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
(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 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 organizations 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

fiscal year 1993–94 with 829 open investigations and expects to receive an additional 500 cases during 1993–94. Thus, to accomplish its first goal, BDE plans to seek budgetary authority to hire five additional investigators. The Board also plans to expand the use of its non-disciplinary review process for minor violations which do not merit formal discipline or a citation and fine *[12:2&3 CRLR 82]*; hire two additional dental consultants to assist in reviewing incoming complaints about quality of care; monitor the effectiveness of its citation and fine program *[13:1 CRLR 34]*; and increase licensee awareness of its enforcement activities through the biannual publication of a Disciplinary Action Bulletin.

• BDE will apply its disciplinary guidelines in a consistent and equitable manner. The Board plans to achieve this goal by regularly reviewing its existing disciplinary guidelines to ensure they are consistent with current law, and periodically reviewing staff-prepared summaries of its disciplinary decisions.

• BDE will provide for appropriate and timely communication between the Board, the regulated profession, and the public by issuing a biannual Disciplinary Action Bulletin, establishing media contacts to assist in its public education role, investigating the cost and feasibility of establishing a toll-free 800 line to provide consumers with easier access to the Board, and investigating ways to develop an online electronic information system.

• The Board, its staff, and legal counsel will complete a comprehensive review of, and recommend appropriate changes to, the Dental Practice Act and its regulations in the CCR.

• BDE will increase its participation in the legislative process to better accomplish its mission. This goal involves greater communication between the Board's Legislative Committee Chair and both DCA staff and key members of the legislature and their staffs. Individual Board members will also establish working relationships with their local legislative representatives.

• The Board will complete a comprehensive review of and recommend appropriate changes to its restorative and clinical licensure examinations to ensure relevancy, validity, and reliability. To accomplish this goal, BDE will appoint a task force to review and recommend appropriate changes to the dental licensure exam, taking into consideration national trends in teaching and practice, and conduct an occupational analysis of the practice of dentistry. Also, COMDA will review and recommend changes to the auxiliary exams.

• Finally, the Board plans to conduct a comprehensive review of its operational and support systems to ensure that these systems properly assist the Board in meeting its mission. To accomplish this goal, the BDE president and vice-president will annually evaluate the performance of the executive officer; and the Board will investigate the establishment of an Executive Committee to review the Board's organizational structure and method of determining agenda issues. The Executive Committee would also provide direction to the executive officer on issues that arise between Board meetings.

Special Permit Program Regulatory Changes. At its November meeting, BDE reviewed comments received on its proposed adoption of new sections 1027 and 1027.1, Title 16 of the CCR, which had been the subject of a public hearing on September 10. As proposed, these regulatory changes would clarify some terms used in statutes authorizing BDE to issue special permits to full-time dental faculty certified or qualified for certification in recognized specialties of dentistry. New section 1027 would define the terms "graduation from a dental college approved by the Board," "specialty board," and "affiliated institution." New section 1027.1 would require a special permit holder who is not certified as a diplomate of an American Dental Association-approved specialty board to retain eligibility for certification as a diplomate so long as the special permit is in effect. *[13:4 CRLR 44]*

Following discussion of several proposed modifications, BDE rejected all but one. The Board agreed to modify new section 1027.1 to clarify that the new requirement is applicable only to an initial special permit applied for after March 1, 1994. BDE approved the regulatory changes as modified, and released the modified text for an additional 15-day comment period ending on December 24; at this writing, BDE hopes to submit the rulemaking package to the Office of Administrative Law in February.

Infection Control Regulations. On December 24, BDE published notice of its intent to adopt new section 1005, Title 16 of the CCR; as required by Business and Professions Code section 1680, the new section would require BDE licensees to follow the most recent recommendations, precautions, and regulations set forth by the U.S. Centers for Disease Control to prevent transmission of bloodborne pathogens in the health care setting. *[13:4 CRLR 44; 13:2&3 CRLR 82]* At this writing, the Board is expected to hold a public hearing on this proposed regulatory action on February 16.

