



REGULATORY AGENCY ACTION

jurisdiction); and amendments to section 8020 to clarify requirements for taking the CSR exam, define what qualifies as "substantially similar" to California equivalency, and require that previous reporting experience be in the legal profession. [15:1 CRLR 51-52]

At its January 27 meeting, CRB discussed its past attempts to clarify the requirements for out-of-state exam applicants; specifically, CRB has had difficulty deciding how it will determine whether another state's CSR exam is comparable to the California exam. [15:1 CRLR 53] CRB Executive Officer Rick Black stated that one alternative would be to require one year of experience in addition to an out-of-state license. CRB could also seek legislation to delete the term "substantially the same as those in California," or more clearly define its meaning in regulations. Following discussion, CRB created a committee to draft regulatory language to define the criteria used to determine whether a state exam is substantially the same as the California exam.

Also at its January 27 meeting, CRB discussed the growing incidence of individuals with experience as captioners for the hearing impaired or steno tutors attempting to use this experience to qualify for the CSR exam. CRB directed the committee developing the criteria for out-of-state licenses to also develop regulatory language to clarify this matter.

Also on January 27, the Board adopted a policy regarding the public disclosure of the issuance of citations and fines against CSRs. [15:1 CRLR 53] Under the policy, citations will be mailed to the licensee by certified and regular, first-class mail. A citation shall be deemed served upon the earlier of the following dates: (1) the date the Board receives the return receipt from the certified mailing, or (2) five working days after the date of mailing of the citation by regular, first-class mail. CRB will disclose information regarding a citation after service of the citation is complete. When providing information to the public regarding a citation, Board staff will also advise the public of the actual status of the citation, including whether a fine has been paid, the time for appeal has not yet run, the citation was contested and is being heard at an informal conference or appeal hearing, or an accusation has been filed.

At CRB's May 11 meeting, Executive Officer Rick Black asked Board members to aid staff in preparing the Board's "sunset" report, which is due on October 1. The comprehensive report must be delivered to the Joint Legislative Sunset Review Committee established under SB 2036 (McCorquodale) (Chapter 908, Statutes of

1994), which will review and determine whether agencies within the Department of Consumer Affairs, such as CRB, will be abolished. [14:4 CRLR 99]

■ FUTURE MEETINGS

June 10 in Burbank.
July 23 in San Diego.
August 17 in Burlingame.
September 19 in Burlingame.
November 9 in Los Angeles.

BOARD OF DENTAL EXAMINERS

Executive Officer:
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The Board of Dental Examiners (BDE) is charged with enforcing the Dental Practice Act, Business and Professions Code section 1600 *et seq.* This includes establishing guidelines for the dental schools' curricula, approving dental training facilities, licensing dental applicants who successfully pass the examination administered by the Board, and establishing guidelines for continuing education requirements of dentists and dental auxiliaries. The Board is also responsible for ensuring that dentists and dental auxiliaries maintain a level of competency adequate to protect the consumer from negligent, unethical, and incompetent practice. The Board's regulations are located in Division 10, Title 16 of the California Code of Regulations (CCR).

The Committee on Dental Auxiliaries (COMDA) is required by law to be a part of the Board. The Committee assists in efforts to regulate dental auxiliaries. A "dental auxiliary" is a person who may perform dental supportive procedures, such as a dental hygienist or a dental assistant. One of the Committee's primary tasks is to create a career ladder, permitting continual advancement of dental auxiliaries to higher levels of licensure.

The Board is composed of fourteen members: eight practicing dentists (DDS/DMD), one registered dental hygienist (RDH), one registered dental assistant (RDA), and four public members. In April, Governor Wilson appointed Richard Benveniste to BDE; Dr. Benveniste, a periodontist from Beverly Hills, fills the Board's professional member vacancy. The Governor also made two April appointments to COMDA: Wayne Del Carlo and Liza Karamardian, both dentists practicing in San Francisco.

