



stitution, a court must determine the legislature'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 impossible 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 authorize electronic recording to create an official record in certain circumstances, but not in superior courts at the present time."

The court stated that until the legislature amends applicable statutory provisions to permit electronic recording to create an official record, the normal practice in California superior courts is for an official shorthand reporter to create the official record. Because the challenged rule permits an official record of superior court proceedings to be made by electronic recording and imposes fees for recording services, the First District held that it is "inconsistent with statute" because it cannot be squared with the existing legislative scheme requiring official shorthand reporting of superior court proceedings. The court concluded that the Judicial Council exceeded its constitutional authority by promulgating 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 petition for review with the California Supreme Court.

Saunders v. California Reporting Alliance, et al., No. BC072147, a case challenging the practice of direct contracting by CSRs, is still pending in Los Angeles County Superior Court. In *Saunders*, several independent CSRs sued two insurance companies, the Court Reporting Alliance (CRA), and the CRA member CSRs who directly contracted with the insurance companies, claiming that the defendants engaged in unfair business practices, interference with contract, and intentional interference with prospective economic business advantage. [15:2&3 CRLR 53; 15:1 CRLR 52; 14:4 CRLR 100] At this writing, the *Saunders* case is pending in the discovery stage.

RECENT MEETINGS

CRB's June 10 meeting in Burbank was cancelled.

CRB's August 17 meeting in Burlingame consisted of a strategic planning session organized by consultant Kate McGuire designed to solicit input for the Board's sunset review report (see MAJOR PROJECTS). 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 discussion at the meeting centered on the appropriate 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 analyze school compliance with Board regulations, and a proposed "capstone curriculum." 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 examination.

Also at the November meeting, the Board discussed proposed 1996 legislation. Under the sunset process, the legislature 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 unlicensed agency owners and address issues such as direct contracting, incentive giving, and other professional conduct concerns. Ultimately, however, CRB decided that these issues are too controversial; 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 deferred 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

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. BDE's current members are Joel Strom, DDS, president; Peter Hartmann, DDS, vice-president; Victoria Camilli, public member, secretary; John Berry, DDS; Stephen Yuen, DDS; Genevieve Klugman, RDH; Robert Christoffersen, DDS; Kit Neacy, DDS; Roger Simonian, DDS; Linda Lucks, public member; and Richard Benveniste, DDS.

MAJOR PROJECTS

BDE Expands RDA Functions. Existing law authorizes BDE, upon COMDA's recommendation, to adopt regulations relating to the functions which may be performed by RDAs under the direct or general supervision of a licensed dentist. Existing regulations do not allow RDAs to take bite registrations for diagnostic models under the direct supervision of a licensed 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 contends that allowing an RDA to perform this procedure would further legislative intent to establish a career ladder permitting 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 registrations 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 the California Dental Association's (CDA) petition to repeal section 1005 and replace it with a modified version; in De-

ember, 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 licensee'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 the patient's benefit and/or 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



curricula which reflect current dental educational trends. [15:2&3 CRLR 57]

Among other things, BDE's proposed changes would provide that each approved program must be reevaluated approximately every five years, and is subject to reevaluation at any time if BDE has reason to believe that the program may have violated applicable regulations; program records are subject to inspection by the Board at any time. Further, the amendments would require each program to have an advisory committee consisting of an equal number of RDAs and dentists, which must meet at least once each academic year with the program director, faculty, and appropriate institutional personnel to monitor the ongoing quality and performance of the program. The amendments set specific qualifications for program faculty, and establish the responsibilities of the program director or coordinator and the owner or school administrator; address program financial resources and required approvals by other governmental agencies; require each program to notify the Board of the names, addresses, and expected date of graduation of all students enrolled within 30 days after enrollment; and require each program to be at least 720 clock hours in length. The amended regulations also set new standards for all program facilities, including lecture classrooms, operatories, laboratories, armamentarium, infection control protocols, required emergency equipment and materials, and libraries. Finally, the amendments establish standards for program curricula, including both didactic and clinical instruction, and require programs to define instructional objectives in writing and use objective evaluation criteria in measuring student progress toward attainment of those objectives.

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

Rulemaking Update. The following is a status update on several BDE rulemaking packages discussed in detail in recent issues of the *Reporter*.

• **Fee Forfeiture Penalty for Cancelled GA/SC Inspections.** In April, OAL disapproved BDE's adoption of new section 1043.5, Title 16 of the CCR, which would have imposed a fee forfeiture on GA/SC permittees after the second and third cancellations of a scheduled inspection, and allowed for automatic denial or revocation of a GA/SC permit upon a third cancellation. 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. 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. [15:2&3 CRLR 54; 15:1 CRLR 54; 14:4 CRLR 53]

In response to OAL's findings, BDE resubmitted the rulemaking file with documentation supporting the contention that the forfeited fees would not exceed the costs reasonably attributable to the cancellation; on September 8, OAL approved new section 1043.5.

• **Dental Examination Regulations.** On July 12, OAL approved BDE's proposed changes to the dental 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. [15:2&3 CRLR 55; 15:1 CRLR 54]

• **RDA Duties.** On August 2, OAL approved BDE's changes to sections 1085(b)(3) and 1085(c)(15), Title 16 of the CCR. The amended regulations allow RDAs 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. [15:2&3 CRLR 55; 15:1 CRLR 54; 14:4 CRLR 55]

• **Changes to the Auxiliary Examinations.** Existing law requires applicants 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. At this writing, OAL is reviewing BDE's proposed changes to 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. [15:2&3 CRLR 55]

Existing law also requires candidates for the 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. On December 18, OAL approved BDE's adoption of new section 1082.1, Title 16 of the CCR, which allows RDH candidates to use radiographs taken not more than one year prior to the examination. [15:2&3 CRLR 55]

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. At BDE's August meeting, Deputy 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 un-

insured 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-

portive 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," replace it with the term "allied dental health professionals," and 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 Post-secondary 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]

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 1618.5, 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

January 25-26 in San Francisco.

March 7-8 in Los Angeles.

May 16-17 in San Francisco.

August 2-3 in San Diego.

November 7-8 in San Francisco.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

(916) 263-3180

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 ex-

aminations. State law also charges BFDE with inspecting the physical and sanitary conditions in 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 McCorquodale 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: