



REGULATORY AGENCY ACTION

in light of the legislature's clearly expressed desire to have the boards continue only in a merged form. While BFDE expressed great optimism that its request would be granted at its November 17 meeting, Senator Thompson denied the request on November 18. Also on November 17, the Board took no action on the Department of Consumer Affairs' (DCA) request that it adopt a resolution delegating its licensing and enforcement authorities to DCA pending the approval of a new regulatory structure for the death services industry in California.

As a result, both boards' doors were scheduled to close by January 1. The Cemetery Board ran out of money earlier than that, and DCA shut down its operations on December 5 (see agency report on CEMETERY BOARD for related discussion). However, at this writing, BFDE's doors remain open because Board staff conserved its funds and currently have enough money to pay two employees and Executive Officer Richard Yanes.

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.

Board Rulemaking Stalled. During the summer of 1994, BFDE adopted a package of regulatory changes which would have amended sections 1258 and 1241, and adopted new sections 1258.1, 1258.2, 1258.3, and 1262, Title 16 of the CCR; among other things, these changes would have clarified disclosure requirements for the sale of caskets, defined and prohibited the practice of "constructive delivery," and added new grounds for the issuance of a citation. [14:4 CRLR 55-56; 14:2&3 CRLR 57-58] At this writing, the Board has yet to submit this rulemaking file to the DCA Director or the Office of Administrative Law.

LITIGATION

On October 7, the Third District Court of Appeal issued its third decision in *Funereral Security Plans, Inc. v. State Board of Funeral Directors and Embalmers*, 28 Cal. App. 4th 1470 (1994). [13:4 CRLR 49; 13:2&3 CRLR 70] Once again, the court decided several important issues arising under the Bagley-Keene Open Meeting Act, Government Code section 11120 *et seq.*, including the following:

• The court interpreted the "pending litigation" exception to the Act's open meeting requirement, Government Code section 11126(q), which permits state bodies "to confer, and receive advice from, legal counsel...[.]" to include the communication of facts (as well as legal advice)

from legal counsel and to include the state body's deliberations and decisionmaking thereon.

• With regard to the Act's procedural requirements accompanying the use of the "pending litigation" exception, the court noted that section 11126(q) requires the state body's legal counsel to prepare and submit to it, preferably prior to the closed session but no later than one week after the closed session, a memorandum stating the specific reasons and legal authority for the closed session. The court rejected the Board's assertion of a "substantial compliance" defense for failure to comply with this procedure.

• The court also interpreted section 11126(d), which—at the time relevant to this litigation—provided that state bodies may meet in closed session "to deliberate on a decision to be reached based upon evidence introduced in a proceeding required to be conducted pursuant to [the Administrative Procedure Act]." Because the language of the statute expressly contemplated (1) deliberation, (2) decision, (3) evidence, and (4) APA proceedings, the court held that state bodies are not permitted to meet in closed session under section 11126(d) to consider petitions to terminate license probation, for license reinstatement, or to reduce a penalty unless it has previously held an APA hearing to receive evidence on the issue of the licensee's rehabilitation. Further, the court held that state bodies may not meet privately under section 11126(d) to consider proposed disciplinary settlements which involve a stipulated set of facts: "Subdivision (d)...does not permit deliberations to provide cover for receiving and considering evidence in closed session. It is only deliberation, and not the introduction of evidence, which can be conducted in closed sessions pursuant to the subdivision (d) exception." To the extent that evaluation of a proposed settlement is part of the Board's litigation strategy, the court found that it may be reviewed with legal counsel under section 11126(q), but not under section 11126(d). The court noted that several of the Board's arguments for closed sessions to consider stipulated settlements are better addressed to the legislature, because "subdivision (d) simply does not go that far."

• And once again, the court held that the Board's two-member advisory committees are state bodies under section 11121.7, and fully subject to the Act's open meeting requirement. Although two-member advisory committees of a state body appear to be exempt from the open meeting requirement under section 11121.8, the court found sections 11121.7 and 11121.8 to be coexten-

sive and overlapping. The court held, in effect, that when even one member of a state body serves on an advisory committee in his/her official capacity as a representative of the state body, and the state body finances the member's participation, the open meeting requirements of the Bagley-Keene Act "follow" that member and his/her official participation.

On November 7, the Third District denied BFDE's motions for rehearing and for depublishing of its decision. On January 5, the California Supreme Court denied BFDE's petition for review but depublished the Third District's decision, thus negating the precedential impact of five years of litigation.

FUTURE MEETINGS

To be announced.

BOARD OF REGISTRATION FOR GEOLOGISTS AND GEOPHYSICISTS

Executive Officer: Dalton Pollard
(916) 445-1920

The Board of Registration for Geologists and Geophysicists (BRGG) is mandated by the Geologist and Geophysicist Act, Business and Professions Code section 7800 *et seq.* The Board was created by AB 600 (Ketchum) in 1969; its jurisdiction was extended to include geophysicists in 1972. The Board's regulations are found in Division 29, Title 16 of the California Code of Regulations (CCR).

The Board licenses geologists and geophysicists and certifies engineering geologists. In addition to successfully passing the Board's written examination, an applicant must have fulfilled specified undergraduate educational requirements and have the equivalent of seven years of relevant professional experience. The experience requirement may be satisfied by a combination of academic work at a school with a Board-approved program in geology or geophysics, and qualifying professional experience. However, credit for undergraduate study, graduate study, and teaching, whether taken individually or in combination, cannot exceed a total of four years toward meeting the requirement of seven years of professional geological or geophysical work.

The Board may issue a certificate of registration as a geologist or geophysicist without a written examination to any person holding an equivalent registration issued by any state or country, provided that



the applicant's qualifications meet all other requirements and rules established by the Board.