■ MAJOR PROJECTS

OAL Disapproves Fee Forfeiture Penalty for Cancelled Conscious Sedation Inspections. On April 21, the Office of Administrative Law (OAL) disapproved BDE's adoption of new section 1043.5, Title 16 of the CCR. The Dental Practice Act authorizes BDE to require onsite inspection of conscious sedation/anesthesia permittees; the new regulation would have imposed a fee forfeiture on permittees after the second and third cancellations of a scheduled inspection, and allowed for automatic denial or revocation of a conscious sedation/anesthesia permit upon a third cancellation. [15:1 CRLR 54; 14:4 CRLR 53; 14:2&3 CRLR 53]

OAL found that the imposition of a fee forfeiture penalty is a legislative function, and the Board may not impose such a penalty unless specifically authorized to do so. The Dental Practice Act provides that BDE may deny or revoke a conscious sedation or anesthesia permit upon refusal to submit to an inspection, but the statute is silent on all other remedies, including penalty assessment.

OAL noted, however, that forfeiture of the fee for cancellation of an onsite inspection constitutes a penalty only to the extent that it exceeds costs reasonably attributable to the cancellation; the part of a regulatory fee that exceeds the reasonable cost attributable to the regulatory activity is unlawful and must be refunded. Regarding the costs reasonably related to the cancellation of onsite inspections and evaluations, OAL found that the rulemaking record contained only a statement to the effect that last-minute cancellations cause administrative problems for the Board, the Society of Oral and Maxillofacial Surgeons, and the evaluator team; OAL determined that this "bare statement" fails to demonstrate that the fees for cancellation are reasonably related to regulatory costs attributable to the cancellation. BDE has 120 days in which to correct this deficiency and resubmit the rulemaking file on proposed section 1043.5 to OAL.

Remedial Education Regulations Approved. On March 20, OAL approved BDE's adoption of new section 1039, Title 16 of the CCR, which defines the course of study required by Business and Professions Code section 1632.5 for dental licensure applicants who fail the skills examination three times; the section also outlines the method of demonstrating successful completion of the remedial education. [15:1 CRLR 54; 14:4 CRLR 54; 14:2&3 CRLR 53]

New Rules for Dental Examination Adopted. Following a January 26 public



hearing, BDE adopted its proposed changes to the examination procedures in sections 1007, 1008, 1035, 1035.2, 1036.3, and 1037, Title 16 of the CCR. The amendments primarily rearrange the sections for clarity, but also include changes in the administration of the exam, including the manner in which BDE deals with examinees who demonstrate unethical and inappropriate behavior during the exam and the addition of infection control guidelines to be followed during the examination. [15:1 CRLR 54] BDE made minor changes to the proposed regulatory amendments and subsequently released the modified language for an additional 15-day comment period. At this writing, the proposed changes await review and approval by OAL.

BDE Backs Down on Infection Control Regulations. On March 9, BDE decided that the U.S. Centers for Disease Control's (CDC) infection control guidelines—which the Board in 1994 adopted in section 1005, Title 16 of the CCR, as minimum standards for licensees to follow in preventing the transmission of bloodborne pathogens in the health care setting—may be too onerous for dental practitioners. The dental community has opposed them on that basis since BDE first proposed new section 1005. In October 1994, BDE denied the California Dental Association's (CDA) petition to repeal section 1005 and replace it with a modified version; in December, BDE denied CDA's petition for reconsideration. [15:1 CRLR 54; 14:4 CRLR 53; 14:2&3 CRLR 53]

At its March 9 meeting, however, BDE decided to reconsider CDA's concerns, and will explore the use of infection control standards promulgated by Cal-OSHA and the use of certain excerpts from the CDC documents to comprise the Board's standards. BDE appointed a two-member ad hoc committee to determine which portions of the CDC documents should be incorporated into the new, less stringent standards; at this writing, the committee hopes to present a recommendation to the Board at its November meeting.

