



REGULATORY AGENCY ACTION

During the summer of 1994, the legislature underscored its support for the proposed merger by appropriating only six months' worth of funding for the separate boards in the 1994-95 Budget Act, and amending SB 2037 to include the balance of 1994-95 funding for the merged board—thus tying continuation funding to the merger provision. Not content with the Senate's compromise, the death services industry and both boards organized a campaign to convince the Assembly to kill the merger provision; under intense pressure, the Assembly Consumer Protection Committee deleted the merger provision on August 10 and returned the bill to the Senate for concurrence in its amendments. On August 31, the Senate refused to concur in the Assembly's removal of the merger provision, and SB 2037 died on the Senate floor—taking with it the funding for both boards beyond January 1, 1995. [14:4 CRLR 4, 47]

At its September 29 meeting, the Board considered several options for obtaining additional funding or ensuring that essential Board functions continue after its existing funds are depleted. Executive Officer Ray Giunta outlined five options for Board consideration: (1) seek deficit funding from the legislature, either through an emergency request via DCA, the Department of Finance, or an urgency appropriations bill; (2) transfer Board staff to DCA and adopt a resolution delegating licensing and enforcement functions to DCA until more funding can be secured or a new regulatory structure is determined; (3) transfer enforcement and audit functions to DCA, but retain responsibility for inspections; (4) transfer initial licensing of salespersons and all renewal licensing to DCA; and (5) take no action and continue operating until funds are extinguished.

Board staff distributed a package of supporting materials on Option 1, including a format for the funding request. Option 2 was advocated in testimony by DCA Deputy Director Traci Stevens, who attended the Board meeting to offer assistance and strategic planning. However, the Board directed its anger about the legislature's decisions towards DCA, Stevens, and Senate Business and Professions Committee Chair Senator Dan Boatwright. Several Board members misunderstood the role of the legislature in the appropriations process, and repeatedly demanded that DCA simply give it the needed funds. Stevens explained that DCA lacks authority to loan or appropriate funds, and that—given the clarity of the legislature's intent—any attempts to request a direct appropriation would be futile. Further, she added, such attempts might enrage legislators and therefore DCA would not par-

ticipate in any such requests. However, Stevens urged the Board to consider Option 2, and relayed DCA's offer to shoulder the costs of staff and all functions transferred from the Board and to work with the Board to develop viable options to obtain funding. After grilling Stevens, the Board asked whether a representative from Senator Boatwright's office would testify; Boatwright consultant Michael Gomez replied from the audience that he was at the meeting to observe only. Some Board members were unsatisfied with this response and continued to berate Senator Boatwright throughout its discussion of the Board's problems.

New Board members Janie Emerson and Jeff Wallack spoke in favor of Option 2, and highlighted their concerns for consumer protection in the immediate future. Emerson opined that the only way to continue enforcement without funding is via DCA's proposal; Wallack called on the Board to "be fiscally responsible and protect the consumer" at the same time, and suggested that the delay inherent in a legislative appropriation would leave the Board unfunded and the consumer unprotected. Both Emerson and Wallack urged the Board to take DCA up on its offer and approve a resolution delegating its responsibilities to DCA until more funding and a new regulatory structure can be agreed upon. However, the Board passed a motion approving Option 1 on a 4-2 vote (with Emerson and Wallack opposed).

Accordingly, in October the Board requested a deficiency appropriation pursuant to section 27 of the 1994-95 Budget Act. Department of Finance Director Russell Gould informed the Joint Legislative Budget Committee (JLBC) of his intent to grant the request. This action prompted Senator Boatwright to write a letter to JLBC Chair Senator Mike Thompson, in which he outlined the history of the boards' defunding through the budget process. Senator Boatwright wrote, "The Cemetery Board's request is simply an attempt to circumvent the Legislature's budget process. I strongly urge you to deny requests from the Cemetery Board [or BFDE] pursuant to Section 27 of the Budget Act." Likewise, the JLBC Legislative Analyst Mac Taylor wrote to Senator Thompson that "[i]n view of the Legislature's actions concerning these boards, it is not appropriate for the administration to use the Section 27 notification process to provide funds that the Legislature specifically denied." In November, Senator Thompson refused to concur in the proposed deficiency funding.

The Board ran out of money on December 1. On December 5, DCA Interim Director Lance Barnett transferred the Board's

civil service staff to DCA, took possession of Giunta's state car, and disconnected telephone service at the Board's office. At this writing, a telephone call to the Board's number will yield the following recording: "Effective immediately, the Cemetery Board has exhausted its expenditure authority and as a result currently has no salaried staff to perform the Board's functions. If you have a health or safety concern, contact your county health department. If you have a financial concern, call your local police or district attorney's office. If you have additional concerns, contact the Department of Consumer Affairs' Information Center at (800) 952-5210."

