



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]

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]

RECENT MEETINGS

At its August 13 meeting, BBC re-elected Rosemary Faulkner as Board President and Daniel Sierras as Vice-President.

At BBC's November meeting, staff announced that the Board has been participating in the toll-free 800 number offered by DCA's Consumer Information Center since July 1; between July 1 and September 30, BBC received over 24,500 calls to the toll-free number, and mailed out 587 complaint forms in response to calls received.

At its November 6 meeting, BBC's Examination and Curriculum Committee set December 1996 as its goal for final editing and production of the *Student Handbook*, which is being developed to clarify the Board's application and examination process. [15:2&3 CRLR 45]

FUTURE MEETINGS

January 28-29 in Long Beach.
March 10-11 in Sacramento.
May 5-6 in San Diego.
July 14-15 in Burbank.
September 8-9 in Santa Clara.
November 17-18 in San Francisco.

BOARD OF BEHAVIORAL SCIENCE EXAMINERS

Executive Officer: Sherry Mehl
(916) 322-4910 and
(916) 445-4933

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).

Currently, one LCSW position on the Board is vacant. At its November meeting, BBSE welcomed new public member Bettina Chandler; she replaces Thomas Knutson, Ph.D., whose term expired in June.

MAJOR PROJECTS

Enforcement Issues. For the past several months, BBSE has been involved in a comprehensive effort to evaluate and improve its enforcement program. The following is a status update on several enforcement-related actions recently taken by the Board.

Complaint Processing and Tracking. At BBSE's July 7 meeting, Executive Officer Sherry Mehl reported that the special unit recently established within the Department of Consumer Affairs' (DCA) Division of Investigation (DofI) to receive, process, and track complaints against BBSE

licensees [15:2&3 CRLR 47; 15:1 CRLR 47] has been closed; BBSE is again conducting complaint handling from its office. Mehl stated that processing of the Board's enforcement cases had been so delayed by DofI that an 18-month backlog had accumulated and some cases may be too old to pursue at this time. Although initial investigative reports on these cases were completed by the DofI investigative unit, the Attorney General's Office requested further information which was not forthcoming from DofI. The Attorney General's Office recommended that the backlog of cases be prioritized and offered its assistance in the transition of the investigative unit back to the Board. At BBSE's August 25 meeting, staff reported that the Board's enforcement unit had been successfully restructured, with a four-fold increase in work output and a reduction in the case backlog.

Disciplinary Guidelines. For the past several months, BBSE has been updating its disciplinary guidelines which specify its preferred maximum and minimum penalties for various categories of violations, including sexual misconduct with a client, commission of an act punishable as a sexually related crime, substance abuse impairing the ability to function safely, use of drugs with a client, failure to comply with child abuse reporting requirements, conviction of a crime substantially related to the duties and functions of a licensee, commission of a dishonest or fraudulent act related to the duties and functions of a licensee, misrepresentation of license or qualifications, aiding and abetting unlicensed or unregistered activity, failure to maintain confidentiality, failure to provide a sexual misconduct brochure, and false or misleading advertising. [15:2&3 CRLR 46] The guidelines also define standard and optional probation conditions, toll the probation period if the respondent takes an extended leave of absence from the practice or moves out-of-state, and provide for reinstatement or reduction of penalty hearings. Among other things, BBSE's changes to the guidelines make them easier to follow, and add new provisions on cost recovery and tolling. At its August 25 meeting, BBSE approved the changes to its disciplinary guidelines. However, SB 523 (Kopp) (Chapter 938, Statutes of 1995) requires all agencies to adopt their disciplinary guidelines as regulations by July 1, 1997 (see agency report on DCA for related discussion); at this writing, BBSE has not yet published notice of its intent to formally adopt its guidelines as regulations.

Intermediate Sanctions. Over the past year, BBSE's Enforcement Commit-



tee has evaluated the usefulness of intermediate forms of discipline used by other occupational licensing agencies, such as citations and fines, public and private reprimands, and professional competency exams. At its November meeting, BBSE reviewed several Enforcement Committee proposals regarding alternative forms of discipline; the Board agreed to commence the formal rulemaking process to adopt citation and fine regulations, and to pursue statutory authority to issue public letters of reprimand.