Dental Assistant Duties. Following a public hearing on January 26, BDE adopted changes to sections 1085(b)(3) and 1085(c)(15), Title 16 of the CCR. The amended regulations would allow dental assistants (DAs) to examine orthodontic appliances on the instruction of a licensed dentist who is not physically present, and to cure restorative or orthodontic materials with a light-curing device on the instruction of a licensed dentist who is physically present during the procedure. [15:1 CRLR 54; 14:4 CRLR 55] At this writing, the proposed changes await review and approval by OAL.

BDE Proposes Changes to the DA Examinations. Existing law requires DAs seeking registration as a registered dental assistant in extended functions (RDAEF) or as a registered dental hygienist in extended functions (RDHEF) to pass a skills examination, and authorizes BDE to adopt regulations specifying RDAEF and RDHEF examination requirements. On March 31, BDE published notice of its intent to amend sections 1081.2 and 1082.2, Title 16 of the CCR, to eliminate the fitting of trial endodontic filling points in a mounted natural tooth from the RDAEF and RDHEF examinations.

Existing law also requires candidates for the registered dental hygienist (RDH) clinical examination to provide full mouth radiographs of their patient which have been taken not more than six months prior to the examination in which they are presented. Also on March 31, BDE published notice of its intent to amend section 1082.1, Title 16 of the CCR, to avoid overexposure of patients to radiographs by allowing RDH candidates to use radiographs taken not more than one year prior to the examination.

On May 19, BDE held a public hearing on these proposed changes and adopted them; at this writing, the amendments await review and approval by OAL.

Update of Long-Range Plan. In November 1993, BDE approved a report of its Long-Range Planning Subcommittee setting forth the Board's mission statement and seven long-term goals to help fulfill its mission. [14:1 CRLR 41] These goals were to complete investigations of disciplinary complaints within six months of receipt; apply disciplinary guidelines in a fair and equitable manner; provide for appropriate and timely communication between the Board, the profession, and the public; complete a comprehensive review of and recommend changes to the Dental Practice Act and its regulations in the CCR; increase participation in the legislative process to better accomplish these goals; review and recommend changes to the clinical examinations; and review operational and support systems for efficiency and effectiveness.

At its January meeting, BDE determined that it is making progress toward most of these goals. The Board has been reviewing the duties of dental auxiliaries and has recently adopted regulations expanding the duties of DAs (*see above*). BDE has also been actively reviewing the dental licensure exam and exploring national trends in dental licensing, including the possible use of a multi-state regional or national examination. On May 19, BDE decided to enter into official dialogue with

the Western Regional Examining Board (WREB), one of four regional testing agencies in the United States which administer a uniform dental licensure exam to candidates in a number of states. California is one of only eleven states which administer their own clinical examination; in an effort to bring the California clinical exam in better alignment with the content of clinical examinations on a national level, BDE will explore the feasibility of joining WREB.

The Board has also clarified and amended its regulations regarding the administration of the dental licensure exam in an effort to ensure the reliability of the exam (*see above*). BDE is considering further changes to the clinical examination to improve logistics and time management of examiners as well as to make the exam more relevant. Also in an effort to improve its licensing program, on May 19 BDE approved a long-term study on the use of specialty certification within dental licensing in California.

However, BDE has not met its goal of completing investigations of complaints within six months of receipt; the Board seems unable to arrive at an effective plan for acting upon disciplinary matters more expeditiously. The 1993 report stated that one of BDE's actions to meet this goal should be to increase its use of nondisciplinary review (NDR) for minor violations. At its January 26–27 meeting, BDE voted to drop this action from the Long-Range Plan, stating that the institution of the citation and fine program has rendered use of NDR unnecessary. To date in fiscal year 1994–95, the cite and fine program has issued 22 citations. At its May 19 meeting, BDE considered the possibility of handling certain disciplinary matters via mail vote as an additional means to accomplish its goal of completing investigations within six months of receipt.

LEGISLATION

SB 158 (Peace). Existing law requires that various boards that license certain health care professionals, including dentists, each create and maintain a central file of all persons who hold a license from that board. Under existing law, each board's central file is required to contain prescribed information about each licensee, including, among other things, any judgment or settlement requiring certain licensees or insurers to pay any amount of damages in excess of specified amounts for claims alleging negligence of those licensees. Existing law requires insurers providing professional liability insurance, or licensees who are uninsured and, in certain circumstances, claimants who re-



ceive a settlement or arbitration award, to report this information to the appropriate board. Under existing law, the reportable amount of damages for physicians is awards over \$30,000; for marriage, family, and child counselors, awards over \$10,000; and for dentists and other licensees, awards over \$3,000. Under existing law, failure of the uninsured licensee or the claimant to make this report is a public offense. As amended March 14, this bill would revise the reporting requirements for insurers who provide professional liability insurance to dentists to instead require reporting of judgments or settlements over \$10,000 instead of \$3,000. A similar bill, AB 559 (Peace), was passed in 1994 [14:4 CRLR 54], but was chaptered out as a result of a conflict with another measure. [Governor's Desk]

SB 511 (Leslie). Existing law requires COMDA to consist of nine members, including a member who is a member of BDE; as introduced February 17, this bill would require the member to be a licensed dentist and a member of BDE. [S. B&P]

SB 570 (Rosenthal). The Dental Practice Act defines "dental auxiliaries" as persons who may perform certain dental supportive service, under the general or direct supervision of a dentist; the Act prohibits persons from performing certain of these supportive services without a license. As amended March 28, this bill would delete the reference to "dental auxiliaries" and would replace it with the term "allied dental health professionals," and would make conforming changes. In a reintroduction of AB 221 (Areias) [14:4 CRLR 54-55], a 1993 bill killed on the Senate floor due to opposition by CDA and BDE, this bill would also create a new category of allied dental health professional called a "registered dental hygienist in alternative practice," authorize this person to independently provide specified dental hygiene services without any supervision by a dentist, and provide that the fees for certification of a registered dental hygienist in alternative practice shall not exceed \$250.

Existing law requires the licensure of a person as a dental assistant if the person submits evidence of completing satisfactory work experience as a dental assistant and satisfactory performance on a written examination. Under existing law certain dental assisting programs not approved by BDE can satisfy the work experience requirement if approved by the state Department of Education. Existing law requires BDE in cooperation with the Superintendent of Public Instruction to establish the minimum criteria for the curriculum of nonboard approved programs. The bill would instead require the programs to be

approved by the Council for Private Postsecondary and Vocational Education, and the minimum criteria to be established in cooperation with the Council.

Existing law permits dental assistants to perform certain functions under the supervision of a dentist and requires BDE to adopt, by September 15, 1993, and to review and update at least every seven years thereafter, regulations relating to the functions that may be performed by dental assistants, the level of supervision, and the settings within which dental assistants may work. Existing law requires BDE to adopt regulations prescribing the functions that may be performed by a registered dental hygienist, including, but not limited to, the supervision level and the settings under which the functions may be performed. This bill would, in addition, require BDE, upon COMDA's recommendation, to adopt by January 1, 1997, regulations prescribing the functions to be performed by registered dental hygienists in alternative practice, as an employee of a dentist and independently, the educational requirements, the supervision level, and settings. This bill would authorize the Director of Consumer Affairs to adopt these regulations if not adopted by BDE or approved by the Director.

Existing law requires BDE to license as a registered dental hygienist any person who satisfies certain requirements, including completion of an educational program approved by the Board and satisfactory performance on an examination required by BDE. This bill would require that the educational program, as prescribed, consist of a minimum of two academic years of dental hygiene curriculum provided in a college or institution of higher education. The bill would require satisfactory performance on a clinical examination required by BDE, and would require the certification of successful completion of a national standard written examination.

Existing law makes it a misdemeanor for any unlicensed person to hold himself/herself out as certain specified dental auxiliaries. This bill would include in this misdemeanor any unlicensed person who holds himself/herself out as a registered dental hygienist in alternative practice.

This bill would require a registered dental hygienist in alternative practice to provide to each patient a written referral to a licensed dentist for dental diagnosis and dental treatment. It would also require a registered dental hygienist in alternative practice to provide a written disclosure statement to all patients that indicates that only dental hygiene services are provided, and to provide BDE with documentation of at least one existing relationship with a

dentist for referral, consultation, and emergency services.

Existing law specifies benefits provided under the Medi-Cal program, including, but not limited to, certain emergency and essential dental services. This bill would permit the services provided by a registered dental hygienist in alternative practice to be covered under certain circumstances. [S. B&P]

AB 1324 (Boland). Under existing law, oxygen and nitrous oxide, ordinarily maintained by physicians, dentists, podiatrists, veterinarians, or pharmacists, at their offices or places of business and stored in quantities of not more than 1,000 cubic feet of each material, is exempt from specified requirements to establish and implement a business plan for emergency response to a release or threatened release of a hazardous material in accordance with specified standards. As amended April 26, this bill would include possession of nitrogen, as well as oxygen and nitrous oxide, within the exemption. [A. Floor]

SB 334 (Hughes), as amended March 28, would prohibit a licensed dentist who provides voluntary dental health screening programs for pupils on school premises from soliciting a pupil, or a pupil's parent or guardian, or encouraging or advising treatment or consultation for the pupil by the licensed dentist, or any affiliate of the licensed dentist, for any condition discovered in the course of the dental health screening, except as specified. This bill would also state that it is the intent of the legislature that no licensed dentist use voluntary dental health screening programs for the generation of referrals or for financial benefit. [A. Ed]

RECENT MEETINGS

At its March 10-11 meeting, BDE discussed whether to allow continuing education (CE) units for coursework in practice management and administration; BDE has been considering amending section 1016(a), Title 16 of the CCR, by deleting those areas of study as qualifying CE coursework. The Board's position is that it has no obligation to educate licensees in the area of practice management. At an informational hearing on the matter on March 11, oral testimony from practitioners and written testimony from CDA asserted that practice management is a vital area of CE for dentists; the testimony contended that the quality of dental care is inextricably tied to practice administration, and that poor practice management will adversely affect the quality of care. Additionally, it was noted that the dental consumer relies on the dentist as a professional to provide accurate information



about the non-medical aspects of dental care, such as managed care contracts. At this writing, the Board has taken no action to amend section 1016.

At its May meeting, BDE considered COMDA's recommendation that all guidelines for review of RDA educational programs be adopted as regulations to assure that all program personnel are informed of the standards with which they must comply. The Board expressed concern about adopting the guidelines as regulations because they have not been reviewed or modified in several years; BDE appointed an ad hoc committee to review the guidelines and report back to it at a later meeting.

■ FUTURE MEETINGS

August 24–25 in San Francisco.
November 2–3 in Los Angeles.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Executive Officer:
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The Board of Funeral Directors and Embalmers (BFDE) licenses funeral establishments and embalmers. It registers apprentice embalmers and approves funeral establishments for apprenticeship training. The Board annually accredits embalming schools and administers licensing examinations. BFDE inspects the physical and sanitary conditions in funeral establishments, enforces price disclosure laws, and approves changes in business name or location. The Board also audits preneed funeral trust accounts maintained by its licensees, which is statutorily mandated prior to transfer or cancellation of a license. Finally, the Board investigates, mediates, and resolves consumer complaints.

BFDE is authorized under Business and Professions Code section 7600 *et seq.* The Board consists of five members: two Board licensees and three public members. In carrying out its primary responsibilities, the Board is empowered to adopt and enforce reasonably necessary rules and regulations; these regulations are codified in Division 12, Title 16 of the California Code of Regulations (CCR).