It is widely expected that legislation will be introduced in the near future to merge the boards or create a new entity within DCA to regulate the death services industry.

License Fee Hike Stalled. In May 1994, the Board approved proposed regulatory changes which increase virtually all of the fees it charges to the statutory maximums established in Business and Professions Code sections 9750-70. The fee increases were necessary to address a projected 1993-94 operating deficit and further projected shortfalls in coming years. [14:4 CRLR 47] As the Board failed to submit this rulemaking file to the DCA Director or the Office of Administrative Law prior to its December 5 closure, the proposed fee increases are not expected to take effect.

RECENT MEETINGS

At the Board's September 29 meeting, Executive Officer Ray Giunta reported that, according to recent audits, \$1.9 million in endowment care funds is in jeopardy; Giunta noted that he had issued three citations in connection with these matters. Giunta also noted that Board staff had completed 15% of its scheduled field inspections of licensees; 63% of those inspected were not in compliance with state law, and Giunta had issued 14 citations (nine of which also included fines).

FUTURE MEETINGS

To be announced.

CONTRACTORS STATE LICENSE BOARD

Registrar: Gail W. Jesswein

(916) 255-3900

Toll-Free Information Number:

1-800-321-2752

The Contractors State License Board (CSLB) licenses contractors to work in California, handles consumer com-



plaints, and enforces existing laws pertaining to contractors. The Board is authorized pursuant to the Contractors State License Law (CSLL), Business and Professions Code section 7000 *et seq.*; CSLB's regulations are codified in Division 8, Title 16 of the California Code of Regulations (CCR).

The thirteen-member Board—consisting of seven public members, two B-general building contractors, two C-specialty contractors, one A-general engineering contractor, and one member from a labor organization representing building trades—generally meets four times per year. The Board currently has five committees: administration/public information, enforcement, licensing, legislation, and executive.

MAJOR PROJECTS

CSLB Opens New Response Center to Handle Earthquake-Related Complaints. In December, CSLB opened a new Earthquake Response Center in Van Nuys to handle the tremendous increase in the number of complaints concerning repair efforts following the January 1994 Northridge earthquake. The Center is the culmination of efforts by CSLB Registrar Gail Jesswein, Board Chair Robert Laurie, and Joanne Corday Kozberg, Secretary of the State and Consumer Services Agency. The Center opens at a time when both rebuilding activities and consumer complaints have dramatically increased. [14:4 CRLR 48-49; 14:2&3 CRLR 48] Since August, the Board's Van Nuys district office alone has continuously received an average of 300 complaints per month regarding contractor fraud and unlicensed contracting. According to Registrar Jesswein, "It became clear that extraordinary measures were needed if we were to keep this flood of complaints from completely overwhelming our complaint resolution procedures. By creating the Response Center we expect to resolve virtually all quake-related complaints in a timely fashion and in such a way that our regular district offices in the quake area will be able to function in a business-as-usual mode." The Center is expected to operate for as long as the Board finds it necessary to process all earthquake-related complaints.

In other earthquake-related activity, CSLB's Unlicensed Activity Unit for the Southern Region continued to work with a multi-agency task force throughout the fall; the task force conducted several enforcement "sweep" operations in the Northridge earthquake area to arrest and/or cite unlicensed individuals soliciting earthquake victims and performing fraudulent repairs. On November 19, for example,

the task force made a surprise Saturday sweep of 76 worksites in the earthquake-struck area, arresting 17 individuals for contracting without a license and citing 14 licensed contractors for violations of workers' compensation statutes. Since the January 17 earthquake, the task force has used sting and sweep operations to catch more than 800 unlicensed individuals operating illegally in the area.

CSLB "Stings" Unlicensed Contractors in San Diego. Throughout the fall, CSLB's Unlicensed Activity Unit also cracked down on unlicensed contractors in the San Diego area through the use of "sting" operations. In one such operation, CSLB undercover investigators posed as landlords of an Ocean Beach apartment building; the investigators called several contractors who failed to list a license number in their advertisements, and asked each to come to the apartments at an appointed time to give work estimates. During the two-day "sting," the Unit arrested six contractors for failing to have a valid license and issued three administrative citations for using an expired license or not using a license properly. The "stings" came in reaction to the more than 500 consumer complaints that emanate from the San Diego area every year regarding fraudulent acts by unlicensed contractors, and Governor Wilson's call for greater consumer protection against unlicensed contractors. [14:4 CRLR 49; 14:2&3 CRLR 48] Following the stings, CSLB Chief Deputy Registrar Karen McGagin noted that while consumers may believe they are getting a better deal by hiring an unlicensed contractor, an unlicensed contractor is a risk since they have not promised to abide by laws, minimum quality standards, and ethical codes; McGagin further asserted that hiring an unlicensed individual often ends up costing the consumer more in both money and work quality.

