



REGULATORY AGENCY ACTION

situations in which unlicensed parties have argued that they should be allowed to recover on their contracts by virtue of their having subcontracted out the work to be performed by licensed contractors. The court stated that VDC's efforts to rewrite the CSLL must be directed to the legislature, not to the courts. Accordingly, the First District affirmed the trial court's holding.

RECENT MEETINGS

At CSLB's January 28 meeting, then-Registrar David Phillips announced that information being released to inquiring consumers through the Board's automated phone response system has been expanded to include information on legal actions and construction-related judgments, as well as additional bond information. Phillips also announced that the Board is being forced to maintain a conservative posture on expenditures due to low revenues; however, revenues are expected to increase due to the licensing fee increase which became effective on January 1. [13:4 CRLR 42]

Phillips also reported that CSLB is experimenting with verification of experience stated on licensure applications, as it agreed to do after October 1993 oversight hearings by the Assembly Consumer Protection Committee. [14:1 CRLR 39] Under this procedure, the Board will contact certifiers and previous employers, as well as request further documentation and proof of experience. CSLB eventually hopes to investigate the experience claimed by 100% of its applicants; however, its fiscal condition prevents achievement of that goal at the current time.

CSLB devoted its February 16 and April 7 meetings to discussing its recruitment process, interviewing, and selecting Gail Jesswein to succeed Dave Phillips as CSLB Registrar.

At CSLB's April 22 meeting, Administration/Consumer Education Committee Chair Bob Laurie reported that CSLB must pay special attention to problems in the telephone service that it provides to consumers and the industry; specifically, many callers have complained that they are not able to get through to a live operator. According to Laurie, this and other public outreach concerns will be a priority of the Committee.

Also at CSLB's April 22 meeting, Licensing Committee Chair Nina Tate reported that her Committee is focusing on issues regarding contractors' fiscal responsibility to consumers and the Board's level of oversight to ensure that consumers are protected against financially irresponsible contractors. According to Tate, the Committee is discussing several is-

issues, such as payment and performance bonds in the area of home improvement on projects over a certain dollar amount; higher bonding requirements (*see* LEGISLATION); the feasibility and cost of a recovery fund; separate classification for home improvement contractors with separate bonding; current bonding requirements and how they protect the consumer; the average number of bond claims against a contractor's bond, the amount of the claims, and how many are paid; and minimum financial requirements for a contractor. At present, the Committee is focusing on two of these issues: separate classification for home improvement contractors with separate bonding, and fiscal responsibility for the contractor. These topics will be discussed in greater detail at future Committee meetings.

FUTURE MEETINGS

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

MAJOR PROJECTS

McCorquodale Legislation Calls for Abolition of COMDA, Restructuring of BDE. Following the November 1993 oversight hearing on the performance of BDE and COMDA by the Senate Subcommittee on Efficiency and Effectiveness in State Boards and Commissions [14:1 CRLR 41], Senator Dan McCorquodale introduced SB 2036, which would establish a "sunset" review process for all occupational licensing agencies within the Department of Consumer Affairs (DCA). He also amended SB 2038 (McCorquodale) to include a provision abolishing COMDA and restructuring the composition of BDE to provide greater representation for dental auxiliaries. Under the April 5 version of SB 2038, BDE would consist of six practicing dentists, two registered dental hygienists, two registered dental assistants, and four public members.

SB 2038 is based upon the recommendations of the Senate Subcommittee in its final report released on April 11. In that report, the Subcommittee noted that COMDA is an advisory body which carries out a limited range of duties delegated to it by BDE. COMDA is not authorized to engage in any aspect of enforcement, and very little enforcement activity is undertaken or necessary as against dental auxiliaries. The Subcommittee noted that COMDA is itself under the jurisdiction of another BDE advisory committee, the Auxiliary Committee. Thus, COMDA makes recommendations only on certain issues to the Auxiliary Committee, which may approve or reject them; in turn, the Auxiliary Committee makes recommendations to the full Board, which may approve or reject them. The Subcommittee noted that "there are two committees performing basically the same function," and concluded that abolishing COMDA may improve efficiency by eliminating one level of review. "It would be more efficient for a Board which equally represents dentists and auxiliaries to conduct, approve, and act upon issues and programs, rather than



have two entities going through the same process."