■ MAJOR PROJECTS

BFDE Gets New Life. 1995 began on a bizarre note for BFDE and the Cemetery Board: Although both boards exist in statute, neither had funding or staff. In the

1994–95 Budget Act, the state appropriated only six months' worth of funding to both BFDE and the Cemetery Board; the action was an attempt to force the restructuring of the boards and the state's regulation of the death services industry through SB 2037 (McCorquodale), a 1994 bill which would have merged the boards effective January 1 and provided the rest of the needed 1994–95 funding to the merged board. However, the Assembly reversed the budget agreement in August 1994 by deleting the merger provision from SB 2037, and the Senate subsequently refused to concur in the Assembly's amendments—which killed SB 2037 and continuation funding for both boards. [15:1 CRLR 55; 14:4 CRLR 4, 55]

Despite the lack of funding, BFDE Executive Officer Richard Yanes continued to carry on some of the Board's functions, as the Board sought a budgetary reprieve from lawmakers. In March, that reprieve came in the form of temporary funding pursuant to section 27 of the 1994–95 Budget Act. At roughly the same time, yet another bill was introduced to merge the two boards. As amended May 10, AB 597 (Speier) would enact the Funeral and Cemetery Services Act of 1995; the bill would abolish both existing Boards and merge them into the Board of Funeral and Cemetery Services (BFCS) effective January 1, 1996. BFCS would consist of eleven members: seven public members, two cemetery licensees, and two funeral director or embalmer licensees. The Speaker of the Assembly and the Senate Committee on Rules would each appoint one public member, with the remainder appointed by the Governor.

The Act would consolidate the current Funeral Directors and Embalmers Law and the Cemetery Act; under the Act, the Director of the Department of Consumer Affairs (DCA) would be able to take over any BFCS action when an investigation discloses probable cause to believe that the Board's actions constitute a criminal act and that the Board cannot reasonably perform its regulatory duties. AB 597 would also expand the existing statute of limitations on the merged board's filing of an accusation against a licensee from two years to three years from the performance of an unlawful act; and establish a higher duty of care to the consumer by making "negligence" instead of "gross negligence" the basis for board disciplinary action against a licensee. The bill would also remove an existing statutory cap on fines assessed for multiple violations of the merged board's enabling act, and set a sunset date of January 1, 2000 for the merged board.

Under the March agreement reached by the legislature, the Department of Finance, and DCA, BFDE will receive fund-

ing for January through July; however, according to Executive Officer Yanes, the last three months of this temporary funding will come on a monthly basis contingent on the Board's submission of periodic progress reports on specific issues to the legislature. The reports will cover a number of issues including the viability of eliminating annual management fees for preneed trust funds, having DCA conduct licensing and enforcement actions in place of the Board and establishing a single consumer complaint line, and issues and problems posed by the merger of the two boards. At BFDE's April 22 emergency meeting, Executive Officer Yanes indicated that he will be submitting the required reports on a monthly basis to secure the Board's funding in accordance with section 27.

Rulemaking Resuscitated. During the summer of 1994, BFDE adopted a package of regulatory changes that would amend sections 1258 and 1241, and add new sections 1258.1, 1258.2, 1258.3, and 1262 to Title 16 of the CCR; among other things, these changes would clarify disclosure requirements for the sale of caskets, define and prohibit the practice of "constructive delivery," and add new grounds for the issuance of a citation. [15:1 CRLR 56; 14:4 CRLR 55–56; 14:2&3 CRLR 57–58] The Board originally published notice of these regulatory changes on May 6, 1994. Government Code section 11346.4, part of the Administrative Procedure Act (APA), provides that the effective period of such a notice shall not exceed one year; therefore, if the proposed action as specified in the notice is not completed and transmitted to the Office of Administrative Law (OAL) within the period of one year, the notice expires and the agency must renounce the proposed action. Accordingly, the proposed action was due to expire as of May 6; however, BFDE submitted the package to DCA in late April, and DCA apparently extended the deadline for an additional thirty days. According to Executive Officer Yanes, DCA will return the rulemaking to him in late May; at that time, the Board will submit the regulations to OAL for review and approval.

■ LEGISLATION

AB 597 (Speier), as amended May 10, would merge the Board of Funeral Directors and Embalmers with the Cemetery Board to create the Board of Funeral and Cemetery Services (*see* MAJOR PROJECTS). [A. *Appr*]

SB 769 (Lockyer), as amended May 11, would establish the Comprehensive Criminal Justice Act of 1995. Among other things, this bill would impose crim-