• **Public Disclosure Policy.** Also in November, the Enforcement Committee presented BBSE with proposed changes to its public disclosure policy. Historically, BBSE's informal policy was to withhold information regarding a complaint or investigation until an accusation has been filed by the Executive Officer and/or resulting discipline has been imposed against a licensee; an exception to this policy involves cooperative investigative efforts that may be ongoing between BBSE and a state or federal regulatory agency. Closed complaints or investigations are not released to the public. According to BBSE staff, the Board's adoption of a formal public disclosure policy would enable it to utilize DCA's Consumer Affairs System, thus providing for consistent release of information regarding its licensees. After reviewing the complaint disclosure policies of other occupational licensing agencies, BBSE adopted a formal policy under which it will disclose to the public, upon request, the following information: current status of the license; prior disciplinary action; whether an accusation, temporary restraining order, or interim order of suspension has been filed or issued against the licensee, and the resulting disciplinary action, if any; professional malpractice judgments of \$30,000 or more which are reported to BBSE; and all felony convictions reported to the Board. BBSE directed staff to begin the formal rulemaking process to adopt the policy as a regulation.

• **Sexual Contact Policy.** Also at its November 17 meeting, BBSE reviewed a proposed policy regarding a licensee's sexual contact with a patient; among other things, the policy states that the MFCC, LCSW, and LEP professions universally recognize that sexual contact with a patient (or with a former patient when the relationship was terminated primarily for the purpose of engaging in sex) is the most serious offense for a licensee. As proposed by staff, the policy statement declared that the only option for disciplinary action where sexual contact with a patient is found is outright revocation of the respondent's license; however, as tentatively approved

by BBSE in November, the statement reflects BBSE's right to take disciplinary actions other than revocation in cases involving sexual contact. At this writing, the Board is expected to revisit this issue at its January meeting, in light of SB 2039 (McCorquodale) (Chapter 1274, Statutes of 1994), which requires BBSE to revoke the license of any licensee who is found to have engaged in any act of sexual contact with a patient (or former patient when the professional relationship was terminated for the purpose of having sex). [14:4 CRLR 46]

Use of the Terms "Psychotherapist" and "Psychotherapy" in MFCC Advertising. At its August meeting, BBSE discussed the August 4 opinion of DCA legal counsel Dan Buntjer regarding the use of the terms "psychotherapist" and "psychotherapy" in MFCC advertising. In the August 4 legal opinion, Buntjer concluded that—in light of three prior Attorney General's Opinions and two DCA legal opinions—MFCCs may not use these terms in advertising. According to the legal opinions relied upon by Buntjer, the use of those terms by MFCCs may constitute the unlicensed practice of medicine or psychology.

However, Buntjer also acknowledged that recent caselaw handed down since the legal opinions were rendered has shed more light on the first amendment commercial speech rights of various occupations. Further, some state statutes (including Business and Professions Code sections 728 and 729 and Civil Code section 43.93) now include MFCCs within their definition of the term "psychotherapist." Thus, Buntjer suggested that BBSE seek a new Attorney General's Opinion on the issue—one which could consider the recent caselaw and statutory changes.

At its August meeting, however, BBSE decided not to seek a new Attorney General's Opinion on the issue; instead, it agreed to develop advertising guidelines for MFCCs and review the issue at its next meeting.

At its November 17 meeting, BBSE reviewed the advertising guidelines of the California Association of Marriage and Family Therapists (CAMFT) on the use of the terms "psychotherapy" and "psychotherapist" in advertising by MFCCs. According to CAMFT's policy, "[u]se of the words 'psychotherapy' or 'psychotherapist' in advertising by a licensed marriage, family and child counselor is not, in itself, a violation of law or regulation, nor is it, in itself, false or misleading advertising, provided that all of the following conditions are met: (1) the advertisement indicates the full name of the licensee and the com-

plete title of the licensee (licensed marriage, family and child counselor—in those words); and (2) the person advertising is competent, by reason of his/her education, training, and/or experience, to perform the professional services advertised or to act in a manner or professional capacity advertised."

