



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



industry. [13:4 CRLR 48-49] At the Summit, DCA Director Jim Conran bluntly warned both boards that if they did not initiate reforms swiftly, the Department would support the abolition or merger of both boards at upcoming legislative hearings (see below). At the Summit and in DCA's summary report, Conran requested 30-, 60-, and 90-day reports from both boards on their progress toward discussing and implementing the recommendations made at the Summit.

BFDE considered Conran's request for a report at its November 19 meeting. The Board decided to send two representatives to a December 6 workshop scheduled by the Cemetery Board, and then convene its own workshop on December 10 to discuss the findings of the attending members and attempt to compile a report. However, the Cemetery Board was unable to achieve a quorum at its December 6 workshop and thus made no decisions; and BFDE cancelled its December 10 workshop without rescheduling it. At this writing, neither board has responded to Conran's request for a progress report (see agency report on CEMETERY BOARD).

**Legislative Hearing Addresses Fate of Board.** On October 20, the Senate Subcommittee on Efficiency and Effectiveness in State Boards and Commissions, chaired by Senator Dan McCorquodale, held hearings on the proposed restructuring of several DCA agencies. BFDE and the Cemetery Board were required to present testimony on several options: abolition of both boards, merger of the two boards, transformation of the boards into a bureau supervised directly by the DCA Director, or some combination of these options. The Legislative Analyst's Office has called for the abolition of both boards. [13:2&3 CRLR 57, 69]

Representing BFDE, Board President Virginia Anthony blamed most of the Board's problems on inadequate funding, without which it cannot hire sufficient staff and/or contract out for certain services. Anthony noted that the Board owes the Attorney General's Office a considerable amount of money for its representation of the Board in *FSP v. Board of Funeral Directors and Embalmers* (see LITIGATION). When questioned by Subcommittee members on how the Board plans to increase its revenue, Anthony responded that a \$1 increase in the fee charged for a certified copy of a death certificate would raise \$1 million annually in increased funding for the Board (see below).

On the issue whether to abolish, merge, or "bureau-ize" the boards, Anthony responded that while abolition would elim-

inate direct oversight of licensee practices and standards, "merger appears reasonable." Anthony noted that a merger would result in the combination of the boards' staffs and alleviate consumer confusion about which board to contact if problems arise.

At the October 20 hearing, Center for Public Interest Law 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 48-49]

At this writing, the Subcommittee is scheduled to issue recommendations for proposed legislation in early 1994.

**Enforcement Report.** At BFDE's November 19 meeting, Interim Executive Officer Neil Fippin reported on the Board's latest enforcement statistics. Fippin noted that the number of pending complaints backlogged at the Board continues to increase. The number of pending complaints increased from 259 during fiscal year 1992-93 to 354 as of November. This problem is due in part to a significant increase in the number of complaints filed with BFDE in recent years. During 1991-92, BFDE received 139 complaints. This number increased to 202 complaints in 1992-93, representing an approximate 50% increase. As of November, the Board has already received 98 complaints this year; if complaints continue to be filed at this rate, the Board will receive over 280 by the end of the fiscal year. This would represent another 50% increase over 1992-93.

The other problem contributing to BFDE's complaint backlog—a lack of staff—has been partially remedied. Fippin has appointed Jeffrey Brown as a new BFDE field representative. Fippin expressed hope that this new staff member will help in processing pending complaints.

**Budget Report.** Also at the November 19 meeting, Neil Fippin reported that BFDE will have \$73,000 left over at the end of 1993-94; this surplus is largely the result of \$60,000 in savings the Board has accrued as a result of a vacant EO position. DCA's Budget Office has determined BFDE will not experience a surplus in the 1994-95, and in fact has estimated that the Board will incur a deficit of \$150,677 that year if revenues are not increased. Legis-

lation would be required to authorize BFDE to raise licensing fees, because fees are currently set at their statutory limit.

Following discussion, the Board unanimously rejected a fee increase, arguing that the last increase during 1991-92 is enough of a burden on licensees. Instead, the Board voted to raise the fee for a copy of a certified death certificate by \$1. BFDE directed staff to research this proposal and report back at a future meeting.

**Proposed Rulemaking.** At this writing, the Board has not yet rescheduled the public hearing on its proposal to amend section 1258 and to add sections 1258.1, 1258.2, and 1258.3, Title 16 of the CCR. These changes are intended to clarify disclosure requirements for the sale of caskets. [13:2&3 CRLR 69-70] The Board was originally scheduled to hold a public hearing on these proposals on May 17, but cancelled the hearing.

## LEGISLATION

**AB 1392 (Speier)**, as amended July 1, would—among other things—provide that the 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 contracts for specified goods and services. [A. Inactive File]

**SB 155 (Boatwright)**, as introduced February 1, would require that a written authorization to cremate, provided to the authorizing agent by the funeral director or crematory and containing specified information, be signed, dated, and verified by the authorizing agent. This bill would require that funeral directors and crematories faithfully carry out the instructions of the authorizing agent, 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.

