



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

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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.



**CSLB Revamps Committees, Meeting Policy.** At its December 7 meeting, CSLB's Strategic Planning Committee revised the Board's committee structure and reinstated the scheduling of committee meetings; since October 1992, separate committee meetings have not been held. CSLB now has the following committees: Administration/Consumer Education, chaired by Robert Laurie; Enforcement, chaired by John Chalker; Licensing, chaired by Nina Tate; Strategic Planning, chaired by Phil Moore; and Legislation, chaired by Jim Frayne. At this writing, initial committee meetings are scheduled for January 27, the day prior to the regularly scheduled January Board meeting.

**Rulemaking Update.** The following is a status update on CSLB rulemaking proposals discussed in detail in recent issues of the *Reporter*:

-CSLB's adoption of new section 832.05, Title 16 of the CCR, which creates a new specialty contractor classification for carpentry, was approved by the Office of Administrative Law (OAL) on October 26. [13:4 CRLR 41]

-CSLB's proposed adoption of section 832.28, which would create a new specialty license classification for class C-28 lock and security equipment contractors, and proposed amendments to section 832.07, which would remove language authorizing low voltage system contractors (C-7) to install fire alarm systems, were recently rejected by OAL because the Department of Finance did not approve the fiscal impact statement due to the Board's fund condition.

-At this writing, CSLB's proposed amendments to section 884, Title 16 of the CCR, which would revise recommended minimum and maximum civil penalty assessments which may be included in licensee citations, await review and approval by OAL. [13:4 CRLR 41]

-At this writing, CSLB's proposed amendments to section 832.36, Title 16 of the CCR, which would specify the tasks that may be undertaken by plumbing contractors, await review and approval by OAL. [13:4 CRLR 41]

**CSLB Responds to Fire Victims.** Only days after a series of wildfires destroyed almost 1,000 homes and burned almost 200,000 acres in six southern California counties, CSLB released a warning to homeowners to beware of unlicensed contractors bidding to rebuild their homes; CSLB's special flier outlined tips to homeowners and provided a toll-free number for fire victims to inquire about the status of a contractor's license. Also, CSLB investigators conducted successful sting operations to catch unlicensed contractors

trying to bid on jobs. Although contracting without a license is normally a misdemeanor, if it happens in a disaster zone (such as the southern California wildfire areas), violators face up to three years in prison and a fine of up to \$10,000.

## LEGISLATION

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

**AB 203 (Collins)**, as amended April 26, would provide that one of the seven public members on CSLB shall be a local building official appointed by the Governor. [S. Rls]

**AB 338 (Mountjoy)**, as introduced February 8, is a Board-sponsored bill which would revise the definition of a general building contractor, and eliminate the exclusion of specified persons from the definition of a general building contractor. [13:1 CRLR 31] Because the Board recently agreed to maintain the current contractor classification system (see RECENT MEETINGS), this bill will likely be dropped. [A. CPGE&ED]

**AB 443 (Aguiar)**, as amended March 15, would—among other things—revise existing law which provides that every city or county which requires the issuance of a permit as a condition precedent to the construction, alteration, improvement, demolition, or repair of any building or structure shall, in addition to any other requirements, print a declaration on any building permit issued which includes, among other things, a workers' compensation declaration, a certificate of exemption from workers' compensation insurance, if applicable, and a construction lending agency affirmation requirement, as specified. [A. F&I]

**AB 1800 (Friedman, T.)**, as amended June 22, would abolish the Department of Industrial Relations and instead provide for the Labor Agency supervised by the Secretary of the Labor Agency consisting of the Department of Occupational Safety and Health, the Department of Workers' Compensation, the Department of Rehabilitation, the Department of Labor Standards Enforcement, the Employment Development Department, the Department of Fair Employment and Housing, and CSLB. [A. L&E]

**AB 1807 (Bronshvag)**, as amended September 8, would make the Contractors State License Law inapplicable to a licensee operating within the scope of the Geologist and Geophysicist Act, and would increase from \$5,000 to \$7,500 the amount

of bond required as a condition precedent to the issuance, reinstatement, reactivation, or renewal of a contractor's license. [A. Inactive File]

**AB 1981 (Horcher)**, as introduced March 5, would declare that provisions in an express or implied contract between contractors and their subcontractors and suppliers making payment thereof contingent upon payment of the contractor are contrary to public policy, void, and unenforceable. [A. Jud]

**SB 949 (Rogers)**, as amended July 13, would generally provide that, with respect to all contracts between owners and original contractors for the construction of any private work of improvement, excluding residential construction, entered into on or after July 1, 1994, the retention proceeds withheld by the owner from the original contractor or by the original contractor from any subcontractor from any payment shall not exceed 10% of the payment and in no event shall the total retention withheld exceed 5% of the contract price. [A. Jud]

## RECENT MEETINGS

At CSLB's October 29 meeting, Registrar David Phillips announced that the Board will maintain a conservative posture on expenditures even though the Board's bill to increase licensing fees becomes effective on January 1, 1994. [13:4 CRLR 42] The Board will begin filling positions which have been vacant for some time, including sixteen positions in the new unlicensed activity units in central and northern California.