CAMFT's policy also notes that "[t]he words 'in itself' are of significance. Whether or not a particular advertisement is found to be false or misleading or in violation of any law or regulation depends upon an analysis of all of the facts and circumstances relating to the advertisement in question. Certainly, the usage of any and all words will be amongst the factors considered."

At its November meeting, BBSE adopted CAMFT's policy regarding the use of the words "psychotherapist" and "psychotherapy" in advertising by both MFCCs and LCSWs.

BBSE Examination Issues. At its August 25 and November 17 meetings, BBSE continued its discussion on whether it should increase the amount of time it allows MFCC and LCSW oral examinees to review the vignettes on which they are being tested. Historically, BBSE allowed two to three minutes for the review; at its November 1994 meeting, it unanimously agreed to allow up to ten minutes for the review. However, at its February 1995 meeting, BBSE rescinded that action; also at that meeting, Dr. Norman Hertz of DCA's Office of Examination Resources (OER) informed the Board that it may not direct the development of examinations, and noted that OER has determined that five minutes is a sufficient amount of time for the review. [15:2&3 CRLR 46; 15:1 CRLR 46]

At its August 25 meeting, BBSE continued to discuss this matter, and agreed to reconsider its previous decisions; specifically, BBSE directed OER to have the parties involved in the examination design process review the current time limit and the public comments received on this issue, and decide whether the time limit should be increased. At BBSE's November 17 meeting, the Licensing Committee reported that OER had conducted a workshop to determine the appropriate vignette review time; the workshop panel decided that five minutes is sufficient.

In a related matter, CAMFT and some members of the public have contended that review of the MFCC oral examination by a DCA office is ineffective in validating or improving the reliability of the examination; CAMFT has offered to fund an independent professional evaluation of the exam, if such an action is permissible. [15:2&3 CRLR 46] At the Board's August



25 meeting, several Board members opined that the oral exam does not need an outside review, the examination process and statistics are open to public review at any-time, and that if the examination content needs review, BBSE and/or OER should be the entity to do so. Following discussion, BBSE referred the matter to its Licensing Committee to evaluate the issues and make recommendations as to whether the Board should allow an outside expert review of the examination. At its November 17 meeting, BBSE's Licensing Committee reported its decision not to take any further action on the issue of an outside expert evaluation of the MFCC oral examination at this time.

Board Approves Fee Regulation Proposal. On September 29, BBSE published notice of its intent to adopt new sections 1816 and 1816.1, Title 16 of the CCR, to implement SB 26 (Alquist) (see LEGISLATION) by setting the initial fees for MFCC, LCSW, and LEP licenses and increasing the renewal fees for these licenses. Specifically, new section 1816 would provide that, on or after January 1, 1996, the fee for issuance of an initial MFCC license is \$180; the fee for issuance of an initial LCSW license is \$155; and the fee for issuance of an initial LEP license is \$150.

Section 1816.1 would provide that the biennial renewal fee for an MFCC license is \$150; for those persons whose license expires on or after January 1, 1996, the biennial renewal fee is \$180. The biennial renewal fee for a LCSW is \$150; for those persons whose license expires on or after January 1, 1996, the biennial renewal fee is \$155. The biennial renewal fee for an LEP is \$150.

BBSE held a public hearing on these proposed new sections on November 17 in San Diego; following the hearing, the Board delegated authority to the Executive Officer to adopt the regulation at the expiration of the public comment period. At this writing, the proposed sections await review and approval by the Office of Administrative Law.

BBSE Proposes New Rulemaking Proposals. On December 1, BBSE published notice of its intent to adopt new section 1806(d), Title 16 of the CCR, which would specify the circumstances under which it will deem an application abandoned if the applicant fails to pay the initial license fee within one year after notification by the Board.