Existing law 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 ninety 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. [S. B&P]

## LITIGATION

On October 21, the California Supreme Court granted both sides' petitions for review of the Third District Court of Appeal's decision in *Funeral Security Plans v. Board of Funeral Directors and Embalmers*, 16 Cal. App. 4th 1672 (July 1, 1993), an important case interpreting several provisions of the Bagley-Keene Open Meeting Act, Government Code section 11120 *et seq.* Among other things, the Third District interpreted section 11126(q) (the "pending litigation" exception to the Act's open meeting requirement) and section 11126(d) (the section which permits a state body to meet in closed session for purposes of deliberating on an adjudicative matter). The court also interpreted section 11121.7 to require even two-member advisory committees of a state body to meet in public so long as one of the members is a member of the state body, is serving on the advisory committee in his/her capacity as a representative of the state body, and the state body is funding, in whole or in part, the member's participation in the advisory committee. [13:4 CRLR 49; 13:2&3 CRLR 70; 13:1 CRLR 1]

## FUTURE MEETINGS

To be announced.

## BOARD OF REGISTRATION FOR GEOLOGISTS AND GEOPHYSICISTS

*Executive Officer: John Parrish*  
(916) 445-1920

The Board of Registration for Geologists and Geophysicists (BRGG) is mandated by the Geologist and Geophysicist Act, Business and Professions Code section 7800 *et seq.* The Board was created by AB 600 (Ketchum) in 1969; its jurisdiction was extended to include geophysicists in 1972. The Board's regulations are found in Division 29, Title 16 of the California Code of Regulations (CCR).

The Board licenses geologists and geophysicists and certifies engineering geologists. In addition to successfully passing the Board's written examination, an applicant must have fulfilled specified undergraduate educational requirements and have the equivalent of seven years of relevant professional experience. The experi-

ence requirement may be satisfied by a combination of academic work at a school with a Board-approved program in geology or geophysics, and qualifying professional experience. However, credit for undergraduate study, graduate study, and teaching, whether taken individually or in combination, cannot exceed a total of four years toward meeting the requirement of seven years of professional geological or geophysical work.

The Board may issue a certificate of registration as a geologist or geophysicist without a written examination to any person holding an equivalent registration issued by any state or country, provided that the applicant's qualifications meet all other requirements and rules established by the Board.

The Board has the power to investigate and discipline licensees who act in violation of the Board's licensing statutes. The Board may issue a citation to licensees or unlicensed persons for violations of Board rules. These citations may be accompanied by an administrative fine of up to \$2,500.

The eight-member Board is composed of five public members, two geologists, and one geophysicist. BRGG's staff consists of five full-time employees. The Board's committees include the Professional Practices, Legislative, and Examination Committees. BRGG is funded by the fees it generates.

## MAJOR PROJECTS

**BRGG Selects New Executive Officer.** On November 17, BRGG appointed John Parrish to fill the Board's vacant Executive Officer position; Parrish has twenty years of experience as a geologist, primarily in petroleum-related areas. Before coming to BRGG, Parrish managed oil exploration projects, with particular experience in the Pacific Coast area. Parrish has a Ph.D. in marine geology from the University of Wales, an M.B.A. from California State University at Bakersfield, an M.S. in geology from the University of Houston, and a B.S. in geology from the University of Redlands. According to BRGG, Parrish is well qualified for the position and will be sensitive to the confluence of professional, public, and legislative policies and concerns which relate to the Board.

**Legislative Oversight Hearing.** On November 10, BRGG and the Board of Registration for Professional Engineers and Land Surveyors (PELS) were required to present 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 geologists, geophysicists, engineers, and land surveyors 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).

Board President Art Letter testified on behalf of BRGG, arguing that the Board should be retained in its present structure. Letter stated that BRGG has been "totally revamped...from top to bottom during the last three years," in that the Board has revised its examinations and expanded its enforcement programs. Sensitive to the fiscal crisis currently confronting the state, BRGG has transformed itself—according to Letter—into "a reconstructed lean and mean regulatory machine."

Subcommittee members were skeptical of BRGG's "totally revamped" enforcement program, which (although it consumes 48% of the Board's budget) received only 40 complaints in fiscal year in 1992-93 and took no disciplinary action against any licensee; BRGG filed only one accusation during that time period. Additionally, Senator Dan Boatwright chastised the Board for its failure to adopt citation and fine regulations to address minor violations by licensees and unlicensed practice by nonlicensees, although it has had citation and fine authority since 1986. Letter responded that BRGG began the process of adopting citation and fine regulations for licensees and nonlicensees earlier this year. [13:4 CRLR 51; 13:2&3 CRLR 73]

Center for Public Interest Law Supervising Attorney Julianne D'Angelo testified that both BRGG and PELS fulfill only one of the three traditional responsibilities of an occupational licensing agency: They administer a barrier to entry into a profession and register people. According to D'Angelo, neither board has established any standards of professional conduct through rulemaking, and neither has an active enforcement program. In response to BRGG's claim about its citation and fine regulations, D'Angelo stated that the proposed rules do not (as drafted) apply to unlicensed persons and are defective in that they refer to a repealed statute (former Business and Professions Code section 125.95). Quoting from a report published in *Oil and Gas World Network* and distributed by the Society of Exploration Geophysicists, D'Angelo stated that only 14