



considered independent contractors. [A. F&I]

## RECENT MEETINGS

At its October 24 meeting, the Board discussed its goals and objectives. The goals developed by the Board are to: (1) establish as a priority its commitment to protecting health and safety for consumers of barbering, cosmetology, and electrology services; (2) eliminate unlicensed activity; (3) improve the content of its examinations and the processes used in their administration; (4) increase consumer and licensee awareness of its activities; and (5) promote legislative and regulatory changes that will enhance its authority to protect consumers. BBC is presently working to develop strategies for the achievement of these goals.

At the Board's October 25 meeting, Executive Officer Olivia Guebara presented a statistical report of BBC's activities for the first three months of the 1993-94 fiscal year. During the first quarter of this year, BBC received twice the number of complaints it received in the first quarter of the 1992-93 fiscal year. From July to September 1993, BBC received 713 complaints, closed 524 complaints, and had 1,563 complaints pending as of September 30. During the same period, it opened 28 investigations, closed 32 investigations, and conducted 12,263 inspections of licensed establishments. From July to October 1993, the average waiting period for application processing decreased from 67 days to 46 days. Guebara also stated that the cumulative pass rate on all licensing examinations administered by BBC during fiscal year 1992-93 was 73% on the written portion of the exam and 74% on the practical portion.

BBC's December 13 meeting was cancelled.

## FUTURE MEETINGS

April 17-18 in northern California.

June 12-13 in southern California.

## BOARD OF BEHAVIORAL SCIENCE EXAMINERS

*Executive Officer:*  
Kathleen Callanan  
(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).

The current members of BBSE are Judy Brislain, LEP; Karen Walton, LCSW; Selma Fields, MFCC; Zalia Lipson, MFCC; and public members Thomas Knutson, Jerry Miller, Lorie Rice, Jane Emerson, Jeanne Smith, and Stephanie Carter. Currently, one LCSW seat is vacant on BBSE.

## MAJOR PROJECTS

**BBSE Reviewed by Senate Subcommittee.** On November 10, BBSE and the Board of Psychology (BOP) presented testimony to the Senate Subcommittee on Efficiency and Effectiveness in State Boards and Commissions, chaired by Senator Dan McCorquodale, on several issues related to the possible restructuring of the boards. Specifically, the Subcommittee requested comments on (1) whether marriage counselors, social workers, educational psychologists, and psychologists should be deregulated and both boards abolished; (2) whether the two boards should be merged; and (3) whether either or both boards should be transformed into bureaus which lack a multi-member policymaking board and operate under the direct control of the Director of the Department of Consumer Affairs (DCA).

BBSE Executive Officer Kathleen Callanan represented the Board at the November 10 hearing, and argued that deregulation of the psychotherapy profession would harm consumers. Among other things, she noted that when a consumer seeks psychotherapy, he/she is usually overwhelmed by personal problems and suffering from losses and/or disorders; he/she is not in the best position to evaluate the academic qualifications and experience of the therapist. During therapy, the therapist/client relationship is marked by a "power imbalance" in that the client discloses everything while the therapist discloses nothing; this imbalance encourages client dependency on the therapist. If the therapist is incompetent or deliberately exploits the client in the context of this dependency, the client could be irreparably harmed.

Thus, Dr. Callanan argued that therapists should continue to be licensed by the state.

On the issue of merger, Dr. Callanan noted that BBSE is already an "omnibus board" which regulates three different professions (23,000 MFCCs, 15,700 LCSWs, and 2,000 LEPs) and administers three registration programs for licensure candidates who are providing clinical services under the supervision of a licensee (10,000 MFCC interns, 6,000 MFCC trainees, and 3,600 associate clinical social workers); thus, BBSE already regulates in excess of 60,000 people. However, Dr. Callanan noted that certain areas of BBSE/BOP operations (such as the administration of exams, the investigation of complaints, and other operations common to occupational licensing agencies) are similar and could be centralized or consolidated.

