



those standards to the county health departments. This bill, which would also establish a task force which includes BBC representatives for the purpose of recommending legislation to regulate these areas, is a reintroduction of AB 3787 (V. Brown), which was vetoed by Governor Wilson in September 1994. [14:4 CRLR 43] [A. Health]

AB 550 (Morrissey). Under existing law, BBC is required to adopt rules governing sanitary conditions and precautions to be employed as are reasonably necessary to protect the public health and safety in establishments, schools approved by the Board, and in the practice of the professions it regulates. As amended April 17, this bill would exclude barbers' tools from this provision and instead provide that BBC shall not adopt regulations governing barbers' tools. This bill would also provide that a barber may not use specified tools on a patron unless the tools are disinfected or sterilized immediately before serving the patron by immersion in a solution of not less than 5% phenol or an equivalent. [S. B&P]

AB 1100 (Speier). Existing law prohibits a business establishment from discriminating against a person because of the gender of the person, and specifies the remedies for a violation of this provision. As amended May 3, this bill would provide specifically that no business establishment may discriminate, with respect to the price charged for services of similar or like kind, against a person solely because of the person's gender; specify the remedies for a violation of this provision; and provide further that its provisions do not alter or affect the provisions of the Health and Safety Code, the Insurance Code, or other laws that govern health care service plan or insurer underwriting or rating practices. This bill is a reintroduction of AB 2418 (Speier), vetoed by Governor Wilson in September 1994. [14:4 CRLR 43] [A. Floor]

SB 790 (Hughes), as introduced February 23, would require BBC to establish a course of study and separate license for hairstylists, and a temporary permitting program for shampoo assistants.

Under existing law, an applicant for licensure by BBC must pass a practical examination as well as a written test in order to become licensed. This bill would provide that, in the alternative, an applicant who passes the written examination may receive a provisional license that entitles the licensee to gain 1,200 hours of work experience, as specified. An applicant who has passed the examination and who completes the 1,200 hours of work experience shall be licensed. [S. B&P]

SB 1182 (Haynes). Existing law requires any person, firm, or corporation desiring to operate an establishment in which barbering, cosmetology, or electrolysis is performed to apply to BBC for a license. As introduced February 24, this bill would require any person, firm, or corporation who leases a booth or other space within such an establishment to apply to BBC for and obtain the same license, and would require the licensee to, among other things, be liable for any infraction that occurs within the booth or space and is discovered during any inspection by BBC. [S. B&P]

■ LITIGATION

In *Knauss v. Board of Barbering and Cosmetology, et al.*, No. 95CS00601 (Sacramento County Superior Court), filed on March 14, petitioner James Don Knauss, Sr. challenged BBC's imposition of citations and fines for violation of health and safety regulations which the Board had not provided to its licensees pursuant to Business and Professions Code section 7312(e). On March 21, the court ordered BBC to stop issuing citations and fines for specified violations of the Board's new regulations on the basis that the new rules had not been mailed to the Board's licensees. Since that time, BBC has mailed copies of its health and safety regulations to all licensees, and has recommenced its citation and fine program (*see* MAJOR PROJECTS).

■ RECENT MEETINGS

At BBC's March 20 meeting, Executive Officer Pamela Ramsey reported that the Board had published its first *Keeping Current* newsletter, which was mailed to 46,000 establishments; Ramsey estimated that an additional 1,000 copies would be mailed to interested persons and schools.

On May 21, BBC approved a reorganization of its enforcement division; the action splits the enforcement division into four teams composed of one assistant, one analyst, and one office technician each. According to Executive Officer Ramsey, the new configurations will incur no additional cost to the agency.

Also at its May 21 meeting, the Board discussed the imminent availability of its *Student Handbook*, which is being developed to clarify the examination application process for applicants and state the basic procedures relative to any of the Board's examinations. [15:1 CRLR 45] According to Deputy Executive Officer Denise Brown, the *Handbook* is almost finished but remains to be reviewed by legal counsel; Brown estimates the availability of the *Handbook* by summer 1995.

■ FUTURE MEETINGS

July 23-24 in San Francisco.
September 17-18 in San Diego.
November 5-6 in Fresno.

BOARD OF BEHAVIORAL SCIENCE EXAMINERS

Executive Officer: Sherry Mehl
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Authorized by Business and Professions Code section 4980 *et seq.*, the eleven-member Board of Behavioral Science Examiners (BBSE) licenses marriage, family and child counselors (MFCCs), licensed clinical social workers (LCSWs), and educational psychologists (LEPs). The Board administers tests to license applicants, adopts regulations regarding education and experience requirements for each group of licensees, and appropriately channels complaints against its licensees. The Board also has the power to suspend or revoke licenses. The Board consists of six public members, two LCSWs, one LEP, and two MFCCs. The Board's regulations appear in Division 18, Title 16 of the California Code of Regulations (CCR).

