sition, a court must determine the legis-
lature’s intent behind the statutory scheme 
that the rule is intended to implement and 
measure the rule’s consistency with that 
intent. Thus, the First District held that the 
trial court erred by finding a rule of court 
inconsistent with statute only if it is im-
possible to give both concurrent effect. 
The First District went on to find that a 
review of the applicable statutes “satisfies 
us that the legislature intended to autho-
rize electronic recording to create an offi-
cial record in certain circumstances, but 
not in superior courts at the present time.”

The court stated that until the legisla-
ture amends applicable statutory provi-
sions to permit electronic recording to 
create an official record, the normal practice 
California superior courts is for an offi-
cial shorthand reporter to create the offi-
cial record. Because the challenged rule 
permits an official record of superior court 
proceedings to be made by electronic re-
cording and imposes fees for recording 
services, the First District held that it is 
“inconsistent with statute” because it can-
not be squared with the existing legislative 
scheme requiring official shorthand re-
porting of superior court proceedings. The 
court concluded that the Judicial Council 
exceeded its constitutional authority by 
promulaging an inconsistent rule which 
is, thus, invalid, and that Alameda County 
local rules permitting electronic recording 
are also invalid.

The Judicial Council has filed a peti-
tion for review with the California Supreme 
Court.

Saunders v. California Reporting Al-
liance, et al., No. BC072147, a case chal-
ging the practice of direct contracting by 
CSRs, is still pending in Los Angeles 
County Superior Court. In Saunders, se-
veral independent CSRs sued two insurance 
companies, the Court Reporting Al-
liance (CRA), and the CRA member CSRs 
who directly contracted with the insurance 
companies, claiming that the defendants 
engaged in unfair business practices, inter-
fere with contract, and intentional in-
terference with prospective economic busi-
ness advantage. [15:2&3 CRLR 53; 15:1 
CRLR 52; 14:4 CRLR 100] At this writing, 
the Saunders case is pending in the dis-
covery stage.

■ RECENT MEETINGS

CRB’s June 10 meeting in Burbank 
cancelled.

CRB’s August 17 meeting in Burling-

game consisted of a strategic planning ses-
sion organized by consultant Kate McGuire 
designed to solicit input for the Board’s 
sunset review report (see MAJOR PRO-
JECTS). CRB’s September 19 meeting in 
Burlingame also focused on the sunset 
review report. Executive Officer Rick Black 
sent a draft version of the report to Board 
members prior to the meeting and discus-
sion at the meeting centered on the appro-
priate additions and deletions to the draft 
report.

On November 9, CRB held a meeting 
in Los Angeles in conjunction with its 
certification exam. At the meeting, the 
Board formally adopted its sunset review 
report. CRB also discussed a proposed 
school visitation manual, to be used to 
alalyze school compliance with Board 
regulations, and a proposed “capstone cur-
riculum.” The Board also directed staff to 
work with a consultant to develop a draft 
style manual for its approval; the style 
manual would be used to clarify the Board’s grading policies on the examina-

Also at the November meeting, the 
Board discussed proposed 1996 legisla-
tion. Under the sunset process, the legisla-
ture must affirmatively reestablish CRB or 
it will be eliminated. After considerable 
discussion, the Board decided to move 
forward with legislation that differs only 
in minor respects from its current enabling 
legislation in Business and Professions 
Code section 8000 et seq. Some Board 
members advocated legislation that would 
greatly expand CRB’s power over unli-
censed agency owners and address issues 
such as direct contracting, incentive gift-
giving, and other professional conduct 
concerns. Ultimately, however, CRB de-

cided that these issues are too controver-
sial; Board members were also concerned 
that legislation expanding the power of the 
Board would have little chance of passage 
in the current political climate. CRB de-
ferred a final decision on this issue to its 
January meeting.

■ FUTURE MEETINGS

January 6 in Burlingame.

March 9 in Los Angeles.

May 9 in San Francisco.