Dr. Callanan also noted that BOP is currently part of the Medical Board of California (MBC) and utilizes MBC's investigative personnel and a special unit of prosecutors within the Attorney General's Office dedicated to MBC enforcement cases, while BBSE is an independent DCA agency and uses DCA investigators and generalist prosecutors within the AG's Licensing Division. This fragmentation causes problems when a complaint is lodged against a therapist who is "dual-licensed" by both boards. When a complaint is received against such a licensee, the two boards necessarily duplicate each other's efforts because the same complaint against the same licensee involving the same set of facts is investigated by two different investigators and may be prosecuted by two different deputy attorneys general. Dr. Callanan stated that, in light of the limited resources of both boards and the usual severity of cases which proceed to hearing, this duplication of time and effort is "not defensible."

At this writing, no legislative proposals have been introduced as a result of the hearing.

**BBSE Discusses Electronic Testing Options.** In order to accommodate the increasing MFCC and LCSW examination populations and to address the corresponding increase in cost, BBSE is exploring the possibility of replacing its written exam with daily electronic testing; Dr. Norman Hertz, manager of DCA's Central Testing Unit (CTU), attended the Board's November 9 meeting and provided information on electronic testing. Dr. Hertz explained that under electronic testing, the current written exam would be used but would be administered by a computer. After an applicant is approved by BBSE to take the exam, he/she would contact the



exam vendor and take the test at one of many testing sites; the vendor would then notify BBSE and the candidate of his/her test results and, if the candidate passes, he/she would then take the oral exam. Dr. Hertz noted that BBSE would still be responsible for the actual approval or denial of licensure applications.

According to Dr. Hertz, electronic testing is more convenient for candidates because they can take the test in one of many locations; the candidate can select the date of the exam; there are no final filing dates; and candidates would receive test results in a more timely manner. Further, electronic testing would also offer BBSE staff a more consistent workload; BBSE would enjoy increased exam security, in that there would be no lost exams, and each candidate would take a different exam taken from a large item bank; the vendor would have the responsibility of providing adequate test-taking facilities; BBSE could market the exam program to other states; and the costs of administering the electronic test would be less than the administration of the "pencil-and-paper" test.

BBSE expressed interest in the concept and agreed to proceed with further development; CTU estimates that BBSE may be able to offer electronic testing for MFCC candidates by July.

**BBSE Considers Rulemaking Proposals.** As originally drafted, AB 1885 (Brown) (Chapter 1054, Statutes of 1993) proposed to establish a registration program for MFCC supervisors; the goal of this proposal was to enable the Board to oversee those persons responsible for supervising individuals who are attempting to qualify for licensure and authorize the Board to specify the qualifications and responsibilities of supervisors. However, due to opposition from the California Association of Marriage and Family Therapists (CAMFT), the proposal was withdrawn from AB 1885. [13:2&3 CRLR 55] Instead, BBSE intends to pursue this reform through rulemaking. DCA legal counsel Anita Scuri is currently preparing a draft of the proposed regulation, which would define the term "supervisor" and define, clarify, and enhance supervisor responsibilities contained in current statutes and regulations.

BBSE may also pursue regulatory amendments which would allow the Board to fine supervisors for minor disciplinary violations; minor violations would include only those that result in no client harm, according to BBSE staff.

## ■ LEGISLATION

**Future Legislation.** At its November 9 meeting, BBSE agreed to join the Board

of Registration for Professional Engineers and Land Surveyors in cosponsoring an amendment to the Bagley-Keene Open Meeting Act which would allow state boards, at their election, to hold closed sessions for the hiring or termination of their executive officers.

Also at the Board's November 9 meeting, Kathleen Callanan reported on BBSE's serious budget shortfall, noting that the Board has very little reserve funds left. According to Callanan, the number of complaints received by BBSE doubled in fiscal year 1992-93. The increased enforcement program costs exceeded the budgeted amount, and it became necessary for Board staff to submit a budget deficiency request to the Department of Finance in order to take additional funding from the Board's reserve fund; the reserve balance is currently so low that BBSE cannot remove any more funds. In light of this situation, the Board plans to introduce a bill increasing licensing fees effective January 1, 1995; at this writing, the amount of the fee increase to be sought by BBSE is unknown.

