

California Board of Medical Examiners

I. INTRODUCTION

The California Board of Medical Examiners is one of California's many administrative agencies licensing and regulating the state's businesses and professions. It is a part of the executive branch of government and operates in accordance with the State Administrative Procedure Act.¹

This article first discusses a brief history of medical licensing at common law and in this state. It then describes and evaluates the licensing and regulatory functions of the California Board of Medical Examiners and concludes with a proposal for the unification of all health care professions under the Board.²

II. HISTORY OF MEDICAL LICENSING

A. EARLY COMMON LAW

The right to practice medicine or any of the healing arts was almost totally unrestricted at early common law. The only limitation was the government's power to proceed by quo warranto.³ The Statute 3 Henry VIII c. 11 enacted in 1511, was the first regulation of medical practice. That statute required those who desired to practice medicine to pass an examination administered by a designated bishop.⁴

¹CAL. GOV'T. CODE § § 11370-11528 (West 1966).

²This article concentrates primarily on description and analysis of the administrative structure of the California Board of Medical Examiners. An excellent article on the adjudicatory role of the California Board of Medical Examiners can be found in: Guinn, *Judicial Review of Administrative Orders in Texas, A Comparative Analysis: The Board of Medical Examiners, Texas, California and Arkansas*, 23 BAYLOR L. REV. 50-66 (1971).

³Note, *What constitutes the practice of Medicine in North Dakota*, 34 N. DAKOTA L. REV. 53, 54 (1958).

⁴*Id.*

B. THE UNITED STATES

The city of New York passed the nation's first medical regulation act in 1760. New Jersey in 1772 became the first state to enact such legislation, and similar statutes quickly spread throughout the rest of the states.⁵ These early acts usually provided for the establishment of a minimum standard of competence for those practicing the healing arts.⁶ In contrast, today's typical medical practice statutes establish minimum standards for receiving a required license to practice and also provide an elaborate assortment of rules regulating the licensee.

The power to regulate the practice of medicine stems from the reserved police power of the 10th amendment and therefore lies exclusively in the states.⁷ This power was held Constitutional by the United States Supreme Court in *Dent v. West Virginia*.⁸ Mr. Justice Field, speaking for the Court in *Dent* said: "No one has a right to practice medicine without having the necessary qualifications of learning and skill."⁹ Since *Dent*, courts have made it clear, however, that the conditions a statute imposes must not be arbitrary or capricious and must be reasonably related to the state's legitimate interest in protecting its citizens from incompetent practitioners.¹⁰

Today, medical practice is regulated in every state.¹¹ Typically, this authority is placed in an independent executive agency¹² with provisions for some form of judicial review.

C. CALIFORNIA

California enacted its first medical practice statute in 1876. It provided for the state's medical society to elect a seven member Board of Examiners.¹³ In 1878 the statute was amended to

⁵*Id.*

⁶CALIFORNIA DEPARTMENT OF PROFESSIONAL AND VOCATIONAL STANDARDS, BOARD OF MEDICAL EXAMINERS ORIENTATION MANUAL. 90 (b) (1969).

⁷*Dent v. West Virginia*, 129 U.S. 114, 122 (1888); *Hewitt v. State Medical Examiners*, 148 Cal. 590, 592, 84 P. 39 (1906).

⁸*Dent v. West Virginia*, 192 U.S. 114, 123 (1888).

⁹*Dent v. West Virginia*, 192 U.S. 114, 123 (1888).

¹⁰*Williamson v. Lee Optical of Oklahoma*, 348 U.S. 483, 480, 491 (1955); *Watson v. Maryland*, 218 U.S. 173, 178, (1909).

¹¹L. REGAN, *DOCTOR AND PATIENT AND THE LAW* 294 (2nd ed. 1949).

¹²Barran, *Business and Professional Licensing—California A Representative Example*, 18 STAN L. REV. 649 (1965-1966).