BOARD OF DENTAL EXAMINERS

Executive Officer: 
Georgetta Coleman 
(916) 263-2300

T

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 train-
ing facilities, licensing dental applicants 
who successfully pass the examination ad-
ministered by the Board, and establishing 
guidelines for continuing education re-
quirements of dentists and dental auxilia-
ries. The Board is also responsible for 
ensuring that dentists and dental auxilia-
ries maintain a level of competency ade-
quate to protect the consumer from neglig-
ent, unethical, and incompetent practice. 
The Board’s regulations are located in Di-
vision 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 services, 
such as a dental hygienist or a dental as-
sistant. One of the Committee’s primary 
tasks is create a career ladder, permit-
ting continual advancement of dental aux-
iliaries 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. BDE’s 
current members are Joel Strom, DDS, 
president; Peter Hartmann, DDS, vice-pres-
ident; Victoria Camilli, public member, 

docent; John Berry, DDS; Stephen Yuen, 
DDS; Genevieve Kugman, RDH; Robert 
 Christopherson, DDS; Kit Neacy, DDS; 
Roger Simonian, DDS; Linda Lucks, pub-
lic member; and Richard Benveniste, DDS.

■ MAJOR PROJECTS

BDE Expands RDA Functions. Ex-
isting law authorizes BDE, upon COMDA’s 
recommendation, to adopt regulations re-
ating to the functions which may be per-
fomed by RDAs under the direct or gen-
eral supervision of a licensed dentist. Ex-
isting regulations do not allow RDAs to 
take bite registrations for diagnostic mod-
els under the direct supervision of a li-
censed dentist. After a recent occupational 
analysis of the RDA profession, however, 
BDE found that bite registrations could be 
taken by an RDA without harm to patients. 
[14:4 CRLR 55] Additionally, BDE con-
tends that allowing an RDA to perform 
this procedure would further legislative 
intent to establish a career ladder permit-
ting continual advancement of persons to 
higher levels of training without repeated 
training for skills already required. On 
July 7, BDE published notice of its intent 
to amend section 1086, Title 16 of the 
CCR, to authorize RDAs to take bite reg-
istrations for diagnostic models under the 
direct supervision of a licensed dentist. 

On August 24, BDE held a public hearing 
on this proposal: following the hearing, the
Board adopted the change, which awaits review and approval by the Office of Administrative Law (OAL).

Also following the RDA occupational analysis, BDE determined that sizing/placement and cementation of a temporary crown and removal of excess cement are duties routinely performed by RDAs. Accordingly, on July 7, BDE also published notice of intent to amend section 1081.1, Title 16 of the CCR, to add these procedures to the RDA practical examination in order to make the examination more job-related as required by Government Code section 12944(a). On August 24, BDE held a public hearing on this proposal, following the hearing, the Board adopted the change, which awaits review and approval by OAL.

General Anesthesia/Conscious Sedation Change Proposed. The Dental Practice Act authorizes BDE to require an onsite inspection and evaluation, once every six years, of the office(s), facilities, equipment, personnel, and procedures of all licensees who have special permits to administer general anesthesia (GA) or conscious sedation (CS). Section 1043.6, Title 16 of the CCR, currently provides that a dentist who has failed the onsite inspection and evaluation may appeal that decision to BDE and request a reevaluation; upon receipt of the appeal request and an additional evaluation fee, BDE will schedule an independent reevaluation of the appellant. If a dentist has failed two evaluations, BDE will decide the matter and may grant or deny a permit or request further evaluation of the appellant with a Board member present. On July 7, BDE published notice of its intent to amend section 1043.6, to enable the Board to meet its requirement for timely evaluations by allowing the Board to designate a representative to act in its behalf. On August 24, BDE held a public hearing on this proposal; following the hearing, the Board adopted the change, which awaits review and approval by OAL.