Also on December 1, BBSE published notice of its intent to adopt new section 1816.2, Title 16 of the CCR, which would set the examination and reexamination fees at \$125 for LCSWs.

At this writing, BBSE is scheduled to hold a public hearing on these proposed

regulatory changes on January 26 in Los Angeles.

Board Approves Legislative Proposals. At its August 25 meeting, BBSE agreed to seek legislative changes to repeal Business and Professions Code sections 4980.43(c) and 4990.17, and to clarify section 4980.01.

Section 4980.43(c) currently provides that, for MFCC interns and trainees, supervision shall include at least one hour of direct supervisor contact for each week of experience claimed. A trainee must also receive an average of at least one hour of direct supervisor contact for every five hours of client contact in each setting in which experience is gained; an intern must receive an average of at least one hour of direct supervisor contact for every ten hours of client contact in each setting in which experience is gained. For purposes of section, 4980.43(c), the term "one hour of direct supervisor contact" means one hour of face-to-face contact on an individual basis or two hours of face-to-face contact in a group of not more than eight persons; the contact may be counted toward the experience requirement for licensure, up to a specified maximum. BBSE will seek to repeal this language and adopt the appropriate supervision ratios for interns and trainees through the rulemaking process.

Section 4990.17 provides that in any order issued in resolution of a disciplinary proceeding, the Board may request the administrative law judge to direct any registrant or licensee found to have violated or be in violation of specified provisions to pay to BBSE a sum not to exceed the actual and reasonable costs of the investigation and prosecution of the case. Because BBSE anticipates that DCA's 1996 omnibus bill will authorize a broader cost recovery program, it will seek a repeal of this language.

Section 4980.01 provides that the MFCC licensing law does not constrict, limit, or withdraw the Medical Practice Act, the Social Work Licensing Law, the Nursing Practice Act, or the Psychology Licensing Act; does not apply to any priest, rabbi, or minister of the gospel of any religious denomination when performing counseling services as part of his/her pastoral or professional duties, or to any person who is admitted to practice law in the state, or who is licensed to practice medicine, when providing counseling services as part of his/her professional practice; and does not apply to an employee of a governmental entity or of a school, college, or university, or of an institution both nonprofit and charitable if his/her practice is performed solely under the supervision of the entity, school, or organization by which he/she is

employed, and if he/she performs those functions as part of the position for which he/she is employed. However, the section currently provides that no person registered as an intern or licensed under the MFCC licensing law is exempt from the licensing law or BBSE's jurisdiction. BBSE directed staff to develop proposed language to clarify section 4980.01 regarding who is exempt from the scope of the MFCC licensing law.

At its November 17 meeting, BBSE also agreed to pursue legislative changes to reorder and reorganize its statutes in the Business and Professions Code.

LEGISLATION

SB 26 (Alquist), as amended August 21, increases the statutory cap on various BBSE licensing fees. Among other changes, this long-awaited bill increases MFCC fees to \$180 for the initial license, \$180 for biennial license renewal, and \$90 for the delinquency fee. MFCC intern registration fees are increased from \$60 to \$90; registration renewal fees are set at \$75. LCSW initial licensure and biennial renewal fees increase to \$155; and LEP licensure and renewal fees are set at \$150. Before SB 26 had even been signed by the Governor, BBSE commenced the rulemaking process to implement the new fee structure (see MAJOR PROJECTS).

SB 26 also prohibits BBSE, on and after January 1, 1999, from renewing a MFCC or LCSW license unless the applicant certifies to BBSE that he/she has completed not less than 36 hours of approved continuing education (CE) in the preceding two years; authorizes BBSE to waive the requirement for good cause as defined by the Board; requires the applicant to maintain records of completion of required CE coursework for a minimum of two years, and authorizes the Board to audit the records of any applicant to verify completion of the requirement; requires BBSE to establish a procedure for approving providers of CE courses for MFCC and LCSWs and requires, on and after January 1, 1997, BBSE to assess CE provider fees; and requires BBSE to submit a report to the legislature no later than January 1, 2001, evaluating the progress of CE for MFCCs and LCSWs and making recommendations therefor. SB 26 was signed by the Governor on October 12 (Chapter 839, Statutes of 1995).

AB 1355 (Knowles). Existing law provides generally that a public employee is not liable for an injury resulting from his/her act or omission where it was the result of the exercise of his/her discretion, whether or not that discretion was abused; but that he/she is liable for injury caused by his/her actual fraud, corruption, or ac-



tual malice. As amended September 8, this bill provides that the civil immunity of juvenile court social workers, child protection workers, and other public employees authorized to initiate or conduct investigations or proceedings pursuant to the juvenile court law shall not extend to acts of perjury, fabrication of evidence, failure to disclose exculpatory evidence, or obtaining testimony by duress, fraud, or undue influence if any of these acts are committed with malice. This bill was signed by the Governor on October 16 (Chapter 977, Statutes of 1995).

AB 610 (Bustamante), as amended June 15, requires any person supervising an MFCC applicant to have been licensed or certified for at least two years prior to acting as a supervisor, to have a valid and current license, and to meet any regulatory requirements. Existing law describes the qualifications for employment as an unlicensed MFCC intern, limits the maximum length of the internship, and authorizes interns to apply for extensions beyond the maximum length of the internship. This bill repeals the authorization for extensions of the internship beyond the maximum length on January 1, 1999. The bill authorizes, commencing January 1, 1999, an applicant who is no longer able to renew or extend an internship, to apply for and obtain new intern registration status pursuant to prescribed conditions. This bill was signed by the Governor on August 3 (Chapter 327, Statutes of 1995).

SB 685 (Watson). Existing law provides that a psychotherapist or a physician who engages in sexual conduct, as defined, 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 June 19, this bill also applies these provisions to alcohol and drug abuse counselors. This bill was signed by the Governor on September 2 (Chapter 444, Statutes of 1995).

SB 675 (Craven). 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 similarly permits the participation in or operation of a group advertising and referral service for MFCCs. This bill authorizes BBSE to adopt regulations to enforce and administer these provisions, and makes it a misdemeanor for a person to operate a group advertising and referral service without providing certain information to the Board. This bill also authorizes the Board to suspend or revoke the registration of any service that fails to com-

ply with these advertising requirements, prohibits a service from reregistering with BBSE if its registration is under suspension for a violation of this type, and prohibits reregistration for a period of one year if it has had its registration revoked for a violation of this type. This bill was signed by the Governor on October 4 (Chapter 559, Statutes of 1995).

AB 593 (Boland). Existing law specifies penalties and enhancements with regard to the assault of a peace officer. As amended June 27, this bill would extend the application of these penalties and enhancements to those offenses committed against a social worker, child abuse investigator, or other certified or licensed personnel working with child and family services within a social services department. [S. Appr]

SB 195 (Costa). Existing law provides that a person is liable in a cause of action for sexual harassment when the plaintiff proves, among other things, that there is a business, service, or professional relationship between the plaintiff and the defendant. Existing law enumerates various relationships to which this provision may apply, including the relationships between psychotherapist and patient, MFCC and client, and LCSW and client. As amended September 6, this bill would delete the references to MFCC and LCSW, and instead reference a definition of "psychotherapist" that includes those professionals as well as other healing art practitioners (see MAJOR PROJECTS). [A. Health]

LITIGATION

In *Stecks v. Young*, 38 Cal. App. 4th 365 (Sept. 18, 1995), David and Nancy Stecks brought an action for libel per se, slander per se, and intentional infliction of emotional distress against Candace Young, a licensed MFCC with a doctorate in clinical psychology. The action concerned oral and written reports Young made to child protective services regarding the Steckses and others in which she expressed concern that these individuals might be involved in child abuse and cult activities. Young's reports were based upon information she received from her patient, the Steckses' adult daughter who had been diagnosed as schizophrenic. Young demurred, contending she was entitled to absolute immunity under Penal Code section 11172(a). The trial court agreed and sustained the demurrer with leave to amend. After the Steckses filed a first amended complaint, Young filed a second demurrer, again asserting absolute immunity. The court sustained the demurrer without leave to amend and then entered judgment in Young's favor. The Steckses appealed.