**AB 1807 (Bronshvag)**, as amended September 8, is a DCA omnibus bill which stalled on the Assembly floor in the last days of the 1993 legislative year. Among other things, AB 1807 would provide that MFCC experience gained outside of California shall be accepted toward licensure if it is substantially equivalent to that required by Chapter 13 of the Business and Professions Code, provided that the applicant has gained a minimum of 250 hours of supervised experience in direct counseling within California while registered as an intern with the Board; education gained outside of California shall be accepted toward the licensure requirements if it is substantially equivalent to the education requirements of Chapter 13, provided that the applicant has completed specified educational requirements.

AB 1807 would also provide that an MFCC, LCSW, or LEP whose license has been revoked or suspended or who has been placed on probation may petition BBSE for reinstatement or modification of penalty, including modification or termination of probation, after a period not less than the following minimum periods has elapsed from the effective date of the decision ordering the disciplinary action (or, if the order of BBSE, or any portion thereof, is stayed by the Board or by the superior court, from the date the disciplinary action is actually implemented in its entirety): (1) at least three years for reinstatement of a license which was revoked for unprofessional conduct, except that BBSE may, in its sole discretion at the

time of adoption, specify in its order that a petition for reinstatement may be filed after two years; (2) at least two years for early termination of any probation period of three years or more; and (3) at least one year for modification of a condition, or reinstatement of a license revoked for mental or physical illness, or termination of probation of less than three years.

AB 1807 would also provide that the LCSW licensure requirements set forth in Chapter 14 of the Business and Professions Code shall not apply to any clinical social worker from outside California, when in actual consultation with a licensed practitioner of this state, or when an invited guest of a professional association or educational institution for the sole purpose of engaging in professional education through lectures, clinics, or demonstrations, if he/she is at the time of the consultation, lecture, or demonstration is licensed to practice clinical social work in the state or country in which he/she resides; these clinical social workers would not be authorized to open an office or appoint a place to meet clients or receive calls from clients within the limits of this state. [A. Inactive File]

**SB 133 (Hill).** Existing law requires that applicants for licensure as an MFCC obtain certain supervised practical experience as a trainee or intern, and requires that these services be performed in the place where the employer of the intern or trainee regularly conducts their business. As amended July 13, this CAMFT-sponsored bill would provide that services performed at the place where the employer regularly conducts business may include other locations if the services are performed pursuant to the direction and under the control of their employer and supervisors. The bill would prohibit trainees and interns from having a proprietary interest in the employer's business. SB 133 would also repeal an existing provision which requires that an intern receive fair remuneration from his/her employer. [A. Floor]

## ■ RECENT MEETINGS

At its November 9 meeting, BBSE discussed its relationship with the American Association of State Social Work Boards (AASSWB); BBSE currently uses the national clinical social work exam sold by AASSWB. However, BBSE is dissatisfied with recent actions of AASSWB officials. Specifically, BBSE opposes new bylaws recently adopted by AASSWB which effectively transfer all authority from the state delegates to the AASSWB Executive Committee. Further, AASSWB has already developed an electronic test; using



this test, California could convert to electronic testing for its LCSW candidates in a matter of months. However, BBSE contends that the AASSWB Executive Director has established an openly adversarial relationship with ASI, the electronic test contractor; according to BBSE, this antagonism may stem from the fact that ASI is assisting a group of similarly concerned states in developing an alternate exam. BBSE staff believes that the Board should inform AASSWB that California will seek to contract independently for electronic testing if AASSWB is not willing to provide it by a specified date. At this writing, AASSWB has agreed to let California proceed with a pilot electronic testing program. The Board is expected to continue its consideration of this issue at a future meeting.

### ■ FUTURE MEETINGS

May 19-20 in Los Angeles.  
August 25-26 in Sacramento.  
November 17-18 in Sacramento.

### CEMETERY BOARD

*Interim Executive Officer:*

*James Diaz*  
(916) 263-2660

The Cemetery Board's enabling statute is 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).

In addition to cemeteries, the Cemetery Board licenses cemetery brokers, salespersons, and crematories. 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, the Cemetery Board licenses only about 188 cemeteries. It also licenses approximately 142 crematories, 200 brokers, and 1,200 salespersons. A license as a broker or salesperson is issued if the candidate passes an examination testing knowledge of the English language and elementary arithmetic, and demonstrates a fair understanding of the cemetery business.

