



REGULATORY AGENCY ACTION

establishment, and that the student extern may receive school credit, as provided, for the work. The bill would impose various requirements on the externship program. [A. CPGE&ED]

The following is a status update on bills reported in detail in CRLR Vol. 14, No. 1 (Winter 1994) at pages 34-35:

AB 292 (Polanco), as amended April 12, would require all licensed barbers, cosmetologists, manicurists, and estheticians to complete sixteen hours of continuing education (CE) during each license renewal period. [13:1 CRLR 25] The bill would provide for BBC approval of CE programs on health and safety topics; exempt from these CE requirements those instructors who meet the requirements for continuing education under the Council for Private Postsecondary and Vocational Education; require BBC to adopt regulations establishing standards for the approval of CE courses and for the effective administration and enforcement of its CE requirements; and provide that specified provisions of the bill shall become operative on July 1, 1996. [S. B&P]

AB 1392 (Speier), as amended July 1, 1993, would—among other things—provide that BBC'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 DCA Director. [S. B&P]

AB 1358 (Karnette). Existing law defines the term "employee" for purposes of unemployment insurance and personal income tax withholding. As amended January 14, this bill would further define the term "employee," for purposes of unemployment insurance and personal income tax withholding, to include booth renters in the cosmetology industry, as defined, unless specified conditions and requirements are met that would result in them being considered independent contractors. [S. IR]

RECENT MEETINGS

At its January 10 meeting, the Board viewed a segment produced by the "20/20" television program regarding permanent cosmetic tattooing. Although BBC staff believes the potential for harm is great with cosmetic tattooing, the Board has not received many complaints regarding this procedure. Following the viewing, the Board agreed to support legislation requiring enhanced regulation of permanent cosmetic tattooing to prevent disease transmission (see LEGISLATION).

Also at its January 10 meeting, BBC discussed its efforts to comply with AB 310 (Woodruff) (Chapter 521, Statutes of 1993), which establishes requirements for tanning establishments and requires BBC

to conduct a study and report to the legislature no later than July 1, 1994. [13:4 CRLR 36] Staff reported that it has prepared two informational sheets for tanning facilities and a tanning facility inspection survey; these will be given to Board-licensed establishments with tanning facilities at the time of inspection or upon request to any tanning facility. A computer database will also be created to compile and evaluate the information collected from the survey and to help in preparing the report.

At BBC's February 21 meeting, Executive Officer Olivia Guebara reported on the Board's enforcement activities for the period of July-December 1993. BBC received 1,070 complaints during this period, compared to 346 for the same period in 1992; conducted 12,441 inspections during this period, compared to 5,251 for the same period in 1992; opened 50 investigations, compared to 63 in the same period in 1992; and closed 58 investigations, compared to 131 in the same period in 1992. BBC also reported on its efforts to obtain badges for its inspectors; the badges would be used to provide additional identification for field inspectors and to help verify the right to inspect when confronted with hostile operators. At BBC's April 18 meeting, Guebara reported that badges have been ordered.

At its April 18 meeting, BBC adopted Sturgis' Rules of Order for use at Board meetings. Also at this meeting, the Board considered requiring all licensees to include their license number in advertisements, with the idea that this would help reduce unlicensed activity; the Board decided to research the proposal further and discuss it at its June meeting. Finally, Guebara reported that between July 1993 and February 1994, 76% of examinees passed the Board's total practical examinations and 63% passed the total written examinations.

FUTURE MEETINGS

June 12-13 in Los Angeles.

August 7-8 in northern California.