¹³Ch. DXVIII, (1876) Cal. Stats. 792.

establish three separate boards of examiners. Under this amendment, each of the three boards was elected by a different society, including the state Medical, Eclectic Medical and Homeopathic Medical Societies.¹⁴

In 1901 California passed a new Medical Practice act establishing a single nine member Board of Medical Examiners. Five members of this board were elected by the state Medical Society, while the remaining members were elected by the state Homeopathic Society and the Eclectic Medical Society.¹⁵ In 1901 California also established an independent five man Board of Osteopathic Examiners elected from the California Osteopathic Association.¹⁶ The size of the Board of Medical Examiners was increased from nine to eleven in 1907 and the power to appoint all its members was transferred to the Governor.¹⁷

In 1913 California decreased the membership of the Board of Medical Examiners to ten.¹⁸ By an initiative in 1922, independent boards of Chiropractic Examiners and Osteopathic Examiners were established.¹⁹ With the adoption of the Business and Professions Code in 1937 California enacted the existing Medical Practice Act. A Board of Medical Examiners composed of ten licensed medical doctors was initially provided for in that act. In 1961 the Medical Practice Act was amended to provide for the appointment of one public member to the Board of Medical Examiners.²⁰

In 1962 California merged the practices of medicine and osteopathy. Osteopathic licenses are no longer issued and graduates of the former osteopathic college are awarded Doctor of Medicine (M.D.) degrees.²¹ Osteopaths licensed prior to 1962 were issued M.D. degrees if they chose to practice as medical doctors.²² The Board of Medical Examiners was given jurisdiction over all osteopaths who received M.D. degrees and is now the sole agency granting medical licenses. The Board of Osteopathic

¹⁴Ch. DLXXVI, (1878) Cal. Stats. 918.

¹⁵Ch. LI, (1901) Cal. Stats. 56.

¹⁶Ch. XCIX, (1901) Cal. Stats. 113.

¹⁷Ch. 212 § 1 (1907) Cal. Stats. 252.

¹⁸Ch. 354, (1913) Cal. Stats. 722.

¹⁹lxxxviii, (1923) Cal. Stats. (Chiropractors); xciii, (1923) Cal. Stats. (Osteopaths).

²⁰Ch. 414, (1937) Cal. Stats. 1377; Ch. 1821 § 7 (1961) Cal. Stats. 3870.

²¹This merger is extensively discussed in: Forgotson, Newman and Roemer, *Licensure of Physicians*, WASH. U. L.Q. 249, 296-300 (1967) (hereinafter cited as Forgotson, Newman and Roemer).

²²CAL. BUS. & PROF. CODE § 2396 (West 1966).

Examiners was retained solely to regulate the osteopaths not receiving M.D. degrees.²³

The existing Board of Medical Examiners (hereinafter referred to as the Board) is composed of eleven members appointed by the Governor²⁴ to four year staggered terms.²⁵ Ten of the Board members must be licensed M.D.'s while the remaining member must be from the general public.²⁶ Each year the Board elects a president, vice president and secretary who with the immediate past president serve as an executive committee. This committee coordinates operational activities with the staff.²⁷

The Board approves or licenses and regulates all medical doctors, podiatrists, physical therapists, physical therapists assistants, psychologists, psychologists assistants, hearing aid dispensers, dispensing opticians and physicians assistants.²⁸ It also regulates midwives and drugless practitioners holding valid licenses.²⁹ The Board also performs numerous other activities not relating directly to the licensing and regulation of health care professions. These activities are, however, beyond the scope of this article.

III. JURISDICTION, INVESTIGATIONS AND ADJUDICATION

A. JURISDICTION

To practice one of the healing arts mentioned above, it is necessary to obtain a license from the Board. In addition to issuing these licenses the Board is required to regulate its licensees and can, for violations of law, revoke or suspend the license of, or otherwise discipline, any licensee who is found to have engaged

²³Forgotson, Newman and Roemer, *supra* note 21, at 296.

¹⁴CAL. BUS. & PROF. CODE § 2100 (West 1966).

²⁵From 1962 - January 15, 1972 a twelfth board position existed; This interim position was filled by an osteopath who had chosen to practice as an M.D. CAL. BUS. & PROF. CODE § 2102 (West 1966), CAL. BUS. & PROF. CODE § 2100.5 (West Supp. 1971).

²⁶CAL. BUS. & PROF. CODE § 2101 (West 1966).

²⁷Interview with William Fawx, Executive Secretary California Board of Medical Examiners, in Sacramento, California February 22, 1972.

²⁸CAL. BUS. & PROF. CODE §§ 2135 (a) (M.D.'s); 2135 (b) (Podiatrists); 2609 (Physical Therapists); 2630 (a) (Physical Therapist Assistants); 2948 (Psychologists); 2913 (Psychologists Assistants); 3350 (Hearing Aid Dispensers); 2550 (Dispensing Opticians); 2517 (Physicians Assistants)

²⁹Midwives and drugless practitioners are no longer licensed by any agency.

³⁰Unprofessional conduct includes, but is not limited to, the following: (1)

in unprofessional conduct as specifically defined in the State Medical Practice Act.³⁰

B. INVESTIGATION

Any one may make a complaint about a licensee by sending a letter to the Board in care of its executive secretary. The letter should include all relevant facts and be as specific as possible.³¹ A staff member reads and evaluates each complaint and decides whether the Board has jurisdiction over the offense and the licensee. If jurisdiction is present, an investigation is initiated, the scope and extent of which the same staff member decides. Notice of the investigation need not be given the licensee. He is, however, customarily contacted during the course of the investigation and is thus made aware of the charges against him.³²

If the investigation reveals the complaint is non-meritorious no charges are filed and the investigation reports are put in the licensee's file. Complaints and investigation reports that do not result in administrative disciplinary actions are considered confidential and are therefore not made available to either the licensee or the public. Although California's Public Records Act³³ entitles the licensee to see his file, the complaints and investigation reports not acted upon are removed from the file before he is permitted access.³⁴

If enough evidence is present to show a substantive offense, the entire record is submitted to the California Attorney General's Office to determine whether administrative proceedings

violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision of the State Medical Practices Act; (2) Gross negligence; (3) Gross incompetence; (4) Gross immorality; (5) The commission of any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of the individual's professional activities, or otherwise, or whether the act is a felony or a misdemeanor; (6) Any action or conduct which would have warranted the denial of the license; (7) Clearly excessive prescribing or administering drugs or treatment or diagnosis which in light of customary community standards, is detrimental to the patient. CAL. BUS. & PROF. CODE § 2360, 2361, and 2361.5 (West 1966).

³¹Interview with William Fawx, Executive Secretary California Board of Medical Examiners, in Sacramento, California. February 22, 1972.

³²Interview with William Fawx, Executive Secretary California Board of Medical Examiners in Sacramento, California. November 12, 1971.

³³CAL. GOV'T. CODE § 6250 et seq (West 1966).

³⁴Interview with William Fawx, Executive Secretary California Board of Medical Examiners, in Sacramento, California November 12, 1971.

are appropriate.³⁵ If the complaint is meritorious the Board's executive secretary files an accusation setting forth in clear and concise language the exact charges against the licensee.³⁶ Use of narcotics, drugs or alcohol endangering the licensee or impairing his ability to practice³⁷ and conviction of a criminal offense involving moral turpitude³⁸ are the most frequently charged offenses.³⁹

C. ADJUDICATION

Upon the filing of an accusation, an administrative hearing is held, unless waived by the accused licensee.⁴⁰ Procedurally, the hearing must comply with the California Administrative Procedure Act,⁴¹ and may be before the entire Board, a district review committee, a hearing officer assigned by the office of Administrative Procedure,⁴² or in some instances, an examining committee.⁴³ If not heard by the entire Board, the district review committee, the hearing officer or the examining committee submits a proposed decision to the Board.⁴⁴ The Board may: (1) adopt the proposed decision in its entirety; (2) reduce the proposed sanction and adopt the balance of the proposed decision; (3) dismiss the action; (4) return the action to the district review committee or hearing officer; (5) assign the action to a different district review committee or hearing officer for rehearing; or (6) decide the case itself upon the record with or without taking additional evidence.⁴⁵

³⁵*Id.*

³⁶An accusation is the formal written statement of charges filed by the Board's executive secretary that initiates the disciplinary proceedings against a licensee. CAL. BUS. & PROF. CODE § 2364 (West 1961); CAL. GOV'T. CODE § 11503 (West 1961); CALIFORNIA DEPARTMENT OF PROFESSIONAL AND VOCATIONAL STANDARDS, *supra* note 6, at 71 (b).

³⁷CAL. BUS. & PROF. CODE § 2390 (West 1966).

³⁸CAL. BUS. & PROF. CODE § 2383 (West 1966).

³⁹Interview with Wallace W. Thompson, retired Executive Secretary California Board of Medical Examiners, in Sacramento, California, October 5, 1971.

⁴⁰CAL. GOV'T. CODE § 11503 (West 1966).

⁴¹CAL. BUS. & PROF. CODE § 2364 (West 1966).

⁴²CAL. GOV'T. CODE § 11370.3 (West 1966).

⁴³Cases involving podiatrists, hearing aid dispensers and physical therapists may be assigned to the respective examining committee while cases involving psychologists must be assigned to the psychology examining committee. These committees are discussed in detail in the next section of this paper.

⁴⁴CAL. BUS. & PROF. CODE § 2123.9 (West Supp. 1971).

⁴⁵ASSEMBLY BILL 767 (amends CAL. BUS. & PROF. CODE § 2124 and became effective on March 24, 1972), CAL. GOV'T. CODE § 11517 (West Supp. 1971).

The executive committee determines whether an action will be heard by the Board itself or assigned. The case load is approximately equally divided between the Board, the District review committees and hearing officers. The executive committee considers four major factors in determining who shall hear a case: (1) Is the practice of medicine itself involved?; (2) Is something related to patient care (such as self use of drugs) involved?; (3) Does the subject matter of the accusation concern a new charge, or one infrequently used and hence lacking in policy precedent?; (4) Is the change primarily record keeping in nature?⁴⁶

An applicant denied a license is also entitled to an administrative hearing upon filing a "statement of issues" by the Board alleging that he has not complied with statutory requirements and administrative regulations.⁴⁷ Like the disciplinary hearing discussed above, this hearing may be before the Board itself or may be assigned.⁴⁸ If the case is assigned, the Board may adopt, reverse or modify the proposed decision in the same manner as also discussed above.⁴⁹

D. JUDICIAL REVIEW

A licensee disciplined by the Board or an applicant denied a license is entitled to judicial review in the Superior Court by filing a writ of Mandamus under section 1094.5 of the California Code of Civil Procedure.⁵⁰

IV. DELEGATION OF LICENSING AND REGULATION FUNCTIONS

The Board is responsible for establishing policy regarding all health care professions under its jurisdiction.⁵¹ It is, however,

⁴⁶The presence of factors (1), (2), or (3) make it more likely the Board or a district review committee will hear the case while the presence of factor (4) makes it more likely that the case will be assigned to a hearing officer. Interview with William Fawx, Executive Secretary, California Board of Medical Examiners, in Sacramento, California, November 12, 1971.

⁴⁷A statement of issues is the formal written statement that initiates a hearing to contest a denied license. CAL. BUS. & PROF. CODE § 2364 (West 1961); CAL. GOV'T. CODE § 11504 (West 1961).

⁴⁸CAL. GOV'T. CODE § 11370.3 (West 1966).

⁴⁹CAL. GOV'T. CODE § 11517 (b), (c) (West 1966); CAL. BUS. & PROF. CODE § 2124 (West Supp. 1971).

⁵⁰CAL. BUS. & PROF. CODE §§ 2174 (aggrieved applicant), 2364 (disciplined licensee).

⁵¹Interview with William Fawx, Executive Secretary California Board of Medical Examiners, in Sacramento, California, November 12, 1971.

unique among California's licensing agencies because it delegates licensing and regulatory powers to statutorily defined subcommittees.

Dispensing opticians, midwives and drugless practitioners are licensed and regulated directly by the Board. The limited number of licensees in these areas and the small number of contested cases make delegation of either the licensing or regulation functions impractical. The Board itself also examines and licenses all M.D.'s, who practice as physicians and surgeons. Much of the Board's other work is however, performed by the five district review committees and four examining committees discussed below.

A. DISTRICT REVIEW COMMITTEES

In 1965 by statute, the state was divided into five geographic regions and a district review committee was established in each region. The Board is authorized to assign contested cases to these committees for administrative adjudication.⁵² Any contested case over which the Board has jurisdiction can be assigned to these committees. To date, however, only cases involving M.D.'s have been assigned.⁵³ The Board can adopt, reverse or modify the proposed decision of a district review committee as discussed above.⁵⁴

The five members of these committees are appointed to four year staggered terms by the Governor. Three committee members must come from nominations made by the professional medical societies in the district, one member must be appointed from a medical school faculty, and the final members is picked from three nominations submitted to the Governor by the Board.⁵⁵ District review committees do not participate in the processing or investigation of complaints and have no official duties relating to general Board policy either directly or in an advisory capacity.

