



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



cemeteries are under conservatorship, and that those endowment care funds are directly managed by the Board.

At the Subcommittee's hearing, Center for Public Interest Law (CPIL) Supervising Attorney Julianne D' Angelo called for a merger of the boards, stating that "the two industries merely reflect two different approaches of accomplishing the same result: the preparation, care, and disposition of a dead human body in the manner desired by the decedent or his/her family." She argued that the two industries are inextricably interwoven and should be regulated by the same board (which should be dominated by public members) or by a bureau within DCA. [13:4 CRLR 38-39]

Also testifying were cemetery industry representatives, who generally opposed merger of the two boards, and members of the public. At this writing, the Subcommittee is scheduled to issue recommendations for proposed legislation in early 1994.

**Search for New Executive Officer Delayed.** The Board's Executive Officer (EO) position, which has been vacant since the forced resignation of John Gill last March, will remain vacant until at least April 1994. According to Jim Diaz, who has served as Interim EO since Gill resigned, no funds will be available to pay a new EO until that time. The reason for this lack of funding is the termination benefits package provided to Gill. Although he left in March 1993, Gill remained on the Board's payroll through October 1993, receiving pay for accrued vacation. [13:2&3 CRLR 57] Then, in October, Gill received a lump sum distribution, effectively paying his salary through March 1994. Due to the Board's limited budget, there are no available funds to pay a new EO until that time.

Gill was forced to resign following accusations that he failed to respond to consumer complaints and that he privately forewarned industry officials of upcoming inspections. Board members Cuffie Joslin and Linda Trujillo, who voted against Gill's termination settlement, both expressed their dismay that he is effectively being compensated for one year while performing no services for the Board.

According to Diaz, a notice of vacancy and call for applications for the position will be published in early January. Diaz will vacate the position of Interim EO in March, but he promised to continue to assist the Board as much as possible after that date until a permanent EO has been hired.

## LEGISLATION

**SB 155 (Boatwright).** Existing law prohibits a crematory licensee from con-

ducting any cremations of human remains more than 72 hours after death unless the remains have been preserved by refrigeration or embalming; this bill would delete this requirement. Existing law also prohibits a crematory licensee from conducting cremations unless the licensee has a contractual relationship with a cemetery authority for final disposition of cremated remains that are not lawfully disposed of or claimed by persons entitled to custody of the remains within 90 days; this bill would provide that notwithstanding that provision, cremated remains may be disposed of by a funeral director, cemetery authority, or crematory, after one year, by burial at sea, after certain notification requirements are met.

Among other things, this bill would also require funeral directors and crematories to faithfully carry out the instructions of the person who is the authorizing agent for cremation of the body of a deceased person, and provide that a funeral director who faithfully carries out those instructions is not liable for acts of the crematory, and the crematory that faithfully carries out those instructions is not liable for acts of the funeral director. [S. B&P]

**AB 1392 (Speier),** as amended July 1, would—among other things—provide that the Cemetery Board's executive officer is to be appointed by the Governor, subject to Senate confirmation, and that the Board's executive officer and employees are under the control of the Director of the Department of Consumer Affairs. [S. B&P]

**AB 1807 (Bronshvag),** as amended September 8, would require that the current address of the Cemetery Board and/or the Board of Funeral Directors and Embalmers, as appropriate, appear prominently on the first page of all contract for specified goods and services. [A. Inactive File]

## RECENT MEETINGS

Keith Hargrave presided over the Board's October 13 meeting because Board President Brian Armour suffered a stroke a few days before the meeting. Interim EO James Diaz reported that 34 onsite inspections were conducted between May 18 and October 12, and five letters of warning were issued for violations found therein. He reported that 109 complaints from consumers were logged with the Board during the year-long period ending June 30, 1993, and 33 complaints have been filed so far this fiscal year.

The Board heard reports from the trustees of Abbey Funeral Center, currently in Chapter 11 bankruptcy, which concluded

that the former owners misused endowment care funds and generally let the cemetery deteriorate. The trustees stated that the consumers who had placed funds in trust there would probably be forced to accept reduced services or face the possibility of the cemetery's closure. The Board also heard from a volunteer group interested in taking over the maintenance of Hills of Peace Cemetery, which is under conservatorship and directly managed by the Board. This group urged the Board to remove the current caretaker, who allegedly refuses to maintain the grounds properly and has been rude and abusive to some consumers who have relatives buried in the cemetery. The Board voted to have the caretaker removed.

Also in October, the Board heard from DCA representative J.P. Fish, who reminded the Board of its commitment to submit monthly progress reports following the "Death Summit" (see MAJOR PROJECTS). Finally, the Board heard public comments from a number of individuals. Susan Reece of TRUST (The Relatives Urging Sacred Treatment) complained that the public comment period is always scheduled at the conclusion of the Board's meeting, after all industry participants have departed. Reece also argued that the Board's July 23 vote electing Keith Hargrave as Board vice-president was illegal because it was not properly noticed on the Board's agenda, and therefore violated the Bagley-Keene Open Meeting Act.