On November 15, Governor Wilson appointed Steve Doukas of South San Francisco to fill the vacant industry member position on the six-member Board. That vacancy was created by the resignation of Board President Iris Jean Sanders in July 1993. Doukas, a Republican, is affiliated with Greek Orthodox Memorial Park Cemetery in Colma. His appointment

is subject to Senate confirmation. Other Board members are industry member Keith Hargrave and public members Herman Mitschke, Lilyan Joslin, Brian Armour, and Linda Trujillo.

### ■ MAJOR PROJECTS

**"Death Summit" Update.** In late October, the Department of Consumer Affairs (DCA) released its "Summary of Recommendations" resulting from the joint "Death Summit" of the Cemetery Board and the Board of Funeral Directors and Embalmers (BFDE) held on September 22. The Summit addressed concerns that both boards have failed to respond to consumer complaints, have been lax in enforcing regulations, and are dominated by the industries they are charged with regulating. DCA Director Jim Conran warned that unless the performance of both boards substantially improves, each could face abolition, merger, or reformation into bureaus. [13:4 CRLR 39, 48-49]

The summary reports nineteen suggestions made at the Summit "for evolving the Cemetery and Funeral Directors and Embalmers Boards' policies and practices." The recommendations were organized into five categories: scope of regulations, consumer services, investigation and enforcement, funding/resources, and board appointments and processes. Specific recommendations include the following:

- review and prioritize areas of potential consumer harm, and craft appropriate provisions to regulate each area;
- review of business practices related to preneed and endowment care funds;
- establish consumer-friendly services and standards for timely responses;
- improve consumer education and information;
- develop priorities, improve effectiveness, and create better inter- and intra-board communication regarding investigation and enforcement activities;
- increase fee revenues;
- share resources across the two boards; and
- consider merging the two boards or combining the Executive Officer positions.

Each board was charged with submitting 30-, 60-, and 90-day written reports to DCA addressing "actionability" categories, policy development, and legislative proposals concerning these recommendations. At this writing, neither board has submitted any of these reports. The Cemetery Board's failure is due in part to the unfortunate illness of Board President Brian Armour, who suffered a stroke immediately prior to the Board's October 13

meeting, and the Board's failure to obtain a quorum at a December 6 workshop scheduled expressly for the purpose of completing the 60-day report. At this writing, the Board hopes to develop a comprehensive report for submission to DCA at its January meeting.

**Legislative Hearing Addresses Fate of Board.** On October 20, the Subcommittee on Efficiency and Effectiveness in State Boards and Commissions of the Senate Business and Professions Committee held hearings on reforming several of California's consumer regulatory agencies. The Subcommittee heard testimony from various parties concerning possible reorganization of numerous DCA boards, including the Cemetery Board. Specifically, the Subcommittee looked at whether the Cemetery Board should be eliminated and the industry deregulated (with preneed and endowment care funds regulated by some other state agency), transformed in a bureau under the direct supervision of the DCA Director, merged with BFDE, or some combination of these options. The Legislative Analyst's Office has called for the abolition of both the Cemetery Board and BFDE. [13:2&3 CRLR 57, 69]

Representing the Board in the absence of Brian Armour, Keith Hargrave testified that the difference in the nature of the services rendered by the cemetery and funeral services industries justifies the existence of two separate boards to regulate them. In response to questioning, he argued that if the Board were eliminated, consumers would have no place to file complaints concerning industry practices. Hargrave also stated that the Cemetery Board is a "new board" in that only one member has been on the Board for a significant period of time, and asked for the opportunity to make it work properly.

The enforcement records of both the Cemetery Board and BFDE were subjected to harsh criticism by Subcommittee member Dan Boatwright (who chairs the Senate Business and Professions Committee). Senator Boatwright commented that the Cemetery Board's "enforcement track record is -10—not even a zero." In response to concerns from Subcommittee members that the Board is not effectively safeguarding trust funds paid by consumers for the perpetual care of cemetery plots, Interim Executive Officer James Diaz testified that Board staff does not currently have the expertise to audit these trust funds, so it has contracted with DCA to perform an audit of all cemetery trust funds. Diaz stated that most of the trusts are "in good shape," but that 50 of the 180 cemeteries being audited have yet to file returns. He also reported that at least three