October 2-3 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 Sci-

ence 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

Fee Bill Dropped; BBSE Facing Major Budget Shortfall. As introduced on February 25, SB 2109 (Alquist) would have raised, effective January 1, 1995, BBSE's biennial license renewal fees for MFCCs from \$150 to \$250, and for LCSWs from \$150 to \$180. BBSE sponsored the bill to build up its depleted reserve fund and to support the costs of its enforcement program. Over \$400,000 was recently taken from BBSE's reserve fund and transferred to the state's general fund, pursuant to 1992-93 Budget Act language. [12:4 CRLR 1] Simultaneously, the number of consumer complaints received by BBSE against its licensees doubled in fiscal year 1992-93. The costs of processing these complaints far exceeded BBSE's enforcement budget, causing BBSE to submit a deficiency request and deplete its remaining reserve fund. [14:1 CRLR 36] This year, the Board's enforcement costs so exceed its budget that it recently had to request the Attorney General's Office to curtail all non-essential work on BBSE enforcement cases, and reserve its remaining funds for cases which would result in immediate public harm if further delayed. Between January and June, the Board has at least twenty license revocation hearings scheduled; these cases will not be taken off calendar, but will be reviewed carefully to determine whether they can be delayed or settled with no further harm to the public.

However, a March 29 letter from the major trade association representing MFCCs caused Senator Alquist to drop the bill. In his letter, California Association of Marriage and Family Therapists (CAMFT) senior legal counsel Richard



Leslie complained that MFCCs would suffer a 66% fee increase; although MFCC renewal fees have not increased since 1991, Leslie called the proposed increase "unwarranted and unjustified" because MFCC fees were increased from \$30 in 1986 to \$150 in 1991. While noting that the Board needs more money for enforcement purposes, he called BBSE's current enforcement program "weak and ineffective" because "the Board has not aggressively pursued unlicensed activity" and it insists on taking cases to hearing for serious discipline when, according to Leslie, it should be implementing its citation and fine authority and imposing lesser sanctions on licensees who violate the law.

Leslie also stated that "[o]ver the past three calendar years (1991, 1992, and 1993), the Board has finalized only 47 disciplinary actions per year." What he did not note is that, according to Board statistics reviewed by the Senate Subcommittee on Efficiency and Effectiveness in State Boards and Commissions in its November 1933 oversight hearing [14:1 CRLR 35], MFCCs consistently account for a disproportionate amount of the Board's enforcement activity. According to BBSE records, in 1990-91 MFCCs comprised 63% of the Board's licensees yet cost BBSE 79% of its enforcement budget. Figures for subsequent years are consistent: In 1991-92, MFCCs comprised 64% of BBSE's licensee population, while accounting for 79% of its enforcement costs; in 1992-93, MFCCs comprised 61% of the Board's licensees while 77% of the Board's enforcement budget was spent policing MFCC violations.

In its letter, CAMFT not only objected to the amount of the proposed fee increase. The trade association also used the opportunity provided by the fee bill to complain that BBSE is "not properly performing its licensing function, is out of control, is wasteful of its resources, and is unnecessarily harmful to many California residents who have a right to expect better...." For the past several years, CAMFT has been unhappy with BBSE over its refusal to accept out-of-state experience gained by MFCC licensure applicants who are California residents; BBSE refused to accept the out-of-state experience because Business and Professions Code section 4980.90 did not permit it to do so [12:4 CRLR 62-63; 12:2&3 CRLR 70; 12:1 CRLR 49] until AB 1807 (Bronshvag) was signed earlier this year (see LEGISLATION). Nonetheless, CAMFT argued to Senator Alquist that BBSE "has caused harm to a significant number of qualified applicants by exceeding legal and regulatory authority...."

Although the Board will apparently not get a fee increase in 1995, it will be refunded the \$400,000 which was transferred to the general fund under the 1992-93 Budget Act. The California Medical Association filed a lawsuit challenging a similar transfer from the Medical Board of California's (MBC) special fund, and a superior court recently struck down the budget language as unconstitutional on two separate grounds (see agency report on MBC for a summary of this decision). The state decided not to appeal the decision and, through a series of Executive Orders signed by Governor Wilson, agreed to return all the money it had taken from regulatory agencies' special funds. Thus, BBSE projects it has sufficient funds to continue its enforcement program through the end of this fiscal year; however, its latest budget analysis indicates that its fund will be insolvent by fiscal year 1995-96 if it does not increase its licensing fees or decrease its expenses.

BBSE to Consider MFCC Supervisor/Supervision Regulatory Revisions.

On February 15, Department of Consumer Affairs (DCA) legal counsel Kelly Salter forwarded to BBSE draft amendments to sections 1833 and 1833.1, Title 16 of the CCR, regarding MFCC supervisor and supervision requirements. The draft regulatory changes do not establish a registration program for approved MFCC supervisors, as was envisioned by the Board when it sponsored AB 1885 (V. Brown) in 1992 [14:1 CRLR 36; 13:4 CRLR 37], but they more clearly define and stiffen the responsibilities of an MFCC supervisor.

Among other things, the draft revisions to section 1833 would provide that the term "supervision" means direct responsibility for all services provided by an intern or trainee, including monitoring the practice of the intern or trainee, a portion of which monitoring must include direct observation of or audio or videotapes of therapy; approving the assessment and treatment decisions of the intern or trainee; evaluating the ability of the intern or trainee to provide services at the particular site where he/she will be practicing and to the particular clientele being served; and ensuring compliance with all laws and regulations governing the practice of marriage, family and child counseling. The revised regulation would provide that self-reporting alone is not sufficient supervision. During each week in which experience is claimed, an applicant shall have at least one hour of individual face-to-face supervisor contact or two hours of face-to-face supervisor contact in a group of not more than eight persons for each work setting; and no more than three hours of direct

supervisor contact, whether individual or group, shall be credited during any single week. An applicant must receive at least one hour of individual direct supervisor contact per week for a minimum of 52 weeks.

Revised section 1833 would also provide that in a setting which is not a private practice, the authorized supervisor shall be employed by the intern's employer on either a paid or voluntary basis. The supervisor and the intern's employer must enter into a written agreement describing the responsibilities of the supervisor and employer. The agreement shall require the supervisor to ensure that the extent, kind, and quality of counseling performed by the intern is consistent with the training, education, and experience of the intern and is appropriate in extent, kind, and quality. The agreement must also contain an acknowledgement by the employer that the employer understands the licensing requirements being met by the intern and agrees not to interfere with the supervisor's legal and ethical obligations.

The proposed revisions to section 1833.1 set forth supervisor requirements and responsibilities. Supervisors must have possessed for two years prior to commencing any supervision and must maintain a current valid California license as a MFCC, LCSW, psychologist, or physician certified in psychiatry; and must have practiced psychotherapy for at least two years within the five-year period immediately preceding any supervision and averaged at least five patient contact hours per week. A supervisor who possesses a current valid certificate as an approved supervisor issued by the American Association of Marital and Family Therapists and who provides supervision only to trainees at an academic institution which offers a qualifying degree must possess the requisite California license but need not have been so licensed for two years and is also exempt from the practice requirement. Supervisors who are not MFCCs must have had sufficient training and/or education in marriage, family and child counseling to competently practice as a MFCC in California; and must be able to provide to BBSE or to an intern upon request documentation of such experience, training, or education. Supervisors must notify the intern of any disciplinary action or lapse in licensure which could affect their right or ability to supervise.

Section 1833.1 also requires the supervisor to monitor the quality of counseling or psychotherapy performed by the intern by direct observation, audio or video recording, review of progress and process notes or records, or by any other means



REGULATORY AGENCY ACTION

deemed appropriate by the supervisor; however, a portion of the monitoring must include direct observation or audio or video recording. This monitoring shall be performed in accordance with written procedures established by the supervisor. These written procedures shall include access to client records and approval of assessment, diagnosis, and treatment decisions. The revisions would also provide that in any setting which is not a private practice, a supervisor shall evaluate any site where a supervisee will be gaining hours of experience toward licensure and shall determine whether the site provides experience which is within the scope of marriage, family and child counseling, and is in compliance with the laws and regulations governing marriage, family and child counseling and experience being gained toward licensure. A supervisor shall also make and document periodic site visits to each site where an intern is gaining experience away from the place where the employer regularly conducts business.

BBSE's Legislative Committee met on April 14 to review the draft regulatory proposals. As a result of that meeting, Salter is revising the proposals, which will be discussed at a future BBSE meeting.

