



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



to the media, consumer organizations, hospitals, and coroners' offices to empower consumers with the information they need to protect themselves at their most vulnerable times; the Consumer Information Center has transferred the existing telephone lines from the Board's former offices, expanded the number of incoming lines, and is providing initial consumer intake and information assistance; the Mediation Division is screening all incoming consumer complaints and mediating or handling those complaints that do not require formal investigation; and the Enforcement Division and Division of Investigation are investigating the backlog of consumer complaints, and developing a strategy for aggressive enforcement in the areas of consumer vulnerability, specifically economic loss from misuse of ECTFs. Additionally, DCA's Office of Examination Resources has scored the three previous exams administered by the Board and has begun the task of developing new and valid exams to administer; for this reason, no exams are presently being administered and applications for new personal licenses are on hold.

While DCA has acted quickly to resolve many of the short-term problems it inherited from the Cemetery Board, it has also been researching alternatives for the best regulatory structure of the death services industry for the long term. It has contacted 44 states and is currently considering various alternative structures. Absent a legislative extension, DCA's authority to perform the functions of the Board expires on July 1, 1996, or upon the enactment of AB 597 or another merger bill.

**License Fees Raised to Statutory Maximums.** On June 15, the Office of Administrative Law approved the Board's regulatory changes to sections 2310-24 (nonconsecutive), Title 16 of the CCR; these changes, approved by the Board in May 1994, increase virtually all of the fees it charges to the statutory maximums established in Business and Professions Code sections 9750-70. [15:2&3 CRLR 48; 14:4 CRLR 48] The new fees took effect on July 15.

## LEGISLATION

**AB 910 (Speier)**, as amended July 29, is an urgency bill providing that if the Cemetery Board and BFDE are not consolidated or otherwise restructured by January 1, 1996, DCA will succeed to and be vested with all the duties, powers, purposes, responsibilities, and jurisdiction of the boards; further, the bill authorizes the Controller to transfer the necessary amount of funds from the 1995-96 Budget Act, originally allocated to the merged board, to DCA for expenditure in accordance with the proper performance of its assumed duties. This bill was signed by the Governor on August 3 (Chap-

ter 381, Statutes of 1995), and expires on July 1, 1996 or upon the creation of a merged board.

**AB 597 (Speier)**, as amended September 1, would abolish the Cemetery Board and BFDE, create the Board of Funeral and Cemetery Services (BFCS), and transfer all power, authorities, and funds previously vested with the Cemetery Board and BFDE to BFCS. [15:2&3 CRLR 48] As the bill was approaching its third reading in the Senate on its way to passage, Assemblymember Speier withdrew it and made it a two-year bill; Speier was concerned that, due to the explosion of newly discovered cemetery problems around the state (see MAJOR PROJECTS), even a merged board would not have the resources to adequately investigate and prosecute violations. With the passage of AB 910, DCA—with its greater resources—would assume the responsibilities of the Board and give policymakers an opportunity to further research the best structure for death services industry regulation in California. [S. Inactive File]

## LITIGATION

On June 15, the Attorney General's Office issued *Attorney General's Opinion 95-109*, in response to a request by the county counsel for Placer County whether a public cemetery district may use the income from its endowment care trust fund to maintain the roads located within the boundaries of the cemetery. The AG responded in the affirmative. Citing sections 8729 and 8736 of the Health and Safety Code, the AG noted that the income from an ECTF is to be used for the "care, maintenance, and embellishment" of cemeteries, in order to prevent them "from becoming unkept and places of reproach and desolation in the communities in which they are situated." Maintaining the roads within a cemetery provides safe access to burial plots, which permits groundskeepers to care for them and the public to visit them. Therefore, so long as costs do not exceed income, the AG opined that maintaining the roads within a cemetery is a proper use of ECTF interest.

## FUTURE MEETINGS

To be announced.

## CONTRACTORS STATE LICENSE BOARD

Registrar: Gail W. Jesswein

(916) 255-3900

Toll-Free Information Number:

1-800-321-2752

**T**he Contractors State License Board (CSLB) licenses contractors to work

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

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

On July 17, Governor Wilson reappointed Sharon Kowertz and Nina Tate to CSLB for second terms expiring June 1, 1999. Kowertz, who owns Kennison, Inc., a mechanical and electrical contracting firm in Huntington Beach, has been a Board member since 1993; Tate is president of Nationwide Construction Co., and has served on the Board since 1992. Governor Wilson also appointed new public member Minerva Lopez-Baffo to a four-year term on CSLB; Lopez-Baffo is a corporate manager from Los Angeles.

## MAJOR PROJECTS

**Development of Sunset Review Report.** SB 2036 (McCorquodale) (Chapter 908, Statutes of 1994) establishes a Joint Legislative Sunset Review Committee (JLSRC) to conduct a comprehensive review of the need for and performance of all occupational licensing boards within the Department of Consumer Affairs (DCA), including CSLB. The bill established a "sunset" date for each board, on which it will cease to exist unless the legislature reviews the board and enacts a bill extending that date; CSLB's sunset date is July 1, 1998. [14:4 CRLR 20, 49] SB 2036 requires each board to prepare an analysis and submit a report to the JLSRC no later than one year plus 90 days prior to the January 1st of the year during which the inoperative date for the board occurs. This bill also requires the JLSRC to hold public hearings during the interim recess preceding the date the board becomes inoperative to receive testimony from the board, the public, and the regulated industry. Most importantly, the bill requires the JLSRC to evaluate and determine whether each board has demonstrated a public need for its continued existence in accordance with enumerated factors and standards. In other words, the Committee will deter-