B. PSYCHOLOGY EXAMINING COMMITTEE

In 1957 the licensing and regulation of psychologists was placed within the jurisdiction of the Board⁵⁶ and a psychology

⁵²CAL. BUS. & PROF. CODE § 2123.7 (West Supp. 1971).

⁵³Interview with William Fawx, Executive Secretary California Board of Medical Examiners, in Sacramento, California, November 12, 1971.

⁵⁴See text accompanying note 45, *supra*.

⁵⁵CAL. BUS. & PROF. CODE § 2123.3 (West Supp. 1971).

⁵⁶CAL. BUS. & PROF. CODE § 2900 *et seq.* (West Supp. 1971).

examining committee was created⁵⁷. Licenses to practice psychology are issued by the Board at the direction of the committee's recommendation, the Board is given no discretion to reverse the committee's decision.⁵⁸

This committee may hear all contested cases involving psychologists or assign selected cases to a hearing officer who renders a proposed decision which the committee may adopt, reverse, or modify. The committee is given the authority to direct the Board to revoke or suspend the license of any psychologist.⁵⁹ Again, the Board exercises no discretion in this area and it *must* follow the direction of the committee.⁶⁰

The committee is composed of eight members appointed by the Governor to four year terms. Seven committee members must be licensed psychologists and the eighth member must be from the general public.⁶¹ This committee is the only committee of the Board authorized to adopt and publish administrative rules and regulations.⁶² It is also the only committee over which the Board retains such minimal administrative control.

C. PHYSICAL THERAPY, HEARING AID DISPENSER AND PODIATRY EXAMINING COMMITTEES

Examining committees have also been created to participate in the licensing and regulation of physical therapists, hearing aid dispensers and podiatrists.⁶³ These examining committees, unlike the psychological examining committee discussed above, are subject to the appellate-like review of the Board. Members of these examining committees are all appointed to four year staggered terms by the Governor.

The physical therapy examining committee established in 1953 as the first of the examining committees, is composed of one M.D. licensed by the Board, four licensed physical therapists with five years practice, and one public member.⁶⁴ Five of the six member podiatry examining committee must be licensed

⁵⁷CAL. BUS. & PROF. CODE §§ 2900-2996.6 (West 1966).

⁵⁸CAL. BUS. & PROF. CODE § 2931 (West Supp. 1971).

⁵⁹CAL. BUS. & PROF. CODE § 2960 (West 1966).

⁶⁰CAL. BUS. & PROF. CODE § 2961 (West 1966).

⁶¹CAL. BUS. & PROF. CODE §§ 2920, 2921 & 2023 (West 1966).

⁶²CAL. BUS. & PROF. CODE § 2920 (West 1966).

⁶³CAL. BUS. & PROF. CODE §§ 2125 (podiatrists), 2602 (physical therapists), 3320 (hearing aid dispensers) (West Supp. 1971).

⁶⁴CAL. BUS. & PROF. CODE §§ 2603 and 2604 (West Supp. 1971).

podiatrists and the remaining member must be appointed from the general public.⁶⁵ The seven member hearing aid dispensers examining committee is made up of one licensed M.D. specializing in treatment of the diseases of the ear and certified by the American Board of Otolaryngology, one audiologist certified by the American Speech and Hearing Association, three persons currently and for the preceding five years engaged in the fitting and selling of hearing aids to persons with impaired hearing, and the remaining two members must be appointed from the general public.⁶⁶

These committees are empowered to investigate and examine applicants for licenses in their respective professions and to make recommendations to the Board. As contrasted with the recommendations of the psychological examining committee discussed above, the Board is free to adopt, modify or reject these recommendations.⁶⁷

Recently, the Board has been authorized to assign contested cases to the appropriate examining committee for adjudication.⁶⁸ Again as contrasted with the psychological examining committees' proposed decisions the Board is free to adopt, modify or reverse the proposed decisions of these examining committees in the same manner as they can the proposed decisions of hearing officers and district review committees.⁶⁹

The hearing aid dispensers examining committee is the only one of these committees that is statutorily compelled to make recommendations regarding the adoption of rules and regulations to the Board.⁷⁰ The other two committees, however, do in their official capacity advise and make such recommendations to the Board.⁷¹

⁶⁵CAL. BUS. & PROF. CODE § 2127 (West 1966).

⁶⁶CAL. BUS. & PROF. CODE § 3320 (West Supp. 1971).

⁶⁷CAL. BUS. & PROF. CODE §§ 2129, 2130 (podiatrists) 2605 (physical therapists), 3320, 3329, 3330 (hearing aid dispensers).

⁶⁸SENATE BILLS 609 & 770 became effective on March 24, 1972. These two statutes empower the Board to assign contested cases to the Physical Therapy (SENATE BILL 609) and Podiatry (SENATE BILL 770) Examining Committees for adjudication. The Board has been authorized to assign cases to the Hearing Aid Dispensers Examining Committee since that committee's creation in 1970 (CAL. BUS. & PROF. CODE § 3329).

⁶⁹See text accompanying note 45, *supra*.

⁷⁰CAL. BUS. & PROF. CODE § 3328 (West Supp. 1971).

⁷¹Interview with William Fawx, Executive Secretary California Board of Medical Examiners, in Sacramento, California, November 12, 1971.

D. ADVISORY COMMITTEE ON PHYSICIANS ASSISTANTS

The advisory committee on physicians' assistants was created in 1970. This committee's sole function is to advise the Board on matters pertaining to the approval and licensing of physicians' assistants.⁷² The committee is composed of eight members,⁷³ including a representative of a California medical school, an educator with experience in the development of health manpower programming, one physician, one registered nurse and one member of the Board who serves as its chairman.⁷⁴ The authority to approve and license physicians' assistants and to approve applications by M.D.'s to supervise physicians' assistants is given directly to the Board.⁷⁵ No physicians' assistants have yet been approved by the Board.

V. EVALUATION

Whereas the typical California licensing agency is responsible for only a single business or profession the Board licenses and regulates eleven independent health care professions.⁷⁶ The Board is therefore faced with problems of volume and coordination uncommon to most of the state's licensing and regulatory agencies.

Use of the previously discussed system of delegation and a highly competent staff however, enables the Board to fulfill its primary responsibility of protecting the public, by examining large numbers of applicants, investigating all complaints thoroughly and, when appropriate, providing speedy administrative adjudications. Currently 66,232 licensees are practicing under the Board's jurisdiction.⁷⁷ In 1971, over 8,000 applicants were licensed by the Board and 94 administrative hearings were held.⁷⁸

In 1971 the Board investigated over 1000 complaints.⁷⁹ Most of these were made by patients or their families, professional

⁷²CAL. BUS. & PROF. CODE § 2519 (West Supp. 1971).

⁷³CAL. BUS. & PROF. CODE § 2519 (West Supp. 1971).

⁷⁴CAL. BUS. & PROF. CODE § 2519.5 (West Supp. 1971).

⁷⁵CAL. BUS. & PROF. CODE §§ 2515 and 2516 (West Supp. 1971).

⁷⁶See text accompanying notes 28 and 29, *supra*.

⁷⁷Statistical Reports of the Data Processing Unit, Department of Consumer Affairs, fiscal year ending June, 1971.

⁷⁹*Id.*

societies or associations, and local law enforcement agencies. In addition, the Board subscribes to a newspaper clipping service and makes extensive use of the State Justice Department's Criminal Identification and Investigation Divisions computer facilities.⁸⁰ Through this program of affirmative detection, the Board is able to discover, investigate and prosecute violations that might otherwise go unnoticed. This program is typical of the Board's emphasis on protection of the health care consumer.

Administrative hearings are usually held within four to six months of the filing of the accusation of statement of issues.⁸¹ In light of the Board's heavy case load, this speedy adjudication is particularly impressive. Since the Board is now statutorily empowered to assign contested cases to the examining committees discussed in the preceding section,⁸² it is likely that hearings will be held even sooner than they are held currently.

The *district review committees* play an essential role in the Board's adjudication of contested cases. In most state administrative agencies, contested cases must either be heard by the agency itself or assigned to a hearing officer from the California Office of Administrative Procedure. The Board's authority to assign contested cases to district review committees provides an attractive alternative to these two traditional options for several reasons. First, because the district review committees are composed essentially of M.D.'s, they provide a medical expertise that is not available when a case is heard by a hearing officer. The Board recognizes the value of medical expertise at the hearing stage and will, occasionally, at the request of the licensee, reassign a case originally assigned to a hearing officer to a district review committee.⁸³ Second, the existence of these committees enables the Board to assign cases involving complex technical issues which, if assignment to a hearing officer were the only alternative, would undoubtedly have to be heard by the Board itself. Third, these committees by hearing approximately

⁸⁰Interview with William Fawx, Executive Secretary California Board of Medical Examiners, in Sacramento, California November 12, 1971.

⁸¹*Id.*

⁸²See note 68, *supra*.

⁸³Interview with William Fawx, Executive Secretary California Board of Medical Examiners, in Sacramento, California, February 22, 1972.

one third of the contested cases,⁸⁴ speed up the hearing process and free the Board to devote more time to policy consideration, Fourth, because three members of each district review committee are M.D.'s from the district where the committee resides⁸⁵, the committees provide for direct input from the local professional community into the hearing process. Whenever community conditions are a possible important issue in a contested case, the Board's executive committee should give serious consideration to assigning the case to the appropriate district review committee.

Use of *examining committees* helps solve the problem presented by the Board's jurisdiction over independent health care professions. Because the examining committees are essentially composed of practicing members of the professions,⁸⁶ they inject a specialized expertise into the licensing and regulatory function. Assigning contested cases to examining committees thus provides a unique and desirable alternative to adjudication by a hearing officer.

Relegating the Board to the ministerial role of "rubber stamping" the decisions of the psychology examining committee⁸⁷ defeats the purpose of consolidation and is a useless exercise in form. All the examining committees should be subject to the ultimate authority of the Board.

The Board is doing an impressive job in licensing and regulating a diverse group of medical allied professions with a relatively small staff.⁸⁸ This performance demonstrates that the proposal below for consolidation of all health care occupations under the Board is administratively feasible.

VI. PROPOSAL

The Board does not have jurisdiction over all health care re-

⁸⁴Interview with William Fawx, Executive Secretary California Board of Medical Examiners in Sacramento, California November 12, 1971.

⁸⁵See text accompanying note 55, *supra*.

⁸⁶See text accompanying notes 62 (psychology examining committee) 64 (physical therapy examining committee) 65, (podiatry examining committee) and 66 (hearing aid dispensers examining committee), *supra*.

⁸⁷See text accompanying notes 58, 59 and 60, *supra*.

⁸⁸The Board's staff consists of approximately 22 employees (15 of whom occupy clerical positions). Investigations are conducted by investigators from the Department of Consumer Affairs Division of Investigation. Interview with William Fawx, Executive Secretary California Board of Medical Examiners, in Sacramento, California, February 22, 1972.

lated professions in the state. Dentists, registered and vocational nurses, chiropractors, optometrists and pharmacists are all regulated by autonomous administrative agencies.⁸⁹ This approach to regulation of closely interrelated professions creates unnecessary complexity and discourages the innovativeness necessary to maximize the effective use of the finite resource of professional health care personnel. The committee system of delegation used by the Board presents an efficient means to combine the professional independence and occupational integration necessary to meet today's increasing demands upon medical allied services.

With the expanding demand for medical care and the proportionately diminishing supply of trained and qualified personnel innovation is essential to maintain an adequate health care system.⁹⁰ The approach followed by California of dividing the responsibility for licensing and regulating the diverse health care occupations among independent agencies promotes stagnation. This approach makes it easier for "quackery" to exist and more difficult to detect and prosecute fraudulent practitioners.⁹¹ As has been ably observed by Professors Forgotson and Cook: "The many and complex factors involved in expanding the functions of allied personnel (health care) warrant a revised legal approach perhaps utilizing broad statutory standards, the expertise of an administrative body and judicial supervision."⁹²

The ultimate answer appears to be placing all the health care professions under a single agency with absolute authority to render final decisions on all licensing and regulatory matters. Because the Board is composed of primarily M.D.'s, it is the logical agency for this role. The M.D. license is the only one that authorizes the practice of any accepted technique of health care;⁹³ therefore, the Board has the overall perspective necessary to handle a diverse collection of health care professions.

⁸⁹CAL. BUS. & PROF. CODE §§ 1000 *et seq* (chiropractors); 1611 *et seq* (dentists); 2700 *et seq* (nurses); 3010 *et seq* (optometrists); and 4000 *et seq* (pharmacists).

⁹⁰Forgotson and Cook, *Innovations and Experiments in Uses of Health Manpower - The Effect of Licensure Laws*, in MEDICAL PROGRESS AND THE LAW 171 (1969) (hereafter cited as Forgotson and Cook).

⁹¹Note, *California Quackery*, 11 STAN. L. REV. 273 (1958-1959).

⁹²Forgotson and Cook, *supra* note 106, at 190.

⁹³CAL. BUS. & PROF. CODE § 2137 (West 1966).

Individual professions should be licensed and regulated by examining committees composed primarily of members of the profession. These examining committees should be subject to the appellate review of the Board. Controlled innovation in the health care manpower area could be achieved by making it easy to create examining committees as new paramedical professions gain recognition. A broad statutory authorization should be given to the Board to create these committees as the need arises. The Board's primary work would be shifted from licensing and regulation to policy formulation and appellate consideration of contested cases adjudicated by the committees. The committees, with their specialized expertise, would carry the bulk of the responsibility for licensing and regulation. The above proposal would not increase bureaucracy nor foster inefficiency. Rather, it would *reduce* the maze of health care related administrative agencies currently existing in California and thereby provide a more efficient licensing and regulatory system.

VIII. CONCLUSION

There is a tradition, both in this state and nationwide of independent regulation of the major health care categories such as chiropractic, dentistry, nursing and optometry. However, this "shotgun" approach is not adequate to meet the demands placed on the health care professions by today's rapidly expanding medical technology and the modern multiplication of paramedical occupations. This writer believes it is essential to establish an integrated scheme of licensing and regulation of all health care related professions in the state in order to maximize medical manpower development and adequately protect the public.

The existing California scheme compared to those of most other states, places more health care professions under a single administrative agency, the Board of Medical Examiners. Only Illinois, Rhode Island, Utah, and Washington place more health care professions under a single agency.⁹⁴

⁹⁴UTAH CODE ANNOTATED Title 58, (Provides for professional committees for chiropodists, chiropractors, dentists, medical doctors, religious practitioners, naturopaths, physical therapists, osteopaths, optometrists, pharmacists, veterinarians, nursing home operators and psychologists to advise the State Department of Registration and Education); GENERAL LAWS OF RHODE ISLAND § 5-28-1 to 4 (creates a State Board of Basic Science Examiners, within the State Division of Professional Regulation); ILLINOIS ANNOTATED STATUTES Chpt. 91

To say, however, that currently California places more health care professions under a single agency than most other states does not mean that California's approach can not be improved. With the inevitable rise of new paramedical professions, the California approach will be increasingly strained. Today, there are undoubtedly health care personnel exceeding the legally permissible scope of practice authorized by their licenses.⁹⁵ Much of this illegal practice is not the life endangering "quackery" that medical practice acts were intended to eliminate, but is rather established and officially sanctioned (in the sense it is not prosecuted) procedure designed to meet the increasing demand for medical care. Instead of impeding this type of development, statutes must provide a framework broad enough to accommodate the changing nature of modern medical practice. This writer feels that the proposal discussed above will accomplish this.

H. Matthew Marsh

(provides for examining committees relating to medical doctors, physical therapists, nurses, dentists, chiropody, optometry and veterinary medicine to direct the action of the State Department of Registration and Education regarding licensing and regulating these professions), and REVISED CODE OF WASHINGTON ANNOTATED Title 43, ch. 43.20 (creates a State Board of Health within the State Department of Health).

A good comparison chart of State Medical Practice Acts can be found in Forgeson, Newman and Roemer, *supra* note 21, at 308-315.

⁹⁵Interview with Richard Hamilton, Deputy Attorney General, California Attorney Generals Office, in Sacramento, California, November 7, 1971.