Electronic Testing Set to Begin in July. In order to accommodate the increasing MFCC and LCSW examination population and to address the corresponding increase in costs, BBSE has decided to replace its written examination with electronic testing. [14:1 CRLR 35] At this writing, computerized testing is scheduled to start with the July administration of the MFCC written examination. However, the Board still needs to work out logistical issues with the vendor administering the exam, as the first set of test takers is expected to be a very large group.

LEGISLATION

SB 2109 (Alquist), as introduced February 25, would have increased the biennial renewal fee for MFCC licenses expiring on or after January 1, 1995 from \$150 to \$250, and for LCSW licenses expiring on and after January 1, 1995 from \$150 to \$180; and authorized BBSE to establish the renewal fee for those licenses that expire on or after January 1, 1996, not to exceed a certain amount. This bill was dropped by its author due to opposition from a MFCC trade association (see MAJOR PROJECTS).

SB 2036 (McCorquodale), as amended May 18, would create a "sunset" review process for occupational licensing agencies within DCA, requiring each to be comprehensively reviewed every four

years. SB 2036 would impose an initial "sunset" date of July 1, 1999 for BBSE; create a Joint Legislative Sunset Review Committee within the legislature, which would review BBSE's performance approximately one year prior to its sunset date; and specify 11 categories of criteria under which BBSE's performance will be evaluated. Following review of the agency and a public hearing, the Committee would make recommendations to the legislature on whether BBSE should be abolished, restructured, or redirected in terms of its statutory authority and priorities. The legislature may then either allow the sunset date to pass (in which case BBSE would cease to exist and its powers and duties would transfer to DCA) or pass legislation extending the sunset date for another four years. (See agency report on DCA for related discussion of the "sunset" concept.) [S. Appr]

SB 2039 (McCorquodale), as amended April 5, would require BBSE and the Board of Psychology to revoke the license of any psychotherapist who is found to have engaged in any act of sexual abuse, sexual relations with a patient, or sexual misconduct that is substantially related to the qualifications, functions, or duties of a psychotherapist. This bill is a direct result of the November 1993 oversight hearing by the Senate Subcommittee on Efficiency and Effectiveness in State Board and Commissions. [14:1 CRLR 35, 66] [A. Health]

AB 2956 (V. Brown). BBSE's existing licensure laws require that an applicant for a license as an MFCC, LEP, or LCSW shall not have committed acts or crimes constituting grounds for denial of licensure pursuant to a prescribed section in existing law. As introduced February 17, this BBSE-sponsored bill would also require the Board to refuse to issue a registration or license to any applicant for any of these licenses who has been convicted of any crime involving sexual abuse of children in the United States or who has been ordered to register as a mentally disordered sex offender or the equivalent in another state or territory. This bill would provide BBSE with discretion to deny an application for licensure as a social worker, or suspend or revoke a social worker's license when the person's license was revoked or suspended, or other disciplinary action was taken against the individual under specified circumstances. [A. Floor]

AB 2659 (Morrow). Existing law sets forth the psychotherapist-patient privilege, under which the patient has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communi-

cation between the patient and the psychotherapist; defines the term "psychotherapist" for purposes of this privilege. Existing law provides that a professional person rendering mental health treatment has the psychotherapist-patient privilege in situations in which a minor has requested and received mental health treatment or counseling, as specified. As amended May 9, this bill would repeal the latter special provision and clarify that the minor who has requested and received mental health treatment or counseling is the sole holder of the psychotherapist-patient privilege. [A. Floor]

The following is a status update on bills reported in detail in CRLR Vol. 14, No. 1 (Winter 1994) at page 36:

AB 1807 (Bronshvag), as amended March 23, provides 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 also provides 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 also provides 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. This bill was signed by the Governor on March 30 (Chapter 26, Statutes of 1994).