BDE Revisits Infection Control Regulations. In March 1995, 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 CDA’s petition for reconsideration. [15:1 CRLR 54; 14:4 CRLR 53; 14:2&3 CRLR 53] At its March 1995 meeting, however, BDE decided to reconsider CDA’s concerns, and agreed to 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. [15:2&3 CRLR 55]

On September 15, BDE published notice of its intent to amend section 1005. Among other things, the proposed language would require licensees to comply with several specified minimum precautions, in conjunction with the infection control precautions mandated by Cal-OSHA, to minimize the transmission of bloodborne pathogens in health care settings.

BDE held a public hearing on the proposed language on November 3; at this writing, it is reviewing the comments submitted and is scheduled to consider the adoption of the proposed changes at its January meeting.

BDE to Accept CE Courses in Dental Practice Administration. Existing law requires all holders of licenses granted by BDE to complete continuing education (CE) courses; these courses are intended to enhance a licentiate’s knowledge, skill, or competence in the delivery of dental service to the public. BDE’s refusal to accept certain courses in dental administration as qualifying toward the CE requirement has upset CDA. [15:2&3 CRLR 56–57].

On September 15, BDE published notice of its intent to amend section 1016(a), Title 16 of the CCR, to change the section’s references from “dental administration” to “dental practice administration” and to accept as qualifying toward the CE requirement certain types of dental practice administration courses. Amended section 1016(a) defines as acceptable those dental practice administration CE courses which pertain to the legal requirements governing the practitioner in the areas of auxiliary employment and delegation of responsibilities, actual delivery of care, and occupational safety and health regulations and general safety; patient management and motivation (if such management and motivation will improve the health of the patient); and improvement of office operations. For a patient’s benefit and to improve the continuity of care provided to the patient. The section also states that the following types of courses do not qualify toward the CE requirement: courses addressing the computerized dental office (when the topic involves record management or new technology designed primarily for the dentist’s understanding and benefit); courses designed to make the dentist a better business person or designed to improve dentist or staff motivation; courses pertaining to the improvement of office operations, practitioner and staff convenience, or profit motive; courses which address increased office production, financial planning, employee benefits, marketing or motivational topics to increase productivity or profitability; and courses in which the primary beneficiary is the practitioner.

BDE held a public hearing on the proposed changes on November 3; following the hearing, the Board adopted the changes, which await review and approval by OAL.

New Unit Requirements for CE Courses. On December 8, BDE published notice of its intent to amend section 1017, Title 16 of the CCR, to provide that, effective with the 1998–99 license renewal cycle, as a condition of renewal, licensees will be required to complete four CE units in infection control and three CE units on California law. Under the amendments, these mandatory units will count toward the total units required to renew a license; however, failure to complete the mandatory courses will result in nonrenewal of a license. The course on infection control must be consistent with BDE’s regulations on infection control (see above), and the course on California law shall include, but not be limited to, instruction on the scope of practice, requirements for renewal of a license, use of auxiliaries in a dental practice, laws governing the prescribing of drugs, and acts in violation of the Dental Practice Act. Video, audio, or tape-recorded courses, electronically-generated courses, or correspondence courses will not be accepted for completion of the mandatory CE requirements.

At this writing, BDE is scheduled to hold a public hearing on these proposed changes on January 26 in Burlingame.

RDA Educational Programs. BDE is authorized to adopt regulations establishing minimum standards for the approval of RDA educational programs. Pursuant to its mandate to review and update RDA educational programs, and upon COMDA’s recommendation, the Board determined that its existing RDA educational program regulations do not reflect the dental profession’s changing needs and educational trends. On December 8, BDE published notice of its intent to amend sections 1070 and 1070.1, Title 16 of the CCR, to broaden the scope and content of existing RDA educational program regulations by requiring RDA educational programs to develop
REGULATORY AGENCY ACTION

California Regulatory Law Reporter • Vol. 15, No. 4 (Fall 1995)