LEGISLATION

Future Legislation. At its November meeting, BDE approved a recommendation by COMDA that the Board seek legislation to allow the administration of a jurisprudence and ethics examination for all dental auxiliaries; a similar provision for dentists is already included in DCA's omnibus bill, AB 1807 (Bronshvag) (*see below*).

AB 1807 (Bronshvag), as amended September 8, would require insurers providing professional liability insurance to dentists to report settlements of $10,000 or more to BDE.

Existing law exempts certain practices from the definition of the practice of dentistry. This bill would add verification of shade taking in certain circumstances to the list of exempt practices.

Existing law requires an applicant to practice dentistry to pass an examination testing an applicant's skill in dentistry, which may be supplemented by an oral examination. This bill would provide that, instead of being supplemented with an oral examination, the examination may be supplemented by a jurisprudence and ethics examination. This bill would also set minimum time periods after suspension or revocation of a license, certificate, or permit of a dentist at which a dentist could seek modification or termination of the sanction; this bill would also set forth considerations for BDE or the administrative law judge conducting the hearing.

Existing law requires dental assistants, as a condition of licensure, to have graduated from an educational program that meets specified requirements. Existing law sets maximum fees BDE may charge for curriculum review and site evaluation for educational programs not accredited by a Board-approved agency, the Council for Private Postsecondary and Vocational Education, or the Chancellor's Office of the California Community Colleges. This bill would also change the maximum fee provisions to apply to all programs that are not publicly funded. *[A. Inactive File]*

AB 221 (Areias), as amended August 16, would create a new category of allied dental health professional called a registered dental hygienist in alternative practice (RDHAP), and authorize RDHAPs to independently provide specified dental hygiene services. *[13:2&3 CRLR 64]* Additionally, this bill would provide that the fees for certification of an RDHAP shall not exceed $250; require BDE, upon COMDA's recommendation, to adopt by January 1, 1995, regulations prescribing the functions to be performed by RDHAPs (as an employee of a dentist and indepen-

dently), educational requirements, supervision levels, and settings; require an RDHAP to refer patients to a licensed dentist for dental diagnosis and dental treatment; include the RDHAP category within the list of licensed or certified persons in the healing arts that an insured may not be prohibited from selecting; and include the RDHAP category to the list of persons authorized to provide specified services to Medi-Cal beneficiaries. At its July 22–23 meeting, BDE reaffirmed its opposition to this bill. *[S. Appr]*

SB 1194 (Johnston). Existing law provides for primary care case management, as defined, under the Medi-Cal program, and defines the term "primary care provider" for purposes of that program. As amended April 12, this bill would revise the definition of "primary care provider" to include primary dental care providers, as defined. *[S. Appr]*

AB 559 (Peace). Existing law prohibits health care service plans (HCSPs) from requesting reimbursement for overpayment or reducing payments to a provider because the provider entered into a contract with another HCSP. As amended July 7, this bill would revise this prohibition to apply only to specialized dental HCSPs, and would require that nothing in this prohibition be construed to prevent specialized dental HCSPs from including cost containment provisions in contracts with providers, or from terminating contracts in the event that a provider does not comply with these cost containment provisions. *[S. InsCl&Corps]*

AB 720 (Horcher), as introduced February 24, would prohibit any person other than a licensed physician, podiatrist, or dentist from applying laser radiation, as defined, to any person for therapeutic purposes, and would also provide that any person who violates this provision is guilty of a misdemeanor. *[A. Health]*

LITIGATION

Throughout October, BDE produced agency documents responsive to the Environmental Law Foundation's Public Records Act request in an attempt to settle ***Environmental Law Foundation (ELF) v. California State Board of Dental Examiners***, No. 536308 (Sacramento County Superior Court). The lawsuit stemmed from BDE's alleged failure to respond fully and in a timely manner to ELF's PRA request for BDE documents pertaining to its preparation of its "Dental Materials Fact Sheet" as required by SB 934 (Watson) (Chapter 801, Statutes of 1992). *[13:4 CRLR 46]* Following BDE's production of numerous records, the parties settled the matter; BDE agreed to pay all of ELF's attorneys' fees and costs incurred in filing the lawsuit.