Phillips also announced that CSLB is in the process of suspending the licenses of 13,000 contractors who still have not complied with workers' compensation requirements; Phillips noted that licensees had been sent a total of four notices reminding them to comply.

CSLB's Ad Hoc Committee on Long Range Planning presented a summary of its recommendations for future Board action. Among other things, the Committee recommended that CSLB retain the current contractor classification system; improve communication with contractors and trade associations through a continued quarterly newsletter, the distribution of articles, and better access to the CSLB database through electronic media; improve communication to the consumer regarding the status of a contractor's license and educate the consumer regarding complaint resolution and insurance claims; improve consumer complaint resolution, concentrating on contractors with multiple, fraudulent, and health-endangering complaints; study the issue of contractors'



fiscal responsibility to ensure that they can fulfill their contractual obligations to consumers; increase collection efforts regarding unpaid fines and judgments; create an alternate dispute resolution process; and implement a survey of consumer complainants to determine CSLB's effectiveness in resolving consumer complaints.

Finally, CSLB Licensing Deputy Bob Christensen reported that the Board had received many suggestions for changes and additions to CSLB's application form; a second draft should be ready for review by spring and a final draft is expected to be ready by June 1994.

### ■ FUTURE MEETINGS

April 22 in San Francisco.

July 22 in Los Angeles.

## BOARD OF DENTAL EXAMINERS

*Executive Officer:*  
*Georgetta Coleman*  
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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 Stephen Yuen, DDS, president; Joel Stom, DDS, vice president;

Pamela Benjamin, public member; John Berry, DDS; Victoria Camilli, public member; Robert Christoffersen, DDS; Joe Frisch, DDS; Peter Hartmann, DDS; Martha Hickey, public member; Genevieve Klugman, RDH; Virtual Murrell, public member; Roger Simonian, DDS; Hazel Torres, RDA; and Gloria Valde, DMD.

### ■ MAJOR PROJECTS

**Legislative Oversight Hearing.** On November 10, BDE and COMDA 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 two entities. Specifically, the Subcommittee requested comments on (1) whether dentists and dental auxiliaries should be deregulated and both entities abolished; (2) whether the two entities should be merged; and (3) whether either or both entities 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).

BDE Executive Officer Georgetta Coleman represented the Board, and COMDA Executive Officer Karen Wyant represented the Committee. Both made oral presentations (accompanied by written materials) on recent BDE/COMDA activities. Much of the Subcommittee's attention was focused on the enforcement records of the two entities. The statistical information provided by BDE to the Subcommittee did not separate out COMDA complaint information from BDE complaint information, and Subcommittee members expressed confusion over which entity is responsible for receiving, processing, and compiling information on consumer complaints against dental auxiliaries. Wyant stressed that COMDA's role is to advise BDE on the functions which may be performed by auxiliaries and the type of supervision which should accompany performance of those functions. COMDA is not authorized to receive, process, or act on complaints; nor is it able to compile enforcement statistics. Coleman noted that many complaints against auxiliaries are lodged in the form of a complaint against the dentist who supervises that auxiliary; however, she promised that BDE staff could separate COMDA enforcement statistics from BDE enforcement statistics for the Subcommittee.

While representatives of dental professional organizations expressed pleasure with the current structure of the two entities, representatives of dental auxiliary or-

ganizations argued for the separation of COMDA from BDE, noting that BDE is dominated by dentists and objecting to the fact that the dental profession is thus allowed to control the scope of practice of registered dental hygienists and registered dental assistants. They urged the Subcommittee to consider any or all of the following: (1) elevating COMDA to an autonomous and co-equal regulatory program within BDE, or (2) ensuring adequate representation for auxiliaries on BDE, or (3) separating COMDA from BDE.

Center for Public Interest Law Supervising Attorney Julianne D'Angelo testified that both BDE and COMDA should be abolished and replaced with a nine-member board controlled by public members (e.g., five public members, two dentist members, and two dental auxiliary members). She expressed concern that BDE had voted to oppose AB 221 (Areias) (*see* LEGISLATION), which may be an indication that the dentist-controlled BDE is more interested in suppressing competition than protecting consumers and affording them enhanced access to dental care. Based on the earlier testimony which revealed that COMDA has no control over enforcement, DCA Deputy Director Karen McGagin stated that COMDA should either be given adequate authority to regulate dental auxiliaries or absolved of responsibility for that function.

At this writing, the Subcommittee is expected to issue a final report on the hearing and its legislative recommendations in early 1994.

#### Long-Range Goals and Objectives.

At its November meeting, BDE approved a report of its Long-Range Planning Subcommittee which sets forth the Board's mission statement, seven overall Board goals, and specific ways to achieve them. BDE's mission statement is as follows: "The mission of the Board of Dental Examiners is to protect the consumer through the examination and licensing of dental professionals and by enforcing the laws and standards of practice that govern dentistry in California." The seven long-term goals of the Board are as follows:

- BDE will complete investigations of complaints within six months of receipt, at which time the case will either be closed or referred to the Attorney General's Office for further action. BDE plans to achieve this goal primarily by eliminating the current backlog of cases pending before its investigators and by maintaining an appropriate investigation caseload per investigator. Currently, each Board investigator has a caseload of approximately 80 cases; BDE believes that 25 cases is a more manageable caseload. BDE began