The Board has the power to investigate and discipline licensees who act in violation of the Board's licensing statutes. The Board may issue a citation to licensees or unlicensed persons for violations of Board rules. These citations may be accompanied by an administrative fine of up to \$2,500.

The eight-member Board is composed of five public members, two geologists, and one geophysicist. BRGG's staff consists of five full-time employees. The Board's committees include the Professional Affairs, Legislative, and Examination Committees. BRGG is funded by the fees it generates.

MAJOR PROJECTS

Citation and Fine Regulations.

BRGG's proposed adoption of new sections 3062, 3062.1, 3062.2, 3062.3, 3062.4, 3063, 3063.1, 3063.2, 3063.3, and 3063.4, Title 16 of the CCR, still await review and approval by the Office of Administrative Law; the new sections would implement BRGG's authority under Business and Professions Code sections 125.9 and 148 by establishing a citation and fine system for the intermediate discipline of registrants and certificants for minor violations and of nonregistrants and noncertificants for engaging in activity for which registration or certification is required. [14:4 CRLR 58; 14:2&3 CRLR 59; 14:1 CRLR 46]

Under the proposed regulatory scheme, BRGG's Executive Officer would be empowered to issue citations, which may be accompanied by orders of abatement and/or a fine of at least \$500 but not more than \$2,500; the regulations specify ranges of fines for particular violations. In determining the fine, the Executive Officer must consider the gravity of the violation, the good faith of the person cited, and the history of previous violations. The citation must be in writing, must describe with particularity the offense for which it is being issued, must be served by certified mail on the cited individual, and must inform the cited individual of his/her right to appeal the citation by requesting an informal conference with the Executive Officer. If the Executive Officer affirms the citation after the informal conference, the cited individual is entitled to request a hearing before an administrative law judge.

RECENT MEETINGS

At BRGG's November 18 meeting in Los Angeles, Executive Officer Dalton Pollard announced that the Board's news-

letter is scheduled to be finalized in January; Pollard also announced his intent that the Board publish an information bulletin at least quarterly.

Also at its November meeting, the Board directed staff to perform a number of tasks; among other things, staff was instructed to prepare a brief explanation of the Board's grading process; revamp its mailing lists; update the Board's consumer pamphlet; check with other boards to determine if they allow examination review; and research the legality of teleconferencing between BRGG members.

Also in November, BRGG unanimously agreed to establish an ad hoc committee to determine a strategy for preparing for the sunset review process mandated by SB 2036 (McCorquodale) (Chapter 908, Statutes of 1994). [14:4 CRLR 58] The Board named the following persons to serve on the committee: Seena Hoose (Chair), Frank Kresse, Don Hallinger, Ray Seiple, John Larson, Robert Larson, Robert Lindblom, John Williams, and Dalton Pollard.

FUTURE MEETINGS

February 3 in South San Francisco.

April 20 in San Diego.

June 23 in Sacramento.

BOARD OF LANDSCAPE ARCHITECTS

Executive Officer: Jeanne Brode
(916) 445-4954

Authorized in Business and Professions Code section 5615 *et seq.*, the Board of Landscape Architects (BLA) licenses those who design landscapes and supervise implementation of design plans. Prior to 1993, applicants were required to pass the written examination of the national Council of Landscape Architectural Registration Boards (CLARB) in order to qualify for licensure. However, following years of dissatisfaction, BLA decided in May 1992 to discontinue its use of CLARB's exam; commencing in 1993, applicants must instead pass the Board's own Professional Examination for Landscape Architects (PELA) in order to qualify for licensure. [12:4 CRLR 86] In addition, an applicant must have the equivalent of six years of landscape architectural experience. This requirement may be satisfied by a combination of education at a school with a Board-approved program in landscape architecture and field experience.

In addition to licensing landscape architects, the Board investigates verified complaints against landscape architects, prosecutes violations of the Practice Act,

and establishes criteria for approving schools of landscape architecture. BLA's regulations are codified in Division 26, Title 16 of the California Code of Regulations (CCR).

BLA consists of seven members who serve four-year terms. 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.

At its November 18 meeting, BLA announced the appointment by Governor Wilson of Sandra Gonzalez-Fiorenza to the Board; Gonzalez-Fiorenza has been a landscape architect with the Los Angeles County Department of Parks and Recreation since 1990, and earned her bachelor of science degree in landscape architecture from California Polytechnic State University at San Luis Obispo in 1984. At this writing, BLA is functioning with one public member vacancy due to the resignation of Michal Moore.

MAJOR PROJECTS

Strategic Planning Update. BLA is continuing its series of "strategic planning sessions" designed to address the proposed elimination of the Board and deregulation of the landscape architect profession; the deregulation could take place in 1997 following the "sunset" review process mandated by SB 2036 (McCorquodale) (Chapter 908, Statutes of 1994) if BLA does not convince the legislature that it is both a necessary and effective regulatory board. BLA's strategic planning sessions are designed to clarify the Board's role, function, and constituencies, improve its communication both internally and with external forces which impact it (such as the legislature and the Department of Consumer Affairs), and brainstorm about alternative regulatory structures for landscape architects. In recent sessions, the focus has shifted from straight opposition to the sunset of the Board to the development of alternative forms of regulation of the landscape architect occupation. [14:4 CRLR 59]

At its November 18 meeting in Sacramento, BLA heard from Senate Business and Professions Committee consultant Michael Gomez, who discussed and clarified the purpose of SB 2036. Gomez explained that, effective July 1, 1997, BLA will be eliminated unless the legislature takes some action before then to postpone