BDE Prepares for Sunset Review. In preparation for its November 1996 sunset review, BDE has established goals and target dates for the completion of its sunset report. As a part of preparing for the sunset review, BDE is reviewing and updating its long-range plan, which includes its mission statement and seven long-term goals: to complete investigations of disciplinary complaints within six months of receipt; to apply disciplinary guidelines in a fair and equitable manner; to provide for appropriate and timely communication between BDE, the profession, and the public; to complete a comprehensive review of and recommend changes to the Dental Practice Act and its regulations in the CCR; to increase participation in the legislative process to better accomplish these goals; to review and recommend changes to the clinical examinations; and to review operational and support systems for efficiency and effectiveness. [15:2&3 CRLR 55; 14:1 CRLR 41]

During its September 27 meeting, BDE's Executive Committee reported that five of its seven goals have been accomplished. According to the Committee, BDE's goal of providing for the appropriate and timely communication between the Board, the regulated profession, and the public has been partially accomplished; to further meet this goal, the Committee recommended both greater circulation of the biannual Disciplinary Action Bulletin and investigation of the California Dental Association's recent online activities. The Committee also noted that the Board's goal of completing a comprehensive review of, and recommending appropriate changes to, the Dental Practice Act and the CCR is one that will require years to complete. Specifically, BDE intends to identify those regulations that are burdensome to California's economic growth and develop a plan to eliminate or modify them. The Board is currently circulating copies of the Dental Practice Act along with a matrix listing the criteria for regulation review; BDE is asking interested parties for assistance in evaluating its regulations according to the matrix criteria and the six additional criteria of necessity, authority, clarity, consistency, reference, and nonduplication. The Board will consider written comments and suggestions until February 15.

Dental Independent Practice Associations (IPAs). BDE's Associate General Counsel, Attorney General Alan Mangels discussed dental independent practice associations (IPAs) with the Board. The term "IPA" refers to a legal entity which enters into a service arrangement with persons who are licensed to practice medicine, osteopathy,
dentistry, podiatry, optometry, psychology, or other health professions. The arrangement provides that such persons shall provide their professional services in accordance with a compensation arrangement established by the entity and, to the extent feasible, for the sharing by such persons of medical and other records, equipment, and professional, technical, and administrative staff. In Mangels' view, this "coming together" by groups of practitioners to negotiate, arrange for, and provide dental services means the IPA entity is practicing dentistry.

Mangels explained that the Dental Practice Act was originally written for solo practitioners; over time, the Act has been amended to accommodate clinical practices, partnerships, associations, dental corporations, and health care service plans. However, none of these amendments provide the Board with clear authority to regulate IPAs. At present, neither existing statutes nor regulations provide a framework for an IPA to operate legally in California. The Board has received at least three applications from entities seeking approval to operate as IPAs, in spite of the fact that BDE lacks clear authority to approve or deny an IPA.

Staff offered several options for dealing with IPAs. Following discussion, the Board opted to draft legislation which would authorize it to license IPAs as business entities (not corporations) and exempt them from the Board's existing regulations regarding the approval of fictitious names and from section 1046, Title 16 of the CCR, the so-called "50% rule" which requires dentists who have more than one place of practice to be in personal attendance at each place of practice at least 50% of each month the place of practice is open for the practice of dentistry. The Board also agreed to reevaluate its fictitious name provision and the 50% rule to determine their necessity in today's practice environment.

LEGISLATION

SB 158 (Peace). Existing law requires various boards that license certain health care professionals, including dentists, to 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 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 receive 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 revises 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. SB 158 was signed by the Governor on May 22 (Chapter 5, Statutes of 1995).

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 includes possession of nitrogen, as well as oxygen and nitrous oxide, within the exemption. This bill was signed by the Governor on July 17 (Chapter 144, Statutes of 1995).

SB 334 (Hughes), as amended March 28, prohibits 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 also states 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. This bill was signed by the Governor on July 6 (Chapter 64, Statutes of 1995).