Board Prepares to Fund Outreach Campaign. At CSLB's October 20-21 meeting, Chair Robert Laurie authorized CSLB staff to prepare a budget change proposal in order to fund the Board's new Outreach Campaign. The Outreach Campaign seeks to raise the level of consumer awareness concerning the hiring of licensed contractors, as well as increasing "contractor awareness" of the requirements governing their profession. [14:4 CRLR 49] Also at the October 20-21 meeting, the Board unanimously decided to issue a request for proposals for the development of four 30-second English television advertisements and two 30-second Spanish television advertisements on the use of licensed contractors.

CSLB Enforcement Update. According to Deputy Attorney General Anne Mendoza, CSLB's enforcement action against Gotech Builders will be set for a hearing before an administrative law judge in the near future. In June 1994, at the request of CSLB, the Attorney General's Office filed an accusation against Gotech Builders, its predecessor company Systems Construction, and Gotech owner Jeffrey Charles Weiner, among others. According to the accusation, Gotech illegally diverted \$961,000 from its clients and subcontractors over a four-year period. [14:4 CRLR 49] At this writing, Gotech has not filed an answer, but is expected to answer once the administrative law judge sets the hearing schedule.

Rulemaking Update. On December 1, the Office of Administrative Law (OAL) approved CSLB's amendments to section 832.36, Title 16 of the CCR, to specify the tasks that may be undertaken by plumbing contractors. [14:4 CRLR 49; 14:2&3 CRLR 48; 14:1 CRLR 40]

At this writing, CSLB's proposed changes to section 832.07, Title 16 of the CCR, which would prohibit low-voltage system contractors (C-7) from installing low-voltage fire alarm systems, and proposed new section 832.28, Title 16 of the CCR, which would create and define a new specialty license classification for class C-28 lock and security equipment contractors, await review and approval by OAL. [14:4 CRLR 49; 14:2&3 CRLR 48; 14:1 CRLR 40]

LITIGATION

CSLB's appeal of Judge J. Richard Haden's July 1994 decision in *Home Depot U.S.A. v. Contractors State License Board*, No. 666739 (San Diego County Superior Court), is pending in the Fourth District Court of Appeal. Judge Haden ruled in favor of Home Depot and ordered CSLB to invalidate two citations which it had issued against Home Depot for its advertisement and performance of certain installation services. [14:4 CRLR 52; 13:2&3 CRLR 61; 13:1 CRLR 31]

A general building contractor is defined in Business and Professions Code section 7057 as "a contractor whose principal contracting business is in connection with any structure built, being built, or to be built, for the support, shelter and enclosure of persons, animals, chattels or movable property of any kind, requiring in its construction the use of more than two unrelated building trades or crafts, or to do or superintend the whole or any part thereof." To implement section 7057, CSLB adopted section 834(b), Title 16 of the CCR, which provides that a licensee clas-



sified as a general building contractor—licensed as a B-general building contractor—shall not take a prime contract (excluding framing or carpentry) unless it requires at least three unrelated building trades or crafts, or unless he/she holds the required specialty license(s); section 834(b) also states that a general building contractor shall not take a subcontract (excluding framing or carpentry) involving less than three unrelated trades or crafts unless he/she holds the required specialty license(s). CSLB cited Home Depot for its “we install what we sell” installation program under which Home Depot—a B-general building contractor—hires specialty contractors to perform all installation work as violative of section 834(b). Judge Haden found that regulatory section 834(b) is inconsistent with section 7057, stating that section 7057 “does not describe the contract a general contractor may take. 834(b) has simply added a new and additional restriction on the general building contractor not intended or apparently contemplated by the legislature in B&P section 7057.” Thus, Judge Haden ruled that section 834(b) is invalid and dismissed CSLB’s citations against Home Depot.

On September 23, CSLB filed notices with the superior court to prepare the reporter’s and clerk’s transcripts; at this writing, the appeal process is continuing. According to CSLB Registrar Gail Jesswein, until the matter is resolved by the appellate court, CSLB will continue to enforce sections 834(b) and 7057 in the same manner as before Judge Haden’s ruling; Jesswein advised local building departments to consult with their attorneys before issuing building permits to general contractors for work that involves fewer than three separate trades.