RECENT MEETINGS

At its November meeting, BDE decided to rescind a decision it made two years ago with respect to its clinical cast restoration examination. At that time, the Board—in response to requests from the dental schools—decided to permit students to remove decay and place a temporary on a tooth that would later be used during the clinical cast restoration exam. The schools argued that the alternative situation (students who discovered decay in an ideal tooth for cast restoration in November or December would delay treatment of the decay until the June examination) was not in the best interests of patients. However, after two years of allowing the new procedure, the Board concluded that it interferes with its ability to properly evaluate a candidate's judgment in dealing with decay and removing any existing restoration, and skill in performing a cast restoration. Thus, BDE decided that, effective March 1994, candidates will no longer be allowed to remove decay and place a temporary outside the examination process. The instruction packet will again include a notice stating: "All existing restorations and decay must be removed during the examination."

Also in November, the Board was presented with an occupational analysis of the RDA profession prepared by DCA's Central Testing Unit; COMDA will fully review the analysis and present recommendations to the Board at a future meeting. Additionally, and consistent with its long-term goals (*see above*), the Board learned that staff is in the process of hiring a private firm to conduct an occupational analysis of the practice of dentistry. These analyses are used to evaluate and validate licensing examinations.

Finally, the Board elected 1994 officers at its November meeting. Stephen Yuen, DDS, was elected BDE president; Joel Strom, DDS, was selected vice-president; and public member Martha Hickey was chosen as secretary.

FUTURE MEETINGS

May 12–13 in Los Angeles.
July 14–15 in San Francisco.
September 22–23 in Los Angeles.
November 3–4 in San Francisco.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Executive Officer:
Richard P. Yanes
(916) 263-3180

The Board of Funeral Directors and Embalmers (BFDE) licenses funeral establishments and embalmers. It registers apprentice embalmers and approves funeral establishments for apprenticeship training. The Board annually accredits embalming schools and administers licensing examinations. BFDE inspects the physical and sanitary conditions in funeral establishments, enforces price disclosure laws, and approves changes in business name or location. The Board also audits preneed funeral trust accounts maintained by its licensees, which is statutorily mandated prior to transfer or cancellation of a license. Finally, the Board investigates, mediates, and resolves consumer complaints.

BFDE is authorized under Business and Professions Code section 7600 *et seq.* The Board consists of five members: two Board licensees and three public members. In carrying out its primary responsibilities, the Board is empowered to adopt and enforce reasonably necessary rules and regulations; these regulations are codified in Division 12, Title 16 of the California Code of Regulations (CCR).

MAJOR PROJECTS

BFDE Appoints New Executive Officer. On December 1, the Board selected Richard P. Yanes as its new Executive Officer (EO). Prior to becoming BFDE's EO, Yanes served on the personal staff of two California Assembly majority floor leaders, was a founding partner in a public relations firm, and practiced law. Yanes' last job prior to being appointed as EO of the Board was as executive officer for a private nonprofit corporation.

Yanes succeeds Jim Allen, who resigned under pressure last June. Between June and December, Department of Consumer Affairs (DCA) Chief of Management and Information Services Neil Fippin served as the Board's Interim EO. *[13:4 CRLR 47]*

"Death Summit" Update. In late October, DCA released its summary of recommendations which resulted from the September 22 "Death Summit," at which industry leaders, consumer advocates, and state officials discussed the poor records of both BFDE and the Cemetery Board in policing abuses within the death services