In February, BBSE welcomed new members Evelyn Hart of Newport Beach and Diego Ramirez-Cardenas of San Diego; Hart is filling a public member vacancy and Ramirez-Cardenas is filling a MFCC vacancy. BBSE still has one LCSW vacancy.

■ MAJOR PROJECTS

BBSE Postpones Board Meeting Due to Budgetary Constraints. At BBSE's February meeting, Executive Officer Sherry Mehl reported that travel expenses for that meeting would probably put BBSE at over 100% of its in-state travel budget; the reason for the deficiency in the travel budget appears to be the extra Board meetings held in the 1994-95 fiscal year to deal with the process of selecting a new Executive Officer. [15:1 CRLR 46] Mehl recommended that the Board consider rescheduling its quarterly meeting from May to July so that it would fall under the 1995-96 fiscal year budget. The other option would be to submit a deficiency request; however, Mehl opined that BBSE's fund condition would not support such a request. At that time, the Board agreed to hold the May meeting as scheduled with the understanding that the Executive Officer and Board Chair could cancel it later; subsequent to the February meeting, BBSE did in fact cancel its May



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meeting and reschedule it for July 7 in Sacramento.

BBSE Oral Examination. At its November 1994 meeting, BBSE unanimously voted to allow MFCC and LCSW oral examinees up to ten minutes (instead of the two to three minutes previously permitted) to review the vignettes on which they are being tested. [15:1 CRLR 46] At its February meeting, however, the Board rescinded that decision. According to Dr. Norman Hertz of the Department of Consumer Affairs' (DCA) Office of Examination Resources (OER), the Board may not direct the development of examinations. At BBSE's February meeting, Dr. Hertz stated that this issue was brought before the subject matter experts (SMEs), who agreed that five minutes is sufficient; the SMEs consist of licensed LCSWs and MFCCs who advise OER on test content. Dr. Hertz also advised BBSE that the recent LCSW exam was administered with the newly-allowed five minutes and 63.5% of the examinees felt they had sufficient time to review the vignettes.

Dr. Hertz reported that the other changes to the exam which the Board approved have been implemented; the oral exams are no longer administered in hotel bedrooms and staff has prepared a revised candidate handbook including a sample vignette. [15:1 CRLR 46]

The issue of examinations once again sparked a lengthy discussion at BBSE's February meeting. The California Association of Marriage and Family Therapists (CAMFT) and some members of the public argued that having the oral examination reviewed by a DCA office is ineffective in validating or improving the reliability of the exam. CAMFT has offered to fund an independent professional evaluation of the exam, if such an action is permissible; because of the recent changeover in Executive Officers, BBSE staff has not yet looked into whether this is appropriate, and at the February meeting expressed great reluctance to participate in an evaluation funded by a trade association. However, Executive Officer Sherry Mehl agreed to review the issue with BBSE Chair Judy Brislain and report back to the Board at a later date. Dr. Hertz defended the Board's examination as both reliable in assessing competency and fair to candidates, and rejected the necessity or practicability of an outside evaluation.

BBSE Tables Repressed Memory Therapy Issue. At its November 1994 meeting, BBSE heard from critics and alleged victims of "repressed memory therapy" (RMT). [15:1 CRLR 46] After the presentation, the Board expressed a desire to hear from professionals in the field and

invited representatives from professional associations to make presentations on the topic. At its February meeting, however, BBSE refrained from addressing the RMT issue because it does not want to "mislead the public." According to BBSE, its ability to assist a third-party complainant is limited, especially when the individual receiving therapy is an adult and is not supporting the complaint. BBSE tabled this issue indefinitely and is not considering issuing a policy statement on RMT at this time.

BBSE Updates Disciplinary Guidelines. At its November 1994 meeting, the Enforcement Committee decided that its Chair and the Lead Enforcement Analyst would work together to update the Board's disciplinary guidelines; the Committee collected and reviewed samples of disciplinary guidelines from other agencies including the Medical Board of California, the Board of Psychology, the Board of Registered Nursing, and the Board of Dental Examiners.

BBSE's existing disciplinary guidelines list each offense along with maximum and minimum penalties and mandatory terms of probation for each; also included is specific language for standard and optional conditions of probation. The first draft of the new guidelines, as presented at the Board's February meeting, included various formatting changes aimed at making the document easier to follow, the insertion of new language for cost recovery under "Optional Conditions," the insertion of revised language for tolling under "Standard Probation Conditions," the addition of new code violations under each licensing act, and the creation and insertion of an index. At its February meeting, BBSE directed the Enforcement Committee to consider adding unlisted code violations that are not often enforced and making notification to clients of a disciplined licensee standard instead of optional. The Enforcement Committee Chair and Lead Enforcement Analyst will make the requested modifications and bring the changes back to the Board at a later date.

■ LEGISLATION

AB 610 (Bustamante). Existing law requires applicants for MFCC licensure to obtain certain supervised practical experience as a trainee or intern, describes the qualifications for employment as an unlicensed MFCC intern, limits the length of the internship, and authorizes interns to apply for extensions beyond the maximum length of the internship. As amended May 22, this bill would repeal, as of January 1, 1998, the authorization for exten-

sions of the internship beyond the maximum length. [S. B&P]

SB 195 (Costa), as amended April 18, would require licensed MFCCs to maintain certain records relating to their continuing education activities, and prohibit BBSE from renewing any MFCC license after January 1, 1998, unless the applicant certifies to BBSE that he/she has completed not less than 36 hours of prescribed continuing education during the preceding two-year renewal period. The bill would make failure to comply with these requirements unprofessional conduct, and authorize the Board to adopt implementing regulations. [A. Health]

SB 675 (Craven). Under existing law, the offer, delivery, receipt, or acceptance by any person licensed as a healing arts professional of any rebate, refund, commission, preference, patronage, dividend, discount, or other compensation or inducement for referring patients is unlawful. However, existing law permits the participation in or operation of a group advertising or referral service for dentists and chiropractors, if certain conditions are met. As amended April 19, this bill would similarly permit the participation in or operation of a group advertising and referral service for MFCCs. This bill would authorize BBSE to adopt regulations to enforce and administer these provisions, and would make it a misdemeanor for a person to operate a group advertising and referral service without providing certain information to the Board. This bill would also authorize the Board to suspend or revoke the registration of any service that fails to comply with these advertising requirements, prohibit a service from reregistering with BBSE if its registration is under suspension for a violation of this type, and prohibit reregistration for a period of one year if it has had its registration revoked for a violation of this type. [A. Health]

SB 685 (Watson). Existing law provides that a psychotherapist or a physician who engages in sexual conduct with a patient or client, or with certain former patients or clients, is guilty of sexual exploitation, with certain exceptions. Existing law prescribes criminal sanctions for acts of sexual exploitation. As amended April 18, this bill would also apply these provisions to alcohol and drug abuse counselors. [A. Health]

The following is a status update on bills reported in detail in CRLR Vol. 15, No. 1 (Winter 1995) at pages 46-47:

SB 26 (Alquist), as amended May 1, would increase MFCC biennial license renewal fees from \$150 to \$180, LCSW biennial license renewal fees from \$150 to



\$155, and MFCC intern registration fees from \$60 to \$90; require the fees to be reduced if certain moneys appropriated for the general fund are redeposited in the BBSE fund; and prohibit BBSE from renewing an LCSW license on or after January 1, 1999, unless the applicant certifies to the Board that he/she has completed not less than 36 hours of continuing education in the preceding two years. Both the California Chapter of the National Association of Social Workers and CAMFT support this bill. [A. Health]

RECENT MEETINGS

At its February 23-24 meeting, the Board elected LEP Judy Brislain to serve as Chair for a second term and public member Jerry Miller to serve as Vice-Chair for a second term.

Also at its February meeting, BBSE directed Executive Officer Sherry Mehl to develop a program to issue citation and fines to unlicensed practitioners. BBSE is statutorily authorized to adopt such a program, and Mehl opined that it would be advisable to implement that authority prior to BBSE's sunset review by the legislature. [14:4 CRLR 46]

Also in February, Mehl reported that she had signed a memorandum of understanding (MOU) between BBSE and DCA's Department of Investigation (DOI); under the MOU, a BBSE complaint evaluation and case monitoring unit will be established within DOI. [15:1 CRLR 47; 14:4 CRLR 44]

FUTURE MEETINGS

July 7 in Sacramento.

August 24-25 Los Angeles.

November 16-17 (location to be announced).

CEMETERY BOARD

Executive Officer:

Raymond Giunta

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The Cemetery Board's enabling statute is the Cemetery Act, Business and Professions Code section 9600 *et seq.* The Board's regulations appear in Division 23, Title 16 of the California Code of Regulations (CCR).

In addition to cemeteries, the Cemetery Board licenses cemetery brokers, salespersons, and crematories. Religious cemeteries, public cemeteries, and private cemeteries established before 1939 which are less than ten acres in size are all exempt from Board regulation.

Because of these broad exemptions, the Cemetery Board licenses only about 188 cemeteries. It also licenses approxi-

mately 142 crematories, 200 brokers, and 1,200 salespersons. A license as a broker or salesperson is issued if the candidate passes an examination testing knowledge of the English language and elementary arithmetic, and demonstrates a fair understanding of the cemetery business.

At its March 29 meeting, the Board elected industry member Steve Doukas to the position of Chair and public member Jeff Wallack to the position of Vice-Chair; the other Board members are industry member Keith Hargrave and public members Lilyan Joslin, Linda Trujillo, and Jane Emerson. On April 11, Wallack was hired as the Executive Officer of the Acupuncture Committee; he therefore resigned as a member of the Cemetery Board, and the Board is functioning with one public member vacancy.

MAJOR PROJECTS

Board Granted Temporary Stay of Execution. After closing its doors in December 1994 due to legislative defunding, the Cemetery Board reopened for business in March with a loan from the legislature under section 27 of the 1994-95 Budget Act. However, the Board's stay of execution is temporary: The loan will carry it only to July 1, and the legislature plans to repeat its 1994 attempt to force merger of the Cemetery Board with the Board of Funeral Directors and Embalmers (BFDE) by appropriating only six months' worth of funding to both boards in the 1995-96 budget and considering yet another merger bill—this one authored by Assemblymember Jackie Speier, chair of the Assembly Consumer Protection Committee.

The Board's 1994 defunding and prospective 1995 defunding are further steps in a lengthy effort by the legislature to remedy both boards' ineffectiveness in fulfilling their primary duty of consumer protection through their licensing, standardsetting, and enforcement programs. Industry opposition blocked legislative attempts in the late 1980s and early 1990s to merge the Board with BFDE. SB 2037 (McCorquodale), the legislature's 1994 attempt to merge the boards, failed when the Assembly Consumer Protection Committee deleted the merger provision from the bill; the Senate refused to concur in the Assembly's removal of the merger provision and SB 2037—along with the Board's funding for the second half of the 1994-95 fiscal year—died on the Senate floor. [15:1 CRLR 47; 14:4 CRLR 4, 47]

In October 1994, the Board requested a deficiency appropriation pursuant to section 27, but Joint Legislative Budget Committee (JLBC) Chair Senator Mike Thompson denied the Board's request on

the advice of JLBC Legislative Analyst Mac Taylor and Senate Business and Professions Committee Chair Senator Dan Boatwright, who contended that granting the Board's request would circumvent the legislature's budget process and be inappropriate. In March, however, Thompson authorized section 27 funding contingent upon the Board's performance of specified tasks and completion of reports; the Board's failure to produce any report or issue memorandum by specified deadlines will result in the revocation of any remaining section 27 funds. All reports must be forwarded to the Department of Consumer Affairs (DCA), the Secretary of the State and Consumer Services Agency, and the JLBC by the specified deadlines. The mandated tasks, associated reports, and deadlines include the following:

- By March 31, the Board must restore all operations, bring all licensing current, and provide a written status report at that time and monthly thereafter.

- By March 31, and monthly thereafter, the Board must provide a detailed status report of all enforcement activities. The report must identify audits or inspections performed by type; indicate whether each matter is still in progress or the outcome if completed; and include aging information on complaints, investigations, and adjudications opened, closed, and pending.

- By April 17, the Board must provide an issue memorandum, in the format provided by DCA, exploring the feasibility of transferring the administration of cemetery conservatorships to third parties and the necessity of seeking court approval for conservatorships.

- By April 28, the Board must provide an issue memorandum, in the format provided by DCA, exploring the feasibility of removing the annual cap on fines.

- By May 15, the Board must provide an issue memorandum, in the format provided by DCA, exploring the feasibility of contracting with DCA's Consumer Information Division to open a single consumer complaint line for the Board and BFDE.

- By May 26, the Board must provide an issue memorandum, in the format provided by DCA, exploring the feasibility of limiting the annual management fees for endowment funds.

- By June 15, the Board must prepare a detailed report to identify and discuss benefits, disadvantages, issues, problems, and alternatives to the proposed merger of the Board with BFDE.

- By June 15, the Board must work with DCA's Research and Examination Division to prepare a report on the Board's licensing and enforcement measures, using performance measures developed by DCA.