RECENT MEETINGS

At its October meeting, CSLB heard strong opposition to the passage of AB 3001 (Conroy) (Chapter 783, Statutes of 1994). [14:4 CRLR 50] AB 3001 requires a home improvement contractor to disclose disciplinary actions and/or judgments to customers if the contractor has had two or more disciplinary actions within a ten-year period; the disclosure must be provided in a written document prior to entering into a contract to perform work on residential property. In addition, the Board’s toll-free complaint hotline number must be included in the contract with the consumer, as well as information on the hazards of dealing with unlicensed contractors.

Some of the opposition to AB 3001 arises out of the ten-year tracking period

for the two or more actions and bill’s failure to define the term “disciplinary actions.” After listening to criticism of the new law by Phil Vermulen of the Sheet Metal Air Conditioning Contractors Association and Bob Harder of the North Coast Builders Exchange, some Board members generally agreed that the ten-year tracking period is too long a period of time given the minor nature of some violations. Board Chair Robert Laurie also voiced concern about the lack of clarity in defining which disciplinary actions and judgments must be disclosed; CSLB staff explained that only complaints which result in disciplinary action must be disclosed.

Registrar Gail Jesswein stated that disciplinary action against a licensee is currently available on the Board’s toll-free number, thus perhaps negating the need for AB 3001’s written disclosure requirement. However, Ann Armstrong of the Contractors Referral Network pointed out that the public is no longer able to access a contractor’s complaint record through CSLB’s toll-free number; Armstrong asserted that AB 3001 was enacted with consumer protection in mind, and the Board should not lose sight of the benefits and goals of the bill. Armstrong noted that if given the disclosed information, consumers are better able to judge the qualifications of a contractor and make informed employment decisions. CSLB referred the matter to its Enforcement Committee for further consideration.

Also at its October meeting, CSLB discussed the use of translators on licensing examinations. Chair Robert Laurie stated that the Board has asked Department of Consumer Affairs legal counsel Dan Buntjer to clarify the Board’s role and responsibility regarding the use of translators. Buntjer explained that there are several federal and state laws which must be analyzed before such a recommendation could be made. Licensing Deputy Linda Brooks stated that the Board currently has a process by which an examinee can request a translator on licensing examinations; Brooks explained that there are specific requirements which ensure that a translator is needed and staff closely monitors the exam to ensure that the translator only translates the exam. However, CSLB member Douglas Barnhart questioned how a person who cannot read or speak English could follow contracting plans and specifications and adhere to building codes; Barnhart felt the issue requires closer scrutiny. CSLB is expected to continue this discussion at its next meeting, at which time Buntjer will present his findings.

FUTURE MEETINGS

January 19–20 in San Diego.
April 20–21 in Sacramento.
July 20–21 in Orange County.

COURT REPORTERS BOARD OF CALIFORNIA

Executive Officer: Richard Black
(916) 263-3660

The Court Reporters Board of California (CRB) is authorized pursuant to Business and Professions Code section 8000 *et seq.* The Board’s regulations are found in Division 24, Title 16 of the California Code of Regulations (CCR).

CRB licenses and disciplines certified shorthand reporters (CSRs); recognizes court reporting schools; and administers the Transcript Reimbursement Fund, which provides shorthand reporting services to low-income litigants otherwise unable to afford such services.

The Board consists of five members—three public and two from the industry—who serve four-year terms. The two industry members must have been actively engaged as shorthand reporters in California for at least five years immediately preceding their appointment. The Governor appoints one public member and the two industry members; the Senate Rules Committee and the Speaker of the Assembly each appoint one public member.

MAJOR PROJECTS

Group Proposes Court Reporters’ Reform Act. At its October 14 meeting, CRB reviewed a lengthy request to sponsor legislation submitted by a group calling itself the “Reform Coalition”; the Coalition, claiming to represent most local freelance reporting agencies, termed the proposed legislation the “Court Reporters’ Reform Act.”

Among other things, the proposed Reform Act addresses the issue of direct contracting, or third-party contracting, which has grown into a fairly controversial issue within the industry (*see* LITIGATION). [14:4 CRLR 100–01] Direct contracting is an exclusive dealing arrangement under which a CSR or association of reporters contracts with a major consumer of reporter services, such as an insurance company, for the exclusive right to report depositions taken by attorneys representing that consumer. Critics of direct contracting argue that CSRs should avoid any business arrangement which aligns them with one party to litigation, and contend that—in order to provide a discounted rate