Only four members were present at the Board's December 7 meeting—Acting President Keith Hargrave and members Linda Trujillo, Cuffie Joslin, and new appointee Steve Doukas. The Board heard a preliminary report regarding DCA's audit of endowment care funds entrusted to cemeteries. These funds are deposited with the cemeteries by consumers to pay for the perpetual care of the grounds. The audit showed that 60 of 141 cemeteries reporting showed some deficiencies. Most of the deficiencies were technical in nature, such as lack of CPA certification, lack of second signatures of partnership owners, or lack of specificity in investment disclosure statements. However, some of the cemeteries reported questionable investments in high-risk stocks and other ventures. The auditor recommended that the Board consider taking some type of action, especially since the Cemetery Act is very specific regarding permissible types of investments. There was some discussion among Board members about this matter, but no decision was made and the Board moved on to other subjects without taking any action.



Also in December, the Board responded to Susan Reece's October 13 complaint by discussing whether to move the public comment portion of the meeting forward to an earlier time, with several members of the Board voicing support for the idea. However, industry member Hargrave expressed his preference for leaving the public comment at the end of the meeting, stating that licensees appearing before the Board should be allowed to go first. Board member Joslin complained that the Board exists to protect consumers; therefore, consumers should be allowed to speak first. Board counsel advised that because the Board had not included an item on its agenda concerning action to move the public comment period, no motion could be made to move the comment period at that meeting.

During the public comment at the December meeting, representatives of the Hills of Peace volunteer group were again present and complained that, although the Board had voted in October to remove the caretaker at the cemetery, this had not occurred. The caretaker was informed of the Board's decision, but he allegedly made threats against one of the volunteer members. When Board member Joslin asked why the caretaker had not been removed, Interim EO Diaz explained that "what I thought was going to be easy has become legally very difficult." He explained that the authority to remove the caretaker lies with the Attorney General's Office. He initiated contact with the AG's Office but, after reviewing the case, the AG requested a closed session with the Board to discuss the matter. Diaz refused to discuss the matter any further until after the closed session. The Board then retired to closed session to discuss the matter.

## ■ FUTURE MEETINGS

April 21 in Sacramento.

August 28 in Eureka.

## CONTRACTORS STATE LICENSE BOARD

Registrar: David Phillips

(916) 255-3900

Toll-Free Information Number:  
1-800-321-2752

The 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.

In October, Governor Wilson appointed David J. Lucchetti of Wilton to fill a specialty contractor vacancy on the Board; Lucchetti is president of Pacific Coast Building Products, Inc.

## ■ MAJOR PROJECTS

**Assembly Consumer Protection Committee Hearings.** On October 6, the Assembly Committee on Consumer Protection, Governmental Efficiency and Economic Development conducted a hearing on how CSLB handles many of its most important functions, such as screening contractor license applications, responding to consumer complaints, and revoking licenses when warranted. [13:4 CRLR 41] In conjunction with the October hearing, the Committee released a report in which it charged that CSLB is "critically deficient" in protecting consumers from unscrupulous or unqualified contractors. The October hearing and a follow-up hearing on November 9 resulted in the following CSLB actions:

- CSLB has discontinued its policy of refusing to investigate complaints where the contract at issue contains an arbitration clause.

- CSLB agreed to work with Committee Chair Jackie Speier to draft legislation requiring social security numbers on all applications for licensure and renewal.

- By January 1, 1994, CSLB will expand the information it provides on licensees through its automated phone system to include the name, address, and phone number of the contractor's bonding company, as well as information on past or pending suspensions, revocations, citations, judgments, or arbitration awards against the contractor.

- CSLB will continue to research alternative ways of determining whether there are outstanding judgments (including arbitration awards) against contractors. CSLB is planning to complete a feasibility study by April 1994. The Board is also exploring the use of informational brochures in the short term; the brochures would inform consumers that the license of a contractor who fails to pay a judgment may be suspended.

- CSLB will undertake a six-month pilot project to determine whether a 50%

application verification rate (to determine whether licensure applicants are qualified) is too high or too low. The Committee asked that CSLB review at least 50% of the licensure applications received to verify the applicant's experience and judgment history stated on the application, with an eventual goal of verifying 100% of applications; the cost associated with verifying the applications could be reflected in increased application fees.

- CSLB agreed to modify its application form to require a contractor to designate an individual and address for purposes of service of process when the contractor's address of record is a private or U.S. post office box.

- CSLB will update its complaint form to include a box that some complainants may check in order to request confidentiality; the new forms are to be made available as soon as possible.

- CSLB agreed to develop and implement a centralized process to suspend certain licenses without the use of staff who would otherwise be investigating consumer complaints. Currently, CSLB enforcement staff are being used—perhaps unnecessarily—to handle cases which are opened when the Employment Development Department, the Franchise Tax Board, or the Department of Industrial Relations notifies CSLB of a contractor's outstanding liability and requests that CSLB suspend his/her license.

- CSLB will review its policy of informing a contractor that a complaint has been filed and/or that an investigation is or may be under way; in addition, CSLB will review its policy of providing the name of the complainant to the contractor.

- CSLB agreed to review and adjust its passing scores and passage rates on its written examinations to ensure that only qualified applicants are licensed.

- Finally, the Committee is exploring legislation to address the following issues: the reflection of satisfied judgments on a contractor's record; prohibiting the use of government officials in advertising and promotional materials; tightening lien laws to require that the filer of a lien provide supporting documentation of the appropriateness of the lien; tightening arbitration laws; clarifying contract clauses which waive a consumer's right to a jury trial; revising Business and Professions Code sections that provide for the payment of a contractor's bond only for willful or deliberate violations; facilitating the sharing of information among CSLB, building inspectors, and courts; and reviewing the exemption from the written examination for family members and employees of a contractor.