By way of background information, the Fourth District explained that in 1980, the legislature enacted the Child Abuse Reporting Law, Penal Code section 11165 *et seq.*, a comprehensive scheme of reporting requirements "aimed at increasing the likelihood that child abuse victims are identified." Section 11166(a) identifies mandated reporters, including health care practitioners such as MFCCs, and defines the circumstances under which these individuals must report. This provision affirmatively "requires persons in positions where abuse is likely to be detected to report promptly all suspected and known instances of child abuse to authorities for follow-up investigation." Suspected abuse includes circumstances where "it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect child abuse." Section 11172(a) establishes immunity for these mandated reporters by cloaking mandated reporters with immunity from civil and criminal liability for making any report required or authorized by the Act.

On appeal, the Steckses contended that Young's entitlement to immunity depends upon a factual determination of whether she harbored a reasonable suspicion of abuse when she reported to child protective services. While the Steckses conceded that as a health care practitioner Young must comply with the Act's mandatory reporting provisions, they argued that her immunity is not absolute. From their perspective, they had the right to prove the accusations contained in the first amended complaint because the Act does not protect Young from preparing negligent or knowingly false reports.

According to the Fourth District, the Steckses' argument is contrary to existing precedent, and is inconsistent with the Act's fundamental premise—"that reporting protects children." The court also stated that such an argument disregards those factors which eventually led the legislature to include absolute immunity within the Act: (1) professionals will be reluctant to report if they face liability for inaccurate reports, and (2) it is inconsistent to expose professionals to civil liability for failing to report and then expose them to liability where their reports prove false. The Fourth District noted that the appellate courts of this state have previously evaluated the Act's immunity provision and, in each case, soundly rejected the argument that immunity does not attach unless "reasonable suspicion" existed; the Fourth District noted that it would "decline to forge a course inconsistent with the thoughtful reasoning and holdings of these cases."



On December 14, the California Supreme Court denied the Steckses' petition for review. However, the absolute immunity affirmed by the courts has been abrogated by AB 1355 (Knowles) (*see* LEGISLATION).

RECENT MEETINGS

At BBSE's July 7 meeting, staff reported that BBSE's existing phone system was recently analyzed and found to be very inefficient; callers found the routing system to be quite frustrating, and the Board was being billed for seven phone lines that were not locatable. Staff reported that a new phone system will be installed that should be both user-friendly for callers and more cost-efficient for the Board.

At its August 25 meeting, BBSE agreed that Board members would receive per diem reimbursement only for attendance at scheduled meetings and for other work as pre-authorized by the Board chair or Executive Officer.

FUTURE MEETINGS

January 25-26 in Los Angeles.

April 25-26 in Sacramento.

August 8-9 in San Francisco.

October 31-November 1 in San Diego.

CEMETERY BOARD

(916) 263-2660

California law establishes the Cemetery Board in 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).

The Act delegates to the Board the responsibility of licensing and regulating cemeteries, cemetery brokers, salespersons, and crematories; the Act also directs the Board to regulate endowment care trust funds (ECTFs), which are intended to provide for permanent maintenance of licensed cemeteries. 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, only 193 of the state's 2,000 cemeteries are subject to Board jurisdiction. The Board also licenses 142 crematories, 200 brokers, and 1,200 salespersons.

Although California law establishes the Cemetery Board and such a board has functioned since 1949, the legislature recently defunded the Board and passed a bill directing the Department of Consumer Affairs to assume the duties of the Board effective January 1, 1996. The Board of-

ficially relinquished its authority to DCA on October 2, 1995 (*see below*).