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 sup-
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 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]

**RECENT MEETINGS**

At its August meeting in San Francisco, BDE noted that a $200,000 budget change proposal augmenting its 1995–96 budget had been approved, enabling it to contract for the completion of an occupational analysis of dentistry in California. An occupational analysis generally involves a survey of active practitioners to determine the actual tasks performed in today’s practice, and identify the knowledge, skills, and abilities (KSAs) needed to perform them competently. After the tasks and KSAs are identified, the existing licensing examinations are scrutinized to ensure that they are job-related, test the appropriate KSAs, and are otherwise valid and legally defensible. BDE hopes to choose a contractor through the competitive bidding process by February 1996, and that the contractor will be able to make a presentation to the full Board on its findings by July or August 1996.

Also in August, BDE agreed to establish a working relationship with the Department of Corporations (DOC), which regulates health care service plans and managed care plans providing dental care. Although BDE sends DOC a copy of every accusation it files pursuant to Business and Professions Code section 16185.5, DOC has only sent information about one case involving a dentist.

At its November meeting, BDE considered suggested changes to its dental licensure examination. For example, staff noted that the periodontics section of the exam is sometimes unfair to the candidate in that it is difficult to grade and errors can easily be made by the graders; staff suggested that if a candidate is required to probe two quadrants of the mouth, on either the left or the right side, rather than the entire mouth, the test would be easier to grade and less strenuous to the candidate, while still accomplishing the requirements of validity, reliability, and relevance. Following discussion, BDE tabled this matter until its January meeting.

Also in November, BDE elected its 1996 officers. The Board selected Joel Strom, DDS, as its new president; Peter Hartmann, DDS, as vice-president; and public member Victoria Camilli as secretary.

**FUTURE MEETINGS**


**BOARD OF FUNERAL DIRECTORS AND EMBALMERS**

California law establishes the Board of Funeral Directors and Embalmers (BFDE) in Business and Professions Code section 7600 et seq. The Board’s regulations are codified in Division 12, Title 16 of the California Code of Regulations (CCR).

The Board is responsible for licensing funeral establishments and embalmers; registering apprentice embalmers and approving funeral establishments for apprenticeship training; accrediting embalming schools; and administering licensing examinations. State law also charges BFDE with inspecting the physical and sanitary conditions of funeral establishments; enforcing price disclosure laws; approving changes in business name or location; auditing preneed funeral trust accounts maintained by its licensees; and investigating, mediating, and resolving consumer complaints.

Although California law establishes BFDE and such a board has functioned since 1939, 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 (see below).

**MAJOR PROJECTS**

Legislature Defunds Board Again and Directs DCA to Take Over. Finally accomplishing in 1995 what it failed to do in 1994, the legislature has succeeded in transferring the responsibilities of BFDE and the Cemetery Board to the Department of Consumer Affairs (DCA) effective January 1, 1996.

The events leading to the shutdown of the Board began years ago, when many legislators became increasingly dissatisfied with the performance of both boards in regulating the death services industry. In 1993, then-DCA Director Jim Conran joined forces with Assemblymember Jackie Speier and compelled the executive officers of both boards to resign; later that year, Conran convened the so-called “Death Summit” to expose the problems of both boards and seek their resolution. [13:4 CRLR 38–39, 48–49; 13:2&3 CRLR 57, 68–69]

In 1994, the legislature—unhappy with the boards’ failure to implement the recommendations emerging from the Death Summit—appropriated only six months’ worth of funding to BFDE and the Cemetery Board (with funding to expire on January 1, 1995), and separately considered SB 2037 (McCorquodale), a budget trailer bill to merge the boards and allocate the merged board funds to operate between January 1–June 30, 1995. After the Assembly deleted the merger provision from the bill, the Senate refused to concur in the amendments and Senator McCorkquodale dropped the bill. Thus, both boards began 1995 without funding. The Cemetery Board temporarily closed its doors, but BFDE survived by operating on a skeleton crew until March. At that time, both boards secured temporary funding through June under section 27 of the 1994–95 Budget Act, subject to the condition that they submit monthly reports to the legislature on a variety of issues. [15:2&3 CRLR 57; 15:1 CRLR 55; 14:4 CRLR 4, 55]

Between May 21 and June 30, BFDE submitted four reports to the legislature: