applicant must successfully pass the written exam of the national Council of Landscape Architectural Registration Boards (CLARB), an additional section covering landscape architecture in California, and an oral examination given by the Board. As of January 1, 1990, the oral exam requirement is deleted for all instate applicants. In addition, an applicant must have the equivalent of six years of landscape architectural experience. This may be a combination of education from a school with a Board-approved program in landscape architecture and field experience.

The Board investigates verified complaints against any landscape architect and prosecutes violations of the Practice Act. The Board also governs the examination of applicants for certificates to practice landscape architecture and establishes criteria for approving schools of landscape architecture.

Authorized in Business and Professions Code section 5615 *et seq.*, BLA consists of seven members. One of the members must be a resident of and practice landscape architecture in southern California, and one member must be a resident of and practice landscape architecture in northern California. Three members of the Board must be licensed to practice landscape architecture in the state of California. The other four members are public members and must not be licentiates of the Board. Board members are appointed to four-year terms. BLA's regulations are codified in Chapter 26, Title 16 of the California Code of Regulations (CCR).

MAJOR PROJECTS:

BLA President and Executive Officer Testify Against Sunset Plan. On October 25, the Senate Business and Professions Committee conducted an oversight hearing on the Department of Consumer Affairs and selected boards therein. BLA's President and Executive Officer testified in opposition to a "sunset" plan to abolish the Board being considered by the legislature. Board President Bob Hablitzel testified on the importance of licensing landscape architects, and suggested that instead of sunsetting BLA, it should be subjected to regular review to facilitate streamlining of its operations. Hablitzel also indicated that BLA has been discussing possible mergers with other boards, including the Contractors State License Board.

Executive Officer Jeanne Brode testified about the potential impacts of a sunset plan. In other states where landscape architect boards have been sunsetted, she argued, the boards are usually reestablished within two years, resulting in large financial costs to those states. Brode also predicted that dissolution of BLA would result in a flood of unlicensed landscape architects. Finally, Brode testified that financial constraints have hindered BLA's enforcement program. Several measures have been taken to promote better enforcement, including prioritizing consumer complaints and implementing a cyclical collection of licensing fees, to spread budget costs across the year.

LEGISLATION:

SB 1676 (Dills), which would have provided for the licensing and regulation of irrigation consultants by BLA and would have established misdemeanor penalties for persons who practice irrigation consulting without a license, died in committee.

Proposed Legislation During 1990. BLA anticipates introducing proposed legislation that would require landscape architects to enter into written contracts to provide professional services. Also, BLA may seek legislation permitting it to delegate the grading of performance problems to a national vendor. This proposal resulted from CLARB's decision to centralize the grading for all states at one grading site. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 60 for background information.)

RECENT MEETINGS:

At BLA's December 15 meeting, Executive Officer Jeanne Brode updated members on the Board's budget change proposal (BCP) on committee funding for fiscal year 1990-91. Ms. Brode feels that the lack of funding to reimburse BLA's non-Board-member committee members for meeting-related expenses has contributed to the Board's inability to attract and retain qualified landscape architects to serve on the committees. The Executive Officer favors a BCP which would allocate $1200 each to the Enforcement and Education Committees for per diem allowances; these committees meet four times per year. The Examination Committee would receive $144,000 under the BCP, because the Examination Committee meets six times yearly and annually writes a new 120-problem California section for the Uniform National Examination.

The Board also discussed three other BCPs. One would provide more money for the Enforcement Committee, which currently is allocated only $30,000 to review complaints and discipline licensees. Another BCP would allocate money to fund one more salaried staff assistant to work with the Enforcement Committee. A third proposal would allot $100,000 for the development of a new California licensing exam, separate from the UNE. BLA is already locked into pursuing the new exam by 1992. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 60 and Vol. 9, No. 3 (Summer 1989) p. 53 for background information.) The Board approved all four BCPs but acknowledged the fact that its chance of receiving all four is slim.

Also at the December 15 meeting, the Board again considered proposed language to amend section 2620 of Chapter 26, Title 16 of the CCR. The Board is attempting to clarify the education and job experience requirements for licensing applicants. BLA considered four different language proposals, but did not adopt any of them. Instead, the Board authorized the Executive Officer to work with the Board's legal counsel, Don Chang, to formulate proposed language and resubmit the issue at the next meeting. Once the Board approves the language, the matter will be published for public comment, along with proposed amendments to section 2623, regarding appeals of failing scores on the graphic performance section of the exam which were discussed at the Board's September 1989 meeting. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 61 for background information.)

FUTURE MEETINGS:

May 4 in Los Angeles.

MEDICAL BOARD OF CALIFORNIA

Executive Director: Ken Wagstaff
(916) 920-6393

The Medical Board of California (MBC) is an administrative agency within the state Department of Consumer Affairs. The Board, which consists of twelve physicians and seven lay persons appointed to four-year terms, is divided into three autonomous divisions: Licensing, Medical Quality, and Allied Health Professions.

The purpose of MBC and its three divisions is to protect the consumer

from incompetent, grossly negligent, unlicensed, or unethical practitioners; to enforce provisions of the Medical Practice Act (California Business and Professions Code section 2000 *et seq.*); and to educate healing arts licensees and the public on health quality issues. The Board's regulations are codified in Chapter 13, Title 16 of the California Code of Regulations (CCR).

The functions of the individual divisions are as follows:

MBC's Division of Licensing (DOL) is responsible for issuing licenses and certificates under the Board's jurisdiction; administering the Board's continuing medical education program; suspending, revoking, or limiting licenses upon order of the Division of Medical Quality; approving undergraduate and graduate medical education programs for physicians; and developing and administering physician and surgeon examinations.

The Division of Medical Quality (DMQ) reviews the quality of medical practice carried out by physicians and surgeons. This responsibility includes enforcement of the disciplinary and criminal provisions of the Medical Practice Act. The division operates in conjunction with fourteen Medical Quality Review Committees (MQRC) established on a geographic basis throughout the state. Committee members are physicians, other health professionals, and lay persons assigned by DMQ to investigate matters, hear disciplinary charges against physicians, and receive input from consumers and health care providers in the community.

The Division of Allied Health Professions (DAHP) directly regulates five non-physician health occupations and oversees the activities of eight other examining committees and boards which license non-physician certificate holders under the jurisdiction of the Board. The following allied health professions are subject to the jurisdiction of DAHP: acupuncturists, audiologists, hearing aid dispensers, medical assistants, physical therapists, physical therapist assistants, physician assistants, podiatrists, psychologists, psychological assistants, registered dispensing opticians, research psychoanalysts, speech pathologists, and respiratory care practitioners.

MBC's three divisions meet together approximately four times per year, in Los Angeles, San Diego, San Francisco, and Sacramento. Individual divisions and subcommittees also hold additional separate meetings as the need arises.

MAJOR PROJECTS:

BMQA Changes Its Name. Effective January 1, 1990, the Board of Medical Quality Assurance (BMQA) officially changed its name to the "Medical Board of California" (MBC). AB 184 (Speier), which was signed by the Governor in September, is the enabling legislation for the name change. MBC members warmly embrace the name change, hoping that the more general and less descriptive name will reduce confusion concerning the duties of the Board. Apparently, some consumers telephone the Board to request guidance on selecting the best physician, which is not a Board function. Also, it is posited that the new name, which begins with the word "medical", will facilitate consumer access through the telephone directory listings.

DMQ Reviews Its Discipline Process. The Division of Medical Quality recently conducted a review of its physician discipline process. Perhaps in response to recent criticism of the Board's enforcement by the Assembly Office of Research, the Office of the Legislative Analyst, the Little Hoover Commission, and the Center for Public Interest Law (see CRLR Vol. 9, No. 3 (Summer 1989) pp. 54-55 and Vol. 9, No. 2 (Spring 1989) pp. 1 and 60), DMQ member Frank Albino reviewed the backlog and delay issues associated with the physician discipline process at DMQ's December meeting.

The largest backlog of cases is concentrated in the San Francisco Bay Area and the Santa Ana/Los Angeles areas. The backlog may be attributed to many causes, but DMQ's inability to recruit and retain qualified investigative personnel were mentioned as major elements of the problem. The Board plans to discuss the current salary structure for these positions with the Department of Consumer Affairs (DCA), in order to gain approval from DCA to modify it. DMQ Program Manager Vern Leeper believes that an increase in the salary structure for investigative personnel will enable the Board to attract and retain qualified personnel and reduce the staggering case backlog, which was recently estimated by the Legislative Analyst to exceed 870 cases.

Long delays in the investigation and adjudication of claims against physicians also represent a weakness within the present discipline system. Several factors cause these internal delays, which sometimes last three to five years. During the investigation stage, interactions with medical consultants, hospitals, and other state agencies were identified as contributing to delays. In addition, the Attorney General's Office and the Office of Administrative Hearings, which have a mandated role in the adjudicatory process, were blamed for perpetuating the problem.

Mr. Albino mentioned several solutions which might reduce the delay and backlog problems within the physician discipline system. These solutions include an improved salary structure for investigative personnel; cellular telephones for investigators to improve operations in the field; better access to hospital information; and electronic auditing of telephone conversations by Board investigators. Also, it was mentioned that discipline cases often involve a battle of expert witnesses, and accused physicians are usually able to produce higher-paid (and perhaps better qualified) experts, resulting in decisions favorable to the respondent. Thus, Albino suggested that more funds for the Board's expert witnesses be budgeted to improve the end results of litigated cases.

Finally, Mr. Albino suggested that his analysis of the physician discipline process, although needing further study and review, is incompatible with the results of other recent studies of the process. Specifically, he opined that the study conducted by the Center for Public Interest Law (CPIL), which consisted primarily of a review of the Board's own data and documents, may have resulted in some erroneous conclusions. For instance, DMQ took exception to the methodology used by CPIL in calculating the number of complaint calls which come into the Board's discipline system. According to Mr. Albino, the nature of many calls received by the system is outside the jurisdiction of the discipline system, but the Board lacks a system which distinguishes these calls from complaints, for purposes of recordkeeping. Mr. Albino stated that his analysis provides a more accurate perspective of the discipline process and its weaknesses, because he interviewed investigators and conducted site visits. Accordingly, the weaknesses are more properly attributed, in part, to aspects of the discipline process that may not be within the control of DMQ.

The Division accepted Mr. Albino's report on the physician discipline system. DMQ also decided to appoint a committee to review the entire enforcement process and print a booklet on disciplinary procedures.

Report to the Legislature Regarding Enforcement Improvement Programs. Pursuant to supplemental language in the 1989 Budget Act, MBC submitted a report to the legislature in November weighing the advantages and disadvantages of a centralized versus a decentralized intake and complaint handling system as a means of improving enforcement. Under a centralized plan, MBC's consumer service representatives (CSR) would be concentrated in a single unit, instead of the current regional offices, and could be reached by a single toll-free number. However, MBC's report concluded that its current decentralized system is preferable, because it affords consumers better access to the staff responsible for complaint handling, better referral service to local agencies capable of handling complaints outside the Board's jurisdiction, and faster response time in processing consumer complaints. The report also outlined a plan to provide ongoing training to its CSRs and noted recent improvement in the Board's Complaint Investigation Tracking System (CITS).

National Practitioner Data Bank. At DMQ's December meeting, MBC Assistant Executive Director Tom Heerhartz presented a report on the new National Practitioner Data Bank. The data bank, mandated by the federal Health Care Quality Improvement Act of 1986, 42 U.S.C. § 11101 *et seq.*, requires the reporting of professional peer review and state medical board actions against health care practitioners. The data bank will be operated by Unisys for the U.S. Department of Health and Human Services, and should be operational by April 1990.

Heerhartz briefly outlined several aspects of the data bank. All actions taken against health care practitioners on issues of medical competence by state agencies, hospitals, professional peer review organizations, medical staff, and local medical societies must be reported to the new data bank. The law is not retrospective and will not cover actions taken prior to the implementation of the program. Also, the data bank will not be available to the public, but information will be disseminated to state medical boards, peer review organizations, hospitals, and law enforcement agencies.

The California Medical Association (CMA) has expressed concern about several aspects of the new data bank, including issues of confidentiality, practitioner ability to correct information in the data bank, and the requirement that all medical malpractice settlements of any size must be reported.

Expansion of Postgraduate Training Requirements. At its November 30 meeting, DOL staff presented Division members with a legislative proposal which would extend the current postgraduate training (PGT) requirement from a minimum of one year to a mandatory three-year period. At the November meeting, as well as at past meetings, various interest groups shared their concerns regarding the effects of such legislation. (See CRLR Vol. 9, No. 4 (Fall 1989) pp. 62-63; Vol. 9, No. 3 (Summer 1989) p. 56; and Vol. 9, No. 2 (Spring 1989) pp. 60-61 for background information.) In brief, the concerns focus on three main areas:

-The proposed legislation would impede residents' ability to engage in additional paid employment outside their residency programs ("moonlighting"). The restrictions would increase the financial burdens on residents as well as reduce health care to underserved areas where clinics are largely comprised of moonlighting residents.

-Many hospitals and medical centers rely on the ability of interns to obtain licensure following their first year of training. Licensed interns ease the burden on medical staff by signing death certificates, prescribing medicine, and assuming responsibility for patient care to the extent allowed by their level of training. The proposed legislation would eliminate or severely limit such possibilities.

-Some resident groups complain that a mandatory three-year PGT requirement will prevent those residents who choose to temporarily discontinue their residency training from pursuing other career-related or personal interests.

In hopes of reaching a compromise which would address these concerns, the DOL staff's legislative proposal offered four separate alternatives:

Alternative #1 would require applicants to complete three years of PGT before licensure. In the interim, there would be no issuance of a provisional license for moonlighting activities.

Alternative #2 would require applicants to complete two years of PGT during which there would be no moonlighting. Following the second year, however, DOL could grant a provisional license which would permit both moonlighting and the ability to prescribe drugs, sign death certificates, etc. At the end of the third year of PGT, the resident would be eligible for full licensure. The provisional license would be unrestricted and would permit the resident to moonlight without prior approval from the residency program.

Alternative #3 would require residents to complete one year of PGT prior to the issuance of a provisional license at the beginning of the second year. The license would permit moonlighting in the educational setting (the hospital and its clinics), but any outside moonlighting would require special approval by the program director and the employer where moonlighting is to occur. By the beginning of the third year, however, the special approval requirement would be waived, thereby permitting unrestricted moonlighting throughout the third year. The applicant would proceed to full licensure at the end of the third year.

Alternative #4, by far the least restrictive option, would require applicants to complete one year of PGT after which they could be provided with a provisional license for moonlighting during their last two years of PGT. After the first year, the resident would have the choice of either completing the next two years of training or pursuing other interests. Assuming the applicant continues the training, full licensure would be available at the end of the third year. If, however, the applicant temporarily discontinues the training, the provisional license would remain in effect for two years. Following the two-year training deferment, the resident must either return to the training program or cease the practice of medicine completely. The Division would have to approve any extensions to the provisional license.

The California Association of Interns and Residents (CAIR) favors Alternative #4 because it supports the ability to deviate from a hard and fast three-year PGT requirement. CAIR desires the flexibility to moonlight for a few years if financially necessary. Dr. Strong, a general internist who recently completed her residency at UC San Francisco, underscored such sentiments at the November meeting. Having started a family in the middle of her residency training, she now recognizes the need

for flexibility during PGT. Dr. Strong warned that "[a] three-year [PGT] requirement would be detrimental if applied across the board."

Although not personally in attendance at the November meeting, the San Francisco Community Clinic Consortium (SFCCC) supplied written comments which the Division read aloud. The SFCCC strongly opposed any three-year PGT requirement which restricts the ability of residents to moonlight. Restrictions on moonlighting, SFCCC argued, would be devastating to the community clinics in underserved areas and would deny residents valuable educational training. Additionally, the financial burdens on students from poorer families would become overwhelming.

Dr. Neil Parker from the UCLA Residency Review Committee also submitted written comments on the proposals. While recognizing a need for increased PGT due to the "explosion of knowledge and skills" in the medical field, Dr. Parker believes that such training should be extended to two years instead of three. By the end of the second year of training, said Parker, "the resident is a well-trained physician who has all the basic skills and knowledge to care for patients in an independent, knowledgeable and caring manner." Dr. Parker further stated that the third year of PGT merely offers more specialized training with a flatter learning curve with respect to general knowledge and skills. Parker also advocated a provisional license under which students could be supervised while still experiencing the necessary independence expected of them at the time of final licensure.

Dr. Brian Greenberg of the California House Officer Medical Society (CHOMS) also addressed DOL by letter. In short, CHOMS would not support extended PGT requirements in the absence of proof that such increased training would benefit patient care. CHOMS rejected Alternative #1 (no provisional license during the three-year PGT) and supported Alternative #4 (unrestricted provisional license after one year of PGT).

Following the consideration of the four legislative options provided to them by DOL staff, the Division approved Alternative #2. Former MBC member Dr. Lindy Kumagai subsequently warned the Division of the difficulty it would likely have in convincing a legislator to carry Alternative #2, considering the opposition it will undoubtedly trigger.

Disapproval Proceedings. In response to DOL's threat of disapproval proceedings (see CRLR Vol. 9, No. 4 (Fall 1989) p. 63 for background information), the Universidad Autonoma de Ciudad Juarez (UACJ) has finally complied with DOL's order to submit survey information regarding its medical curriculum. Based on the volume of materials submitted, the Division was forced to postpone the hearing date until its February 1990 meeting in San Francisco.

At DOL's December 1 meeting, DOL staff proposed an Order of Disapproval in response to its review of Universidad Mundial Dominicana (World University or WU). The Division suspects that WU's training program may be deficient in the core clinical areas of obstetrics/gynecology, pediatrics, psychiatry, and fifteen weeks of electives. WU agreed that it would be unable to comply with the Division's survey request because it is in the process of relocating its campus. The Division moved unanimously to accept the proposed Order of Disapproval. Four WU students are already in the process of postgraduate training, and their status will be considered individually at the February meeting.

Remedial Study Following Exam Failure. Section 2185 of the Business and Professions Code requires an applicant who fails either or both parts of the Federation Licensing Examination (FLEX), or the oral examination after two attempts, to complete additional medical instruction under the auspices of a medical school. In response to the Division's current lack of policy or guidelines regarding the content or length of the required remedial instruction, DOL attempted to clarify the guidelines for acceptable training. Following Dr. Rider's suggestion that the remedial instruction take the form of accredited postgraduate training, DOL moved unanimously to work together with the Division staff to decide upon the particular length of time required to satisfy section 2185, and present a recommendation at DOL's next meeting.

Review of Section 1324 PGT Programs. After reviewing an extensive report compiled by DOL members Milkie and Mallel, the Division adopted several recommendations to improve the PGT currently provided to foreign medical graduates (FMGs) in accordance with section 1324, Chapter 13, Title 16 of the CCR. (See CRLR Vol. 9, No. 3 (Summer 1989) p. 56 for background information.) DOL members agreed that Section 1324 PGT programs ought to have a separate budget for teaching purposes only, distinct from the budget of the sponsoring facility. The Division also recommended that Section 1324 programs hire a full- or part-time medical director to ensure teacher accountability. Additionally, DOL suggested that the PGT programs develop a core curriculum for the trainees, with periodic methods of testing. Finally, DOL decided to assign one of its members (or hire an outside consultant) to perform routine surveillance of the Section 1324 programs.

DOL Regulatory Changes. In September, DOL adopted a proposed amendment to section 1328, Title 16 of the CCR, regarding the Division's written examination requirement for foreign medical graduates. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 63 for detailed background information on this change.) However, the Division has delayed its submission of that amendment to the Office of Administrative Law because it intends to further amend section 1328.

At its November 30 meeting, DOL was scheduled to hold a regulatory hearing on a proposed amendment to sections 1351.5 and 1352, which would increase the Board's biennial renewal licensing fee and the initial licensing fee to $360. However, that hearing was postponed until DOL's February meeting.

DAHP Regulatory Hearings. At its November 30-December 1 meetings, DAHP held public hearings regarding three sets of proposed regulations:

-*Medical Assistants.* Presently, medical assistants (MAs), as unlicensed individuals, are legally permitted to administer certain injections and draw blood samples. In practice, however, MAs routinely perform other tasks that are technically illegal. Addressing the concerns of MAs and supervising physicians, SB 645 (Chapter 666, Statutes of 1988) was enacted, permitting DAHP to adopt regulations establishing standards for technical supportive services which may be performed by a medical assistant. (See CRLR Vol. 9, No. 2 (Spring 1989) p. 61 for background information.)

After a November 30 hearing, DAHP adopted new regulatory sections 1366, 1366.2, and 1366.4; renumbered existing section 1366 as new section 1366.1; and renumbered existing section 1366.1 as new section 1366.3. Collectively, the

new regulations define the technical supportive services which may be performed by an MA under the supervision of a physician or podiatrist, and establish standards for appropriate MA training and supervision.

Written comments on the proposed regulations reflected a general concern among other allied health professionals—such as nurses, physician assistants, and physical therapists—that some of the proposed technical support services are similar to their tasks and, for reasons ranging from lack of medical training to public safety, suggested that they be amended. MAs generally supported the proposals, and suggested additions to the permitted technical supportive services, such as urethral catheterization and dermatological procedures. DAHP rejected the inclusion of these procedures due to their invasive nature.

-Research Psychoanalysts. Currently, students in research psychoanalysis are required to conduct at least three psychoanalyses under the supervision of three different psychoanalyst graduate students. At least one psychoanalysis is required to go to "termination." The Newport Psychoanalytic Center (Center) proposed an amendment to regulatory section 1374(h) to specify that this latter provision be "highly recommended" instead of required.

In written and oral testimony, Lawrence Hedges of the Center contended that medical institutions occasionally permit "mercy" graduations, reflecting the occasional impracticality of such a strict graduation requirement. Additionally, the professional definition of "termination" is vague and variable. The proposed change would also mirror the requirements of the International Psychoanalytic Association. However, in written comments, the San Diego Psychoanalytic Society and Institute opposed the proposed change, stating that it is "illogical and irresponsible" for research psychoanalysts to have less clinical training than psychiatrists or clinical psychologists. Many other written statements also opposed the change. DAHP concluded that the proposed change would actually weaken the standard, but decided to seek language which will admit the rare exception to the "termination" requirement, instead of abolishing it altogether.

-Physician Assistants. Finally, DAHP also approved amendments to regulatory sections 1399.541, 1399.543, and 1399.545, Chapter 13.8, Title 16 of the CCR, to clarify the scope of practice of physician assistants (PAs). The new regulations come in response to a 1988 Attorney General's Opinion, which interpreted existing regulations very narrowly and suggested that DAHP amend its regulations if expanded PA authority and responsibilities are intended. (For further information, *see infra* agency report on PHYSICIAN ASSISTANT EXAMINING COMMITTEE.)

At this writing, the rulemaking packages on all three sets of regulatory changes are being prepared for submission to the Office of Administrative Law.

Clarification of DAHP Responsibilities. Prior to its December meeting, DAHP requested a clarification of its responsibilities regarding the allied health committees. (See CRLR Vol. 9, No. 4 (Fall 1989) pp. 63-64 for background information.) DCA's Legal Office responded with a memo detailing DAHP's statutory relationship with the eight allied health agencies regarding licensing, discipline, and the adoption of regulations. In general, the specific grants of authority to DAHP in the allied health committees' enabling statutes control over the general grant of authority to DAHP in section 2006 of the Business and Professions Code. Each allied health (AH) agency has a unique relationship with the Division, and each relationship changes with amendments to the applicable enabling statutes.

DAHP member Alfred Song was concerned that the erosion of DAHP authority over the AH agencies threatens the continued existence of the Division, and suggested legislation which would increase its role in examinations, licensing, and discipline. He lamented the lack of a "grand plan" regarding current Division authority. DCA legal counsel Greg Gorges and MBC Assistant Executive Director Tom Heerhartz requested a policy directive and a clarification in scope from DAHP. On Bruce Hasenkamp's motion, the Division agreed that a subcommittee of Hasenkamp, Song, and DAHP Program Manager Linda McCready should study the necessity and the ramifications of such legislation.

Physician Loan Program. At MBC's September 15 meeting, the Board passed Dr. Madison Richardson's motion to resurrect the physician loan program. The original program was formed to provide loans to physicians to assist them in starting or expanding medical practices in areas determined to be deficient in physician services and primary care specialties. The program ran for eight years, and granted a total of 37 loans. Following a December 1988 Legislative Analyst report which noted that the program had only minimally increased the number of physicians in medically deficient areas, the program was abandoned. At MBC's December 1 meeting, Anthony Arjil, MBC Program Manager, requested additional guidance from the Board regarding its intent and goals in resurrecting the program. Richardson will head a subcommittee to address Arjil's concerns and will draft proposed legislative language regarding the program.

LEGISLATION:

SB 1802 (Greene). Existing law makes it unprofessional conduct and grounds for disciplinary action for a physician and surgeon to perform repeated acts of clearly excessive prescribing, furnishing, or administering of drugs or treatment, as specified. This bill would authorize a physician and surgeon to prescribe or administer controlled substances to a person in the course of treatment of that person for intractable pain, as defined, would prohibit MBC from disciplining a physician and surgeon for that prescribing or administering, and would prohibit a health care facility from forbidding or restricting the use of controlled substances when prescribed or administered by a physician and surgeon having staff privileges at that facility for a person diagnosed and treated by that physician and surgeon for intractable pain. SB 1802 is pending in the Senate Business and Professions Committee.

The following is a status update on bills reported in detail in CRLR Vol. 9, No. 4 (Fall 1989) at page 64:

SB 1434 (Presley) would have enhanced DMQ's ability to detect incompetent and/or impaired physicians by requiring improved reporting to DMQ of malpractice judgments and settlements by insurance companies and courts, adverse peer review actions by hospitals, felony charges against physicians by district attorneys, and physician negligence detected by coroners conducting autopsies. SB 1434 would also have established the Medical Quality Panel, a special panel of administrative law judges within the Office of

Administrative Hearings, to hear all medical discipline cases. This bill was withdrawn after passing the Senate Judiciary Committee and the Senate Appropriations Committee; Senator Presley has vowed to reintroduce the bill in 1990.

AB 1565 (Sher) would make the section 805 reporting requirement applicable to a medical or professional staff of a designated postsurgical recovery care demonstration project. The bill would also require every peer review body to establish a committee for the purpose of reviewing the quality of professional care provided by members or employees of that body. This bill is pending in the Senate Judiciary Committee.

SB 1162 (Stirling), regarding the use by a physician of conscious sedation, regional anesthesia, or general anesthesia outside the auspices of a peer review body, died in committee.

Proposed Legislation. At its December meeting, DAHP discussed proposed amendments to section 4955 of the Business and Professions Code to require that an acupuncturist who possesses a degree of Doctor of Oriental Medicine use either the full title or the initials "D.O.M." and no other title or initials. An acupuncturist who possesses a degree of Doctor of Acupuncture may use either the full title or the initials "D.Ac.," "D.Ac.M.," or "D.A.M." and no other title or initials. The use of any other designation implying that the acupuncturist is a doctor of medicine, a physician and surgeon, or an osteopathic physician would constitute unprofessional conduct.

At the meeting, DAHP member Alfred Song echoed the California Medical Association's (CMA) concern that the proposed amendments fail to eliminate the possible public confusion between the acupuncturist title and the medical doctor's title (MD). The central point of CMA's criticism appeared to be use of the word "doctor" or any initial suggesting its equivalent. DAHP members Richardson and Hasenkamp criticized the tardiness of CMA's comments. They further noted that public safety demands prompt action and any further changes before introduction could delay the proposals until the next legislative session. DAHP agreed to introduce a "spot" bill, and to consult CMA and the Acupuncture Committee regarding clarifying language which may be added to the bill by the next DAHP meeting.

LITIGATION:

On December 18, in *People v. Klvana*, No. A791288, a Los Angeles County Superior Court jury found Dr. Milos Klvana guilty on nine counts of second-degree murder and over forty other felony counts. Klvana, who was convicted on 26 counts of illegal prescribing in 1978 but only placed on probation by MBC, was found responsible for the deaths of nine infants occurring between 1982 and 1986. MBC investigated four of those deaths, but allowed Klvana to continue practicing due to "lack of sufficient evidence." During the trial, it was revealed that Klvana repeatedly lied to MBC investigators, who took him at his word and failed to conduct any further inquiry. In his closing argument, Deputy District Attorney Brian R. Kelberg leveled harsh criticism at the Board and its physician discipline system. Klvana's sentencing was expected to take place in February.

RECENT MEETINGS:

At MBC's December meeting, the Board and its divisions selected its 1990 officers. Dr. J. Alfred Rider was selected MBC President; Dr. John Tsao is Vice President; and Dr. Jerome Unatin is Secretary. DOL elected Dr. Fredrick Milkie as President; Dr. John C. Lungren as Vice President; and Audrey Melikian as Secretary. DMQ selected Dr. Rendel Levonian as President; Frank Albino as Vice President; and Theresa Claassen as Secretary. DAHP reelected Dr. Jacquelin Trestrail as President; Bruce Hasenkamp as Vice President; and Dr. Madison Richardson as Secretary.

FUTURE MEETINGS:

April 19-20 in Los Angeles.
June 7-8 in Sacramento.

ACUPUNCTURE COMMITTEE

Executive Officer: Lynn Morris
(916) 924-2642

The Acupuncture Committee (AC) was created in July 1982 by the legislature as an autonomous body; it had previously been an advisory committee to the Division of Allied Health Professions (DAHP) of the Medical Board of California.

Formerly the "Acupuncture Examining Committee," the name of the Committee was changed to "Acupuncture Committee" effective January 1, 1990 (Chapter 1249, Statutes of 1989). That statute further provides that on and after July 1, 1990, and until January 1, 1995, the examination of applicants for a license to practice acupuncture shall be administered by independent consultants, with technical assistance and advice from members of the Committee.

Pursuant to Business and Professions Code section 4925 *et seq.*, the Committee sets standards for acupuncture schools, monitors students in tutorial programs (an alternative training method), and handles complaints against schools and practitioners. The Committee is authorized to adopt regulations, which appear in Chapter 13.7, Title 16 of the California Code of Regulations (CCR). The Committee consists of four public members and five acupuncturists. The legislature has mandated that the acupuncturist members of the Committee must represent a cross-section of the cultural backgrounds of the licensed members of the profession.

MAJOR PROJECTS:

Oversight Hearing. On October 25, the Senate Business and Professions Committee held an oversight hearing on the Department of Consumer Affairs (DCA) and selected regulatory boards. AC was one of ten regulatory boards requested by the Committee to appear and provide testimony on issues specific to each board, as well as testimony regarding DCA in general. AC Executive Officer Lynn Morris and Committee member Stanley Slotkin represented AC at the hearing.

The Senate Committee was particularly interested in the steps that have been taken by AC in response to the scandal involving a former AC member who has been charged with selling answers to the acupuncture licensing exam (see CRLR Vol. 9, No. 4 (Fall 1989) p. 65 for background information). The AC will no longer be administering the licensing examination, and has hired an outside exam consultant.

Continuing Education. AC is considering instituting a random audit of courses which its licensees claim to have taken to satisfy its continuing education (CE) requirement. By statute, the Committee is required to monitor these courses; however, it has not yet set up a program to accomplish this task. At its December meeting, the Committee appeared to be unanimous in agreeing

that classes in "business" will not count toward an acupuncturist's CE requirement.

Tutorial Program. Currently, 35 students are participating in the tutorial program. These individuals study acupuncture not at an approved school, but rather in an apprentice position in order to become eligible to take the licensing examination and be licensed by the Committee. AC's Tutorial Subcommittee has stated that it wants to upgrade current tutorial program requirements, but has reached no conclusions as to how that might be accomplished.

LEGISLATION:

The following is a status update on bills reported in CRLR Vol. 9, No. 4 (Fall 1989) at page 66:

SB 654 (Torres), which would have appropriated $279,000 from the Acupuncture Fund to AC to augment the Budget Act of 1989, died in committee.

SB 633 (Rosenthal), which would require AC to prepare and administer the licensure examination twice per year at six-month intervals, is pending in the Assembly Health Committee.

Proposed Legislation. At its December meeting, AC discussed proposed legislation for the 1990 session. As agreed at the December 1 DAHP meeting, a spot bill will be introduced sometime in January; the bill will subsequently be amended to restrict the titles which may be used by licensed acupuncturists. At present, there is no unanimity of opinion regarding titles and initials which maybe used by acupuncturists.

As currently drafted, the proposed legislation would amend section 4955 of the Business and Professions Code to require that an acupuncturist who possesses a degree of Doctor of Oriental Medicine use either the full title or the initials "D.O.M." and no other title or initials. An acupuncturist who possesses a degree of Doctor of Acupuncture may use either the full title or the initials "D.Ac," "D.Ac.M.," or "D.A.M." and no other title or initials. The use of any other designation implying that the acupuncturist is a doctor of medicine, a physician and surgeon,or an osteopathic physician would constitute unprofessional conduct.

At the December meeting, AC members discussed their perceptions of DAHP's concerns in this area. It was suggested that one DAHP member in particular, retired Senator Alfred Song, feels that AC has gone far beyond its legislative purpose and that acupuncturists should be regulated by DAHP. However, AC members agreed that the majority of DAHP members appear to be concerned only that the initials "M.D." not be used, nor any other initials which would confuse consumers as to the qualifications of the acupuncturist. AC members agreed that they would like to have more input regarding legislation concerning acupuncturists' titles.

RECENT MEETINGS:

At AC's December meeting, Dr. David Chen was elected chair of the Committee and, for the first time, AC elected a vice-chair to serve in the absence of the chairperson. Dr. Lam Kong is AC's new vice-chair.

Also discussed at the December meeting was a proposed "mission statement," intended to help keep the Committee focused on its primary purpose of public protection. Unfortunately, there was much confusion on the part of some Committee members—particularly the acupuncturist members—who wanted to expand the statement to include a provision regarding the Committee's desire to promote acupuncture and encourage research and development in the field. Both the Executive Officer and legal counsel attempted to explain that the purpose of the agency is not to promote acupuncture, but rather to protect the public. After lengthy discussion, AC finally adopted the mission statement as drafted.

Also at the December meeting, the Committee spent a considerable amount of time discussing and asking questions about guidelines for travel arrangements, reimbursement for expenses, and per diem fees for Committee members. Members expressed confusion about the amount of money allocated for meals, and the circumstances in which a Committee member may charge a meal to the state. Additionally, there was a prolonged discussion as to whether or not the Committee would have coffee at its meetings. The state does not pay for refreshments at regulatory agency meetings; therefore, any such expenses must be borne by the Committee members themselves. The Committee's extreme caution over use of state money may be the after-effect of the recent scandal, which has resulted in increased legislative and public scrutiny of the Committee's actions.

FUTURE MEETINGS:

To be announced.

HEARING AID DISPENSERS EXAMINING COMMITTEE

Executive Officer: Margaret J. McNally
(916) 920-6377

Pursuant to Business and Professions Code section 3300 *et seq.*, the Medical Board of California's Hearing Aid Dispensers Examining Committee (HADEC) prepares, approves, conducts, and grades examinations of applicants for a hearing aid dispenser's license. The Committee also reviews qualifications of exam applicants, and is authorized to issue licenses and adopt regulations pursuant to, and hear and prosecute cases involving violations of, the law relating to hearing aid dispensing. HADEC has the authority to issue citations and fines to licensees who have engaged in misconduct. HADEC recommends proposed regulations to the Medical Board's Division of Allied Health Professions (DAHP), which may adopt them; HADEC's regulations are codified in Chapter 13.3, Title 16 of the California Code of Regulations (CCR).

The Committee consists of seven members, including four public members. One public member must be a licensed physician and surgeon specializing in treatment of disorders of the ear and certified by the American Board of Otolaryngology. Another public member must be a licensed audiologist. The other three members are licensed hearing aid dispensers.

MAJOR PROJECTS:

Regulatory Hearing. At its November 4 meeting, HADEC held a regulatory hearing on proposed changes to its continuing education (CE) regulations. HADEC proposed to amend section 1399.141(a)(1) to specify that the content of CE course offerings shall be information related to the fitting of hearing aids at a level above that basic knowledge required for licensure; adopt new section 1399.141(a)(6) to specify that HADEC may approve only courses offered in California or in the Lake Tahoe Basin; and adopt new section 1399.141(a)(7) to state that HADEC may approve only CE courses which are open to all licensed hearing aid dispensers. Following the hearing, HADEC approved the proposed regulatory

changes.

These changes had previously been approved by HADEC, but were rejected by the Office of Administrative Law (OAL) for lack of clarity. (See CRLR Vol. 9, No. 2 (Spring 1989) p. 64 for background information.) Specifically, OAL found that the phrase "at a level above that basic knowledge" was unclear. In new section 1399.141(a)(1), HADEC defines that term to mean "any subjects, issues, topics, theories, or findings that are more advanced than the entry level of knowledge described in those basic subjects listed in subdivision (b) of Section 3353 [of the Business and Professions Code]."

Implementation of SB 1324. Also at its November 4 meeting, HADEC discussed possible timetables for implementing SB 1324 (Rosenthal) (Chapter 302, Statutes of 1989). (See CRLR Vol. 9, No. 4 (Fall 1989) p. 66 for background information.) SB 1324 authorizes HADEC to issue temporary licenses to applicants licensed in other states who meet specified criteria, if the applicant will be supervised and trained by a licensee. The Committee is also authorized to adopt regulations setting forth criteria for refusal to approve a licensee to supervise a temporary licensee. HADEC discussed draft language for new regulatory section 1399.115, which sets forth grounds for denial, suspension, or revocation of a licensee's authority to supervise a licensee. The Committee also discussed existing section 1399.116, which requires a hearing aid dispenser to have three years of licensed experience before he/she may be permitted to supervise more than one trainee-applicant at a time. HADEC generally agreed with the draft implementing regulations, but decided to review them at its January meeting before submitting them to DAHP for hearing and approval.

Consumer Pamphlet. At its November meeting, HADEC reviewed the latest draft of its consumer education brochure. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 66 for background information.) The Committee added some final revisions and agreed to submit it to the Department of Consumer Affairs (DCA) for review. HADEC hoped to be able to review and approve the final version at its January meeting.

LEGISLATION:

SB 1916 (Rosenthal). Existing law providing for the licensing and regulation of hearing aid dispensers does not apply to the bona fide sale of hearing aids by catalog or direct mail. This bill would delete that exemption, and would create a new source of licensing fees, to be deposited into the Hearing Aid Dispensers Fund. This bill is pending in the Senate Rules Committee.

AB 459 (Frizzelle) would have provided that a previously licensed individual may renew his/her license at any time after license expiration upon payment of the applicable fees and satisfaction of continuing education requirements. This bill was dropped by its author.

Proposed Legislation. At its November meeting, HADEC decided to propose legislation which would amend section 3305 of the Business and Professions Code to change the definition of a hearing aid and add assistive listening device language. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 66 for background information.) HADEC members believe that this change is necessary because as long as assistive listening devices are not included in the definition of "hearing aid," they may be sold by unlicensed persons.

HADEC is also considering proposed two amendments to section 3320, one of which would add a seat on the Committee for a dispensing audiologist. HADEC acknowledges that dispensing audiologists comprise a growing percentage of licensees and thus should gain representation on the Committee. Another possible amendment to section 3320 would change the Committee's name to either "Board of Hearing Aid Dispensers" or "Board of Hearing Aid Specialists." HADEC members feel that the present name is inaccurate as HADEC is not, functionally, a "committee" of any other entity and that its licensees are not actually "dispensers," but are, rather, licensed to perform independent activities.

Presently, HADEC may adopt its continuing education regulations, but DAHP adopts, upon Committee recommendation, all other HADEC regulations. At its November 4 meeting, HADEC discussed the possibility of proposing amendments to section 3328 to transfer all rulemaking authority directly to HADEC. However, due to the potential controversy such a proposal would generate, HADEC decided to withhold this legislation until a later date.

RECENT MEETINGS:

HADEC held its November meeting in conjunction with a meeting of the Speech Pathology and Audiology Examining Committee.

At the November meeting, HADEC reviewed the citation and fine regulations adopted by other DCA agencies to implement their authority under Business and Professions Code section 125.9. The Committee created an enforcement task force to develop a citation and fine program and report back to HADEC at its January meeting.

FUTURE MEETINGS:

June 29-30 in Redding.
September 14-15 in Sacramento.
November 30-December 1 in San Diego.

PHYSICAL THERAPY EXAMINING COMMITTEE

Executive Officer: Steven Hartzell
(916) 920-6373

The Physical Therapy Examining Committee (PTEC) is a six-member board responsible for examining, licensing, and disciplining approximately 11,400 physical therapists. The Committee is comprised of three public and three physical therapist members. PTEC is authorized under Business and Professions Code section 2600 *et seq.*; the Committee's regulations are codified in Chapter 13.2, Title 16 of the California Code of Regulations (CCR).

Committee licensees presently fall into one of three categories: physical therapists (PTs), physical therapy aides (PTAs), and physical therapists certified to practice electromyography or the more rigorous clinical electroneuromyography.

The Committee also approves physical therapy schools. An exam applicant must have graduated from a Committee-approved school before being permitted to take the licensing exam. There is at least one school in each of the 50 states and Puerto Rico whose graduates are permitted to apply for licensure in California.

LEGISLATION:

SB 1434 (Presley) would have enhanced DMQ's ability to detect incompetent and/or impaired physicians by requiring improved reporting of malpractice judgments and settlements by insurance companies and courts, adverse peer review actions by hospitals, felony

charges against physicians by district attorneys, and physician negligence detected by coroners conducting autopsies. This bill was withdrawn by its author after passing the Senate Judiciary Committee and the Senate Appropriations Committee; Senator Presley intends to reintroduce the bill in the near future.

AB 459 (Frizzelle) would have provided that a previously licensed individual may renew his/her license at any time after license expiration upon payment of the applicable fees, and upon satisfaction of continuing education requirements. This bill was dropped by its author.

Proposed Legislation. At its December meeting, PTEC discussed various legislative proposals, including the addition of Article 5.5, Chapter 5.7, Division 2 of the Business and Professions Code. This amendment would authorize PTEC to establish a diversion program to identify and rehabilitate PTs and PTAs whose competency is impaired due to abuse of dangerous drugs or alcohol. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 67 for background information.)

PTEC may introduce legislation which would amend section 4142 of the Business and Professions Code to include PTs who are certified by PTEC to perform therapy involving tissue penetration among those persons statutorily authorized to be issued hypodermic syringes and needles.

Finally, PTEC may proposed legislation which would make technical, nonsubstantive changes to the Physical Therapy Practice Act.

LITIGATION:

In California Chapter of the American Physical Therapy Ass'n et al., v. California State Board of Chiropractic Examiners, et al., Nos. 35-44-85 and 35-24-14 (Sacramento Superior Court), petitioners and intervenors challenge the Board's adoption and OAL's approval of section 302 of the Board's rules, which defines the scope of chiropractic practice. Following the court's August 1989 ruling preliminarily permitting chiropractors to perform physical therapy, ultrasound, thermography, and soft tissue manipulation, the parties engaged in settlement negotiations. A January 5 status conference was postponed until March 2. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 67; Vol. 9, No. 3 (Summer 1989) p. 60, and Vol. 9, No. 2 (Spring 1989) p. 65 for background information on this case.)

RECENT MEETINGS:

At PTEC's December 7 meeting, Committee member James Sibbet presented his report on recommended guidelines both for the approval and reapproval of PT facilities which seek to provide clinical experience for the foreign-trained PT, and for the approval of candidates wishing to waive any or all required experience in such a facility. Mr. Sibbet prepared this report pursuant to a charge from the Committee at its October 5 meeting.

Mr. Sibbet's report identified four problems with the present system. First, facilities within California which wish to apply for approval as a facility offering clinical experience for the foreign-educated PT are no longer inspected on-site by a licensed PT surveyor. Sibbet recommended that PTEC retain a licensed PT as a consultant to perform these inspections.

Second, PTEC does not resurvey approved facilities. Sibbet suggested that PTEC develop a rotation method which would ensure that each approved facility undergoes an on-site survey at least every four years.

Third, PTEC has not developed guidelines or parameters for granting an applicant a waiver of further clinical experience. Sibbet suggested that the applicant demonstrate that he/she is clinically competent to practice; that the competency is diverse and proportionately divided among the services listed in Item 15 of PTEC's Application for Waiver of Physical Therapy Service; and that narrative testimony from the applicant's supervisor indicates that the applicant's competence is equal to that required of a domestically educated PT, including communicative and evaluatory skills.

Finally, Sibbet found that PTEC's current method of granting licensure to foreign-educated PTs who are licensed by another domestic jurisdiction by approving specific out-of-state clinical facilities is inconsistent with the rationale of approving California facilities. Instead, Sibbet recommended that this type of applicant should be required to submit exhaustive documentation satisfying PTEC that he/she has completed all the didactic and clinical requirements of a domestically educated PT.

Also at the December meeting, PTEC elected its 1990 officers. Norma Shanbour was elected chair, and George Suey was selected vice-chair.

FUTURE MEETINGS:

April 27 in Sacramento.
June 22 in Monterey.
August 3 in Santa Barbara.

PHYSICIAN ASSISTANT EXAMINING COMMITTEE

Executive Officer: Ray Dale
(916) 924-2626

The legislature established the Physician Assistant Examining Committee (PAEC) in Business and Professions Code section 3500 *et seq.*, in order to "establish a framework for development of a new category of health manpower—the physician assistant." Citing public concern over the continuing shortage of primary health care providers and the "geographic maldistribution of health care service," the legislature created the PA license category to "encourage the more effective utilization of the skills of physicians by enabling physicians to delegate health care tasks...."

PAEC certifies individuals as PAs, allowing them to perform certain medical procedures under a physician's supervision, such as drawing blood, giving injections, ordering routine diagnostic tests, performing pelvic examinations, and assisting in surgery. PAEC's objective is to ensure the public that the incidents and impact of "unqualified, incompetent, fraudulent, negligent and deceptive licensees of the Committee or others who hold themselves out as PAs [are] reduced." PAEC's regulations are codified in Chapter 13.8, Title 16 of the California Code of Regulations (CCR).

PAEC's nine members include one member of the Medical Board of California (MBC), a physician representative of a California medical school, an educator participating in an approved program for the training of PAs, one physician who is an approved supervising physician of PAs and who is not a member of any division of MBC, three PAs, and two public members.

MAJOR PROJECTS:

Scope of Practice Regulations. MBC's Division of Allied Health Professions (DAHP) held a hearing on December 1 in San Diego to consider proposed regulatory changes drafted by PAEC in response to Attorney General Opinion 88-303, which narrowly inter-

preted the PA's permitted scope of practice. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 68; Vol. 9, No. 3 (Summer 1989) p. 60; Vol. 9, No. 2 (Spring 1989) p. 65; and Vol. 9, No. 1 (Winter 1989) pp. 55-56 for detailed background information.) Interested parties were invited to provide both oral and written testimony concerning these regulatory changes.

The proposed amendments to sections 1399.541, 1399.543, and 1399.545, Chapter 13.8, Title 16 of the CCR, would specify those services which may be provided by the PA. The supervising physician (SP) would specify the type and the limit of delegated medical services based on the SP's specialty or usual and customary scope of practice. The amendments would also authorize the PA to initiate certain tests and treatment, and to provide necessary treatment in an emergency or life-threatening situation. The PA's practice in a non-ambulatory setting would be clarified as well.

Representatives from the California Pharmacy Association, the Board of Osteopathic Examiners, the California Nurses Association, the California Medical Association, the Board of Registered Nursing, and the Surgical Nurses Council of California all expressed the general concern that the proposed regulations would expand the areas in which PAs are currently authorized to practice. Those representatives supported the AG's narrow interpretation of the current regulations describing a PA's duties, arguing that the proposed regulations unduly expand the PA's role by permitting them to "initiate" certain procedures, and expressing concern about the scope of a physician's supervision. Additionally, "chain of command" concerns were raised. Nurses argued that if they were to take orders from a PA, such action would violate the Nursing Practice Act, which prohibits a nurse from implementing orders from anyone except a licensed medical practitioner.

PAEC responded that many of the concerns raised relate to language that is already in the Committee's existing statutes or regulations—language which is not the subject of the proposed amendments. The Committee and legal counsel Greg Gorges emphasized the language which details the physician's supervisory responsibility; PAs are "transmitting" orders to the RN—orders which originate with and are authorized by the physician. Thus, the proposed regulations do not require a nurse to implement a PA's order.

After hearing a considerable amount of testimony, DAHP voted to adopt the proposed regulations. At this writing, PAEC is preparing the rulemaking file on the regulatory action for submission to the Office of Administrative Law (OAL).

Regulatory Changes Approved. On January 8, OAL approved PAEC's amendments to regulatory sections 1399.530 and 1399.531, and its repeal of section 1399.530(d). These changes will give approved PA programs wider discretion to grant credit for prior educational and clinical experience. (See CRLR Vol. 9, No. 3 (Summer 1989) p. 60 and Vol. 9, No. 2 (Spring 1989) p. 65 for background information.)

LEGISLATION:

AB 459 (Frizzelle), which would have provided that a previously licensed individual may renew his/her license at any time after license expiration upon payment of applicable fees and satisfaction of continuing education requirements, was dropped by its author.

Proposed Legislation. PAEC may seek legislation which would add sections 3527.1, 3527.2, and 3527.3 to the Business and Professions Code, regarding PAEC's authority to test the continuing competence of PAs. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 68 for background information.) The proposed legislation would allow PAEC to order a PA to undergo a professional competency examination if, after investigation and review by a medical or physician assistant consultant of PAEC or MBC or his/her designee, there is reasonable cause to believe that the PA is unable to practice medicine with reasonable skill and safety to patients. Under proposed section 3527.1, reasonable cause would be demonstrated by one or more of the following: (1) a single incident of gross negligence or incompetence; (2) a pattern of inappropriate prescribing; (3) an act of negligence causing death or serious bodily injury; or (4) a pattern of substandard care.

Pursuant to proposed section 3527.2, the professional competency examination would be in the form of an oral clinical examination administered by two examiners selected by PAEC or its designee, who would test for medical knowledge and any special knowledge required of a PA in the examinee's type of practice. The examination would be tape-recorded. If the examinee fails the original examination, a second examination would be scheduled before two different examiners within 90 days. A failing grade from both examiners would constitute a failure of the examination. Further, if the examinee fails both examinations, PAEC would be able to direct the filing of an accusation charging the examinee with incompetence under section 2234(d) of the Business and Professions Code.

Proposed section 3527.3 would provide that if PAEC proceeds pursuant to proposed sections 3527.1 and 3527.2, and the PA passes the professional competency examination, PAEC would be precluded from filing an accusation of incompetency based solely on the circumstances giving rise to the reasonable cause for the examination. If PAEC determines there is insufficient cause to file an accusation based on the examination results, then all Committee records of the proceedings, including investigative reports, if any, and the reports of the examiners, shall be kept confidential and would not be subject to discovery or subpoena. At this writing, PAEC is seeking an author to sponsor this proposed legislation.

PAEC is also seeking an author to sponsor a proposed amendment to section 11215 of the Health and Safety Code. This amendment would add PAs to the list of health care providers who may administer any narcotic controlled substance employed in treating an addict for addiction.

At its November 17 meeting, PAEC discussed several other areas of possible future legislation: (1) a bill which would change the name of the PAEC to the "Board of Physician Assistants"; (2) legislation which would change the date of approval renewals for PA supervising physicians to the last day of the physician's birth month, which would coincide with the renewal date of the physician's MBC license; and (3) legislation which would increase the PAEC's fee for written certification from $2 to $10. If a PA's license lapses during the period he/she is waiting for a renewal, PAEC issues a letter of good standing (certification), which the PA may submit to his/her supervising physician, allowing the PA to continue to practice until his/her license renewal is processed. This process requires PAEC's custodian of records to officially sign and seal the written certification; the current charge for written certification does not adequately cover the cost to PAEC. Simple

telephonic certification of license and approval status will continued to be provided free of charge.

RECENT MEETINGS:

At its November meeting, PAEC noted that the implementation of Part 1 of "CAS Phase II," the enforcement tracking computer system developed by the Department of Consumer Affairs (DCA), has been delayed. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 68 for background information.) The system was expected to be operational by November 1989. DCA and the private contractor estimated that the customized software should be ready for use by the MBC and the allied health committees in January. However, all the relevant case data still must be entered and staff must be trained to operate this complex program, further delaying the date by which the system will be fully functional. When fully functional, the CAS Phase II will be able to track investigation activities by license number, by name, and by fictitious name. It can also cross-reference investigations of the same licensee being conducted by different DCA agencies. It will be able to track the costs incurred for each investigation.

Also in November, PAEC directed Executive Officer Ray Dale to continue to research the issue of obtaining a salary increase for the Committee's Executive Officer. The request will be sent to the DAHP for initial processing.

Mr. Dale suggested that PAEC review its model disciplinary guidelines. These guidelines are adopted by the PAEC, and serve as its general recommendation on appropriate disciplinary action for specified offenses. They are used by staff, the Attorney General, and administrative law judges in the discipline process. The current guidelines are similar in style and content to those of the MBC. Mr. Dale suggested that PAEC review its guidelines and propose any amendments necessary to update them. Furthermore, he suggested that a budget change proposal be drafted in order to acquire the employee hours which will be required to properly revise these guidelines.

Finally, the PAEC reelected both Janice V. Tramel as Chair and Nancy B. Edwards as Vice-Chair for 1990.

FUTURE MEETINGS:

May 4 in Palm Springs.
July 27 in San Jose.

BOARD OF PODIATRIC MEDICINE

Executive Officer: James Rathlesberger
(916) 920-6347

The Board of Podiatric Medicine (BPM) of the Medical Board of California (MBC) regulates the practice of podiatry in California pursuant to Business and Professions Code section 2460 *et seq.* BPM's regulations appear in Chapter 13.9, Title 16 of the California Code of Regulations (CCR).

The Board licenses doctors of podiatric medicine (DPMs), administers two licensing examinations per year, approves colleges of podiatric medicine, and enforces professional standards by initiating investigations and disciplining its licentiates. The Board consists of four licensed podiatrists and two public members.

Former BPM Executive Officer (EO) Carol Sigmann recently resigned her position to take a job in the private sector. BPM has selected a new EO, James Rathlesberger. Prior to coming to BPM, Rathlesberger served as vice president for the National Health Council.

MAJOR PROJECTS:

Oversight Hearing. On October 25, the Senate Business and Professions Committee held an oversight hearing on the Department of Consumer Affairs (DCA) and selected regulatory boards therein. BPM was one of ten regulatory boards requested by the Committee to appear and provide testimony on issues specific to each board, as well as testimony regarding DCA in general. BPM Executive Officer Carol Sigmann, BPM president Rodney Chan, and BPM member Richard Baerg represented BPM at the hearing.

The Senate Committee was concerned with allegations that have been made regarding BPM's selective enforcement of its standards against licensed podiatrists. These allegations have been leveled primarily at the Board's enforcement procedure involving BPM's Chief Podiatric Medical Consultant (CPMC). Sigmann outlined the steps recently taken by the Board to address these concerns, including: expanding BPM's resource pool of experts; providing the first expert witness training workshop in the state; providing on-the-job training for medical consultants; and revising job descriptions for the Podiatric Medical Consultants (PMCs). The Board will recruit and hire new Associate Podiatric Medical Consultants (APMCs), leaving the CPMC in a largely supervisory role. (See CRLR Vol. 9, No. 4 (Fall 1989) pp. 68-69 for details on these enforcement program changes.)

These changes have occurred largely in response to an amendment recently enacted by the legislature to section 2471 of the Business and Professions Code, limiting the tenure of podiatric medical consultants utilized by the Board (added by SB 2542 (Montoya), Chapter 471, Statutes of 1988). The law now states that the consultants may serve no more than 48 consecutive months. The Board's current CPMC has held that position since 1981.

At the oversight hearing, Senator Montoya questioned Sigmann as to why the Board has not replaced the current CPMC, stating that the legislative intent of the bill is clear and requires replacement of the CPMC after 48 months. Sigmann replied that the CPMC has not been found to have committed improper behavior, and that a hasty removal of the current CPMC would prompt questions as to the integrity of that individual.

At the Board's December meeting, Board staff distributed a memorandum from DCA which addressed the specific language of the amendment and whether it should be given retroactive effect or interpreted prospectively. In other words, the issue is whether the Board may contract with a medical consultant who has served as the Board's Podiatric Medical Consultant for 48 months or longer prior to the effective date of the amendment. DCA concluded that, while the sponsors of the legislation cited alleged abuses of the Board's enforcement powers and selective enforcement of the Medical Practice Act against certain podiatrists in certain written analyses of the bill, "there is no expressed indication on the part of the Legislature which was set forth in the bill that its provisions were intended to pertain to past consultant's [sic] retained by the Board or were otherwise to be interpreted retroactively."

At least two podiatrists and one former BPM public member have confronted BPM at its last two meetings with their displeasure at the Board's failure to address these concerns regarding the CPMC. (*See infra* RECENT MEETINGS.) At this writing, the Board has not responded and, in fact, has been hesitant to allow much discussion of the issue at BPM meetings regarding the

individual CPMC for fear that if, in the future, any action must be taken, the Board may be prejudiced by such testimony.

Also discussed at the oversight hearing was BPM's handling of investigations and enforcement. Ms. Sigmann explained that while the Board cannot investigate every complaint received, each complaint is evaluated. Of priority to the Board are complaints involving quality of care, and podiatrists who are the object of a criminal conviction. Currently, 23 disciplinary cases are pending at the Attorney General's Office. In 1989, the Board revoked two licenses: one involving gross negligence by a podiatrist, and the other involving substance abuse. One license was also suspended for failure to pass an exam.

Enforcement Program. At the December Board meeting, BPM's Enforcement Program statistics, as prepared by CPMC Barry L. Scurran, DPM, were presented. From the Board's inception in 1964 to 1981, eleven licenses were revoked; in the past seven years, the Board has revoked twelve licenses. Currently, 23 cases are pending at the Attorney General's Office; two have been assigned to the District Attorney; 173 cases have been assigned to investigation; and the Podiatric Medical Consultants are reviewing 115 cases. Dr. Scurran also announced that six podiatrists are the subject of five or more complaints; three podiatrists are the subject of 40 or more complaints.

Diversion Program. Recently, the Board has been discussing and outlining its policy on diversion for podiatrists whose competence is impaired due to abuse of drugs or alcohol. It has been estimated that approximately 10% of all medical professionals are chemically dependent, and that only roughly 1% seek help on their own. The Board's Diversion Program is intended to identify and rehabilitate podiatrists with substance abuse problems. BPM's Diversion Evaluation Committee (DEC) works in conjunction with MBC investigators. (See CRLR Vol. 7, No. 4 (Fall 1987) p. 58 and Vol. 7, No. 4 (Summer 1987) p. 82 for background information.)

During the first eleven months of the Program, eleven podiatrists have been admitted. Recently, DEC reevaluated three of the participants and accepted a new applicant to the program. One of the participants has successfully completed the program.

Of current concern to the Board is the issue of whether criminal charges should be brought while the professional is in the diversion program. On at least one occasion, MBC investigators recommended that criminal charges be filed with the District Attorney's Office. The Committee has stated its "concern as to the necessity of the filing of criminal charges."

At its December meeting, the Board reiterated its view that the Program should not be allowed to create a "free zone" for licensees whose conduct is incompetent or criminal. As a matter of policy, the Board concurred that while the program should not create a sanctuary from prosecution, BPM should be allowed to submit its own input before any case is referred to the District Attorney. The Board scheduled further discussion of evaluation and guidelines for appointees to the Program for its next meeting.

LEGISLATION:

The following is a status update of bills described in detail in CRLR Vol. 9, No. 4 (Fall 1989) at page 69:

SB 1434 (Presley) would have enhanced the ability of MBC's Division of Medical Quality to detect incompetent and/or impaired physicians by requiring improved reporting of malpractice judgments and settlements by insurance companies and courts, adverse peer review actions by hospitals, felony charges against physicians by district attorneys, and physician negligence detected by coroners conducting autopsies. This bill was withdrawn by its author after passing the Senate Judiciary Committee and the Senate Appropriations Committee; Senator Presley has promised to reintroduce the bill in the near future.

AB 2459 (Klehs) would provide that a certificate to practice podiatric medicine would authorize a podiatrist to use the title "podiatric physician and surgeon." This bill is pending in the Senate Business and Professions Committee.

AB 459 (Frizzelle) would have provided that a previously licensed individual may renew his/her license at any time after license expiration upon payment of the applicable fees, and upon satisfaction of continuing education requirements. This bill was dropped by its author.

SB 1162 (Stirling), regarding the use by a physician of conscious sedation, regional anesthesia, or general anesthesia outside the auspices of a peer review body, died in committee.

Proposed Legislation. Section 2499.5 of the Business and Professions Code presently states that the initial license fee for BPM licensees is $800, and that the biennial renewal fee for BPM licensees is also $800. The Board may propose legislation which would amend this section to state that any applicant enrolled in an approved residency program at the time of the initial license fee shall be required to pay only 50% of the biennial renewal fee at the time of his/her first renewal. Alternatively, BPM may propose legislation which would state that any applicant enrolled in an approved residency program shall be required to pay only 50% of the initial license fee.

BPM is currently investigating the financial impact of such legislation and has scheduled further discussion of this issue for its next meeting.

RECENT MEETINGS:

At the Board's December 8 meeting in Sacramento, staff announced that, for the first time in eight years, DCA has approved an increase in staff for BPM. This increase will enable BPM to hire a full-time administrative assistant. BPM will also now be processing its own mail and supplies, rather than using DCA's shared services program. The Board expressed hope that this change will reduce the number of complaints from licentiates regarding delays in BPM's responses to mail.

Also at the December meeting, two podiatrists asked to speak to the Board. Both criticized the current Board's enforcement record and procedure, expressing concern regarding the high number of complaints and what they view as little input or overview by the Board members themselves. It was noted that, in discipline cases, the Board usually adopts the administrative law judge's recommendations with few exceptions. The speakers registered even more concern regarding the processing of complaints against the acting Podiatric Medical Consultants. The Board did not respond to this concern.

One of the podiatrists who spoke, Dr. William Moalem, DPM, presented the Board with a list of proposed changes to the current enforcement and discipline procedures, and suggestions for improving complaint processing. Dr. Moalem criticized what he characterized as the

exclusion of the Board members from this process by the former Executive Officer. Dr. Moalem requested that an ad hoc committee be established by the Board to restructure the Board's enforcement and disciplinary procedures.

FUTURE MEETINGS:
June 1 in Sacramento.

BOARD OF PSYCHOLOGY
Executive Officer: Thomas O'Connor
(916) 920-6383

The Board of Psychology (BOP) (formerly the "Psychology Examining Committee") is the state regulatory agency for psychologists under Business and Professions Code section 2900 *et seq.* BOP sets standards for education and experience required for licensing, administers licensing examinations, promulgates rules of professional conduct, regulates the use of psychological assistants, investigates consumer complaints, and takes disciplinary action against licensees by suspension or revocation. BOP's regulations are located in Chapter 13.1, Title 16 of the California Code of Regulations (CCR). BOP is composed of eight members, three of whom are public members.

MAJOR PROJECTS:

Proposed Fee Increases. On December 15, the Office of Administrative Law (OAL) approved BOP's proposed regulatory amendments which increase the psychologist examination fee from $100 to $150, and establish the inactive renewal fee for psychologists at $40. This action amends subsection (b) and adds subsection (d) to section 1392, Title 16 of the CCR. (See CRLR Vol. 9, No. 4 (Fall 1989) pp. 69-70 for background information.)

Fictitious Name Regulations. Following a supplemental comment period ending on October 20, BOP submitted new regulatory sections 1398, 1398.1, and 1398.2, Chapter 13.1, Title 16 of the CCR, regarding fictitious name permits, to the Office of Administrative Law (OAL) for approval. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 70 for background information.) At this writing, OAL is still reviewing the regulatory changes.

LEGISLATION:

The following is a status update on bills reported in CRLR Vol. 9, No. 4 (Fall 1989) at page 70:

SB 194 (Morgan) would require the California Postsecondary Education Commission to recommend criteria and standards to be used in periodic review of associations that accredit educational institutions. This bill is pending in the Assembly Education Committee.

AB 1016 (Moore) would have provided that Medi-Cal outpatient psychology services may be provided by a psychologist or by any provider trained to provide the services, such as a psychological intern, while under the supervision of a physician. This bill died in committee.

AB 1266 (Tucker), which would have enacted the Alcohol and Drug Counselors License Law, and would have required those wishing to become licensed to complete 315 hours or 21 semester academic units of approved alcohol and drug education training, also died in committee.

AB 2422 (Polanco), which would have assessed a 10% surcharge on the licensing fees of a number of health professions, including psychologists, died in committee.

AB 459 (Frizzelle) would have provided that a previously licensed individual may renew his/her license at any time after license expiration upon payment of the applicable fees, and upon satisfaction of continuing education requirements. This bill was dropped by its author.

Future Legislation. BOP plans to sponsor a bill during the 1990 session which will raise its biennial licensing renewal fees, to offset the increasing cost of enforcement actions taken by the Board.

RECENT MEETINGS:

At its November 4 meeting in Monterey, BOP adopted revisions to its disciplinary guidelines, including standard conditions to be included in all cases of probation, optional conditions to be included as appropriate, and examples of specific violations. The guidelines will be printed and made available to the Attorney General's Office, administrative law judges, and other interested parties.

FUTURE MEETINGS:
May 11-12 in Los Angeles.
July 27-28 in San Francisco.

SPEECH PATHOLOGY AND AUDIOLOGY EXAMINING COMMITTEE
Executive Officer: Carol Richards
(916) 920-6388

The Medical Board of California's Speech Pathology and Audiology Examining Committee (SPAEC) consists of nine members: three speech pathologists, three audiologists and three public members (one of whom is a physician).

The Committee registers speech pathology and audiology aides and examines applicants for licensure. The Committee hears all matters assigned to it by the Board, including, but not limited to, any contested case or any petition for reinstatement, restoration, or modification of probation. Decisions of the Committee are forwarded to the Board for final adoption.

SPAEC is authorized by the Speech Pathologists and Audiologists Licensure Act, Business and Professions Code section 2530 *et seq.*; its regulations are contained in Chapter 13.4, Title 16 of the California Code of Regulations (CCR).

MAJOR PROJECTS:

Citation and Fine Regulations. At its November 3 meeting, SPAEC approved the language for proposed regulations to implement Business and Professions Code section 125.9, which allows specified agencies within the Department of Consumer Affairs to issue citations and fines to licentiates and to others who provide services for which a license is required.

This proposal would adopt Article 10 (commencing with section 1399.128) of Chapter 13.4, Title 16 of the CCR. Specifically, these regulations would authorize SPAEC's Executive Officer to issue citations containing orders of abatement and fines for violations of specified provisions of law. The regulations specify the contents of a citation and the mode of service upon a licensee, and set forth two ranges of fines for specified violations. The regulations also authorize the Executive Officer to issue an order of abatement in conjunction with the issuance of any citation. Finally, the regulations permit the Executive Officer to issue citations or fines against nonlicensees who are perform services for which licensure as a speech pathologist and audiologist is required.

The Committee was scheduled to

hold a January 12 public hearing on its proposed citation and fine regulations.

Topics Tabled to Subcommittee. At its November meeting, SPAEC referred issues to its legislative subcommittee for further study and presentation at a future SPAEC meeting, including the following:

-whether acoustic emittance testing is actually the practice of audiology and beyond the scope of practice of a hearing aid dispenser; SPAEC will work with the Hearing Aid Dispensers Examining Committee (HADEC) on this issue;

-the number of clock hours of continuing education which should be required of SPAEC licensees;

-the possibility of amending the Business and Professions Code to prevent hearing aid dispensers from conducting hearing tests;

-the possibility of increasing the minimum statutory grade point average required for SPAEC licensure;

-a possible amendment to section 1399.157 of SPAEC's regulations to limit the number of clinical practicum units a student may apply to his/her overall units required for licensure; and

-whether out-of-state practitioners should be required to take the standard California licensing exam or whether an alternative exam or procedure would be acceptable.

LEGISLATION:

AB 459 (Frizzelle), which would have provided that a previously licensed individual may renew his/her license at any time after license expiration upon payment of applicable fees and completion of continuing education requirements, was dropped by its author.

Proposed Legislation. At its November 3 meeting, SPAEC approved a number of proposed legislative amendments to its enabling statute. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 71 for background information.) Although many of the proposals are technical and non-substantive, the Committee will recommend that the legislature enact several substantial changes to the Business and Professions Code, including the following:

-SPAEC will propose amendments to section 2531.4 of the Business and Professions Code, which would grant the Committee full authority to investigate and evaluate every applicant for a license to practice speech pathology or audiology, and to admit the applicant to the examination or to issue a license, in conformance with existing law. Currently, SPAEC makes licensing recommendations to MBC's Division of Allied Health Professions (DAHP), which makes all final licensing decisions.

-SPAEC proposes to repeal section 2531.5 of the Business and Professions Code, which presently limits the authority of SPAEC to hear only contested cases or petitions for reinstatement, restoration, or modification of probation referred to it by DAHP.

-SPAEC proposes to add language to section 2532.2(c), which currently requires applicants to submit evidence of completion of supervised clinical experience with individuals representative of a wide spectrum of ages and communication disorders. The Committee proposes to add language stating that the clinical practice shall be under the direction of an educational institution approved by the Committee. Further, if the site of the clinical practice is a facility which is not a part of an approved educational institution, the educational institution must have an affiliation agreement with the facility providing clinical practice to students. According to the proposed language, the Committee may set forth guidelines for provisions to be contained in the affiliation agreements.

-Proposed changes to section 2533 of the Business and Professions Code would transfer from DAHP to SPAEC the final authority to refuse to issue, issue subject to terms and conditions, suspend, revoke, or impose conditions upon the license of a licensee if he/she has been guilty of unprofessional conduct which has endangered or is likely to endanger the health, welfare, or safety of the public.

-Proposed section 2533.2(b) would authorize SPAEC to hear all matters, including but not limited to any contested case, or to assign any such matters to an administrative law judge (ALJ). According to the proposed section, if a contested case or petition for reinstatement, modification, or termination of probation is heard by the Committee itself, the ALJ who presided at the hearing shall be present during the Committee's consideration of the case and shall assist and advise the Committee.

-Section 2535.2 of the Business and Professions Code presently states that a license which has expired may be renewed at any time within two years after its expiration upon the filing of an application for renewal on a form prescribed by the Committee and upon payment of the renewal fee in effect on the last regular renewal date. Under specified circumstances, the licensee would also be required to pay a prescribed delinquency fee as a condition precedent to renewal. SPAEC proposes to change the two-year period for renewal to a five-year period.

-The Committee also proposes to amend section 2531.05 to require HADEC to appoint one of its members to serve as a liaison to SPAEC; and to add section 2531.10 to require SPAEC to notify HADEC in advance of all Committee business concerning the fitting or dispensing of hearing aids.

-Finally, proposed changes to section 2535.4 of the Business and Professions Code would set forth the conditions that must be met before a person whose license has been expired for more than five years may apply for and obtain a new license.

At this writing, the Committee is looking for a sponsor for these proposals.

FUTURE MEETINGS:

May 11 in Ontario.
July 6 in Sacramento.
September 28 in Burbank.
November 30 in San Diego.

BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

Executive Officer: Ray F. Nikkel
(916) 920-6481

Pursuant to Business and Professions Code section 3901 *et seq.*, the Board of Examiners of Nursing Home Administrators (BENHA) develops, imposes, and enforces standards for individuals desiring to receive and maintain a license as a nursing home administrator (NHA). The Board may revoke or suspend a license after an administrative hearing on findings of gross negligence, incompetence relevant to performance in the trade, fraud or deception in applying for a license, treating any mental or physical condition without a license, or violation of any rules adopted by the Board. BENHA's regulations are codified in Chapter 39, Title 16 of the California Code of Regulations (CCR). Board committees include the Administrative, Disciplinary, and Education, Training and Examination Committees.