MAJOR PROJECTS

Legislative Defunding, Cemetery Scandals Prompt Board to Close its Doors. Following the legislature's defunding of the Board for the second consecutive year, the passage of a bill directing the Department of Consumer Affairs (DCA) to take over the Board's functions effective January 1 if the Board is not merged with the Board of Funeral Directors and Embalmers (BFDE), and the revelation of massive scandals at cemeteries across the state, the Board approved a resolution delegating its authority to DCA on September 25 and closed its doors on October 2.

The events leading to the shutdown of the Board escalated during budget hearings of the early summer, as the legislature once again approved only one-half of the Board's annual funding in the 1995-96 budget bill (with defunding scheduled for January 1, 1996) and considered two bills which would force change in the Board's regulation of the death services industry—AB 597 (Speier), another bill to merge the Cemetery Board and BFDE into a new Board of Funeral and Cemetery Services, and AB 910 (Speier), a budget trailer bill which would require DCA to take over the functions of both boards if they are not merged or otherwise restructured by January 1, 1996 (*see* LEGISLATION).

In late June, however, the news media exploded with reports of improprieties at cemeteries across the state. The Board seized two Los Angeles-area cemeteries—Paradise Memorial Park in Santa Fe Springs and Lincoln Memorial Park in Carson—based on evidence of mass graves, multiple sales of gravesites, relocated or missing remains and headstones, and funds missing from the ECTFs intended to guarantee long-term cemetery maintenance. Alarmed by news reports, concerned families began checking up on the condition of their buried or cremated loved ones. This heightened interest revealed many more instances of both major and minor violations as the year wore on at cemeteries around the state.

Aware that AB 910 had been signed by the Governor on August 3 and that its days were numbered, the Board met on September 25. Executive Officer Ray Giunta stated that he and his small staff were overwhelmed by the large and growing backlog of consumer complaints, and could not keep up with their duties. Giunta further indicated that the Board had run out of money to investigate complaints, and that he had already begun requesting assistance from Mike Gomez, head of DCA's Division of Investigation.

Following heated discussion, the Board passed a resolution—by a 3-2 vote—approving a memorandum of understanding (MOU) delegating all of its powers to DCA except original licensure, license renewals, and administrative follow-through on regulation changes previously acted upon by the Board. The Board also approved a separate MOU empowering Giunta to delegate these reserved powers to DCA as well. Giunta eventually signed the separate MOU, and DCA assumed all powers and responsibilities of the Cemetery Board at 5:00 p.m. on October 2—three months before it was statutorily obligated to do so.

DCA immediately dispatched a team of investigators and administrative staff to the Board's offices, and confiscated the files and records of the Cemetery Board. According to status reports submitted by DCA to the legislature in October and December, within the first month of the takeover DCA staff had sorted through 183 boxes and 18 cabinets of materials and distributed them to the appropriate operational divisions of the Department (Licensing, Mediation, Enforcement, and Administration) for review, assessment, and handling. Based on this review, DCA Director Marjorie Berte reported that approximately 40 cemeteries have either failed to file their annual financial statements related to their ECTFs or have submitted questionable financial statements—meaning that some or all of the ECTFs may have been inappropriately used by the owners of the cemeteries; all 40 of these cemeteries will need to be fully investigated, and Berte stated that she expects the filing of as many as 16 criminal indictments in connection with these funds. Berte also noted that DCA was compelled to assume the management of conservatorships over 11 cemeteries which had been established by the Board; according to DCA, the bank accounts for the ECTFs of these facilities had not been appropriately reconciled by Board staff. DCA hopes to transfer these properties by court order as soon as possible to private entities within the state.

DCA found many other problems with the functioning of the Board, including the following: (1) a minimum six-month backlog in the processing of applications for all types of licenses; (2) a lack of information provided by the Board to the public or media to protect consumers from fraud; (3) the absence of an investigative or enforcement strategy to detect and eliminate consumer abuses; and (4) the licensing examination which had been administered by the Board is not "occupationally valid." DCA's various divisions have been working to resolve these problems—for example, the Public Affairs Office has prepared a consumer fact sheet that can be distributed