SB 133 (Hill). Existing law requires that applicants for MFCC licensure obtain certain supervised practical experience as a trainee or intern, and requires that interns receive fair remuneration from their employer. As amended May 2, this bill would repeal that requirement and instead authorize an intern to be either a paid employee or a volunteer, and would provide that employers are encouraged to provide fair remuneration. [A. Floor]

RECENT MEETINGS

At its February 24-25 meeting, BBSE held a strategic planning session and adopted a mission statement, goals, objectives, and strategies intended to ensure that BBSE is responsive to consumer needs and efficiently organized. The Board's mission is to protect the public by establishing and maintaining requirements and standards for professional licensure and practice regulated by the Board; inform consumers about the purposes and standards of the professions regulated by this Board with regard to the consumer's rights and responsibilities; collaborate with governmental and private sector organizations that deliver, utilize, or regulate related services; and deliver services in a competent and responsible manner to all involved parties for the public good. The Board's five goals include (1) promotion and maintenance of high standards of competence, service, and ethical behavior by the professions; (2) ensuring that applicants for licensure meet the requirements prescribed by law and regulation; (3) responding promptly to consumers; (4) development and implementation of communication strategies designed to collect, process, and disseminate information; and (5) simplification and clarification of existing legislation and regulations applicable to the Board.

Also at its February meeting, the Board agreed to seek legislation which would require a candidate for professional licensure from BBSE to have received an earned

bachelor's degree or its equivalency from an accredited institution of higher learning prior to attaining a master's degree.

At its February meeting, the Board engaged in a lengthy discussion of out-of-state MFCC experience and supervision provisions in the Board's regulations; specifically, staff asked for direction as to how to handle the verification of experience and supervision information that is submitted by MFCC applicants from out-of-state, especially from states which do not have MFCC licensing boards. Following a lengthy discussion, the Board unanimously directed staff to prepare an analysis of the issues and present it for discussion at the Board's May 19-20 meeting.

Also at its February meeting, the Board elected Dr. Judy Brislain to serve as BBSE chair for 1994. The Board's first vote for the vice-chair position resulted a tie, with Lori Rice and Janie Emerson each receiving five votes; a second vote also ended in a tie, with Emerson and Dr. Thomas Knutson each receiving five votes. On a third vote later in the day, Dr. Jerry Miller was finally elected vice-chair.

FUTURE MEETINGS

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

CEMETERY BOARD

Executive Officer:
Raymond Giunta
(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.

The Board is chaired by industry member Keith Hargrave. Other Board members

include industry member Steve Doukas and public members Herman Mitschke, Lilyan Joslin, Brian Armour, and Linda Trujillo.

MAJOR PROJECTS

Bill Calls for Abolition of Cemetery Board. Following the "Death Summit" sponsored by the Department of Consumer Affairs (DCA) in September 1993 and the October 1993 oversight hearing on the Board's performance by the Senate Subcommittee on Efficiency and Effectiveness in State Boards and Commissions [14:1 CRLR 44-45; 13:4 CRLR 38], Senator Dan McCorquodale amended SB 2037 (McCorquodale) on April 5 to include a provision merging the Cemetery Board and the Board of Funeral Directors and Embalmers (BFDE) into a single bureau within the Department of Consumer Affairs (DCA). A bureau is not controlled by a multi-member policymaking board like the Cemetery Board, but is headed by a chief who functions under the direct supervision of the DCA Director.

Senator McCorquodale's bill adopted the recommendation of the Senate Subcommittee in its final report released on April 11. In that report, the Subcommittee found that the boards' investigation and enforcement activities are "ineffective and non-existent," neither board ensures the competence of its licensees in preneed/endowment care trust fund investment and management, and the boards are "very weak" in the area of setting standards for the industry. The Subcommittee's final report also indicated that it does not recommend a simple combination of two ineffective boards; it suggested that the new entity be required to adopt education, training, and testing standards to ensure licensee competence in their actual areas of practice; establish stringent disclosure requirements for preneed and endowment care contracts; and possibly impose a bond requirement to ensure that there is a fund from which injured consumers may be compensated should the licensee declare bankruptcy or otherwise leave the jurisdiction.

At a May 9 hearing on SB 2037 before the Senate Business and Professions Committee, Center for Public Interest Law Supervising Attorney Julianne D'Angelo testified in support of the proposed merger, noting that both boards have been given ample warning that their performance has been unsatisfactory for years. At last year's "Death Summit," both boards were given one final chance to take action to address their shortcomings, and were instructed to submit 30-, 60-, and 90-day reports to DCA on their actions; D'Angelo argued that neither board has made an adequate