At a May 9 hearing on SB 2038 before the Senate Business and Professions Committee, a representative of the California Dental Hygienists Association testified in opposition to the merger of COMDA into BDE, and suggested that instead COMDA should be permitted to go through the SB 2036 "sunset" review process on an expedited basis. Another dental auxiliary trade association representative also opposed the bill on grounds that the proposed BDE composition gives insufficient representation to auxiliaries. Conversely, representatives of dental trade associations objected to the fact that the April 5 version of SB 2038 reduces the number of Board positions reserved for dentists from eight to six, and increases the number of Board positions for auxiliaries from two to four. The dentists argued that COMDA is presently an advisory entity, and that giving auxiliaries more "decisionmaking" Board votes (even though dentists would still outnumber auxiliaries by six to four) is inconsistent with the current scheme. Following minimal debate, the Business and Professions Committee agreed to amend the bill to provide that BDE will consist of eight dentists, four auxiliaries, and two public members (*see* LEGISLATION).

Infection Control Guidelines. On February 16, BDE held a regulatory hearing on its proposal to adopt new section 1005, Title 16 of the CCR, which establishes minimum standards for licensees to follow to minimize the transmission of bloodborne pathogens in health care settings. [14:1 CRLR 42; 13:4 CRLR 44]

As proposed, section 1005 would require BDE licensees to follow the recommendations, precautions, and regulations set forth in four specified documents issued by the U.S. Centers for Disease Control (CDC); 29 C.F.R. Part 1910.1030 (adopted by the U.S. Department of Labor's Occupational Safety and Health and Administration); and section 5193, Title 8 of the CCR (adopted by the California Department of Industrial Relations' Division of Occupational Safety and Health [13:1 CRLR 94; 12:4 CRLR 162; 12:2&3 CRLR 187]).

Among other things, hearing participants expressed concern that the regulations do not include a requirement that health care workers be tested for human immunodeficiency virus (HIV) and hepatitis B virus (HBV); questioned whether spore testing must be conducted as frequently as the regulations propose in order to ensure proper functioning of sterilizing equipment; and discussed the direct and indirect costs of complying with the proposed requirements.

Following the hearing, the Board made several revisions to the proposed language (including deletion of the references to a 1991 CDC document and to the state and federal regulations) and released it for an additional public comment period ending on March 6. At its March 18 meeting, BDE adopted the modified regulatory proposal, which awaits review and approval by the Office of Administrative Law (OAL).

Board Adopts Guidelines for Remedial Education. AB 194 (Tucker) (Chapter 1299, Statutes of 1992) provides that an applicant for a license to practice dentistry in this state who fails to pass the skills examination after three attempts is not eligible for further reexamination until the applicant has successfully completed a minimum of 50 hours of additional education at an approved dental school; a foreign-trained dental applicant who fails to pass the required restorative technique examination after three attempts is not eligible for further reexamination until the applicant has successfully completed a minimum of two academic years of education at an approved dental school. [12:4 CRLR 76]

At its March 17-18 meeting, BDE noted that some dental schools had requested direction from the Board relating to the additional education requirement, such as whether students should be allowed to participate in clinical exams. The Board unanimously directed Board member Robert Christoffersen, DDS, to work with Board staff to draft general guidelines for the remedial education courses and present them for the Board's consideration at its May meeting.

At its May 13-14 meeting, BDE reviewed proposed guidelines regarding the remedial education requirement, as well as a proposed certificate of completion of remedial education to be completed by the dean of the college or university providing the remedial education. The guidelines provide that the course of study must provide a minimum of fifty hours for each discipline failed in the last attempt on the licensure examination; the course of study must be didactic and/or laboratory, and the use of patients is optional; instruction must be provided by a faculty member of an accredited dental school; pre-testing and post-testing must be a part of the course of study to ensure the program has been effective in improving knowledge and skills; and evidence of successful completion of a course of study must be provided to BDE prior to the examination. Following discussion, BDE approved the guidelines and certificate form.

Future Rulemaking. At its March 17-18 meeting, BDE discussed the proposed

adoption of new section 1043.5, Title 16 of the CCR, which would specify the penalties which will be imposed when a conscious sedation or general anesthesia permittee or applicant cancels a scheduled onsite inspection and evaluation. Under existing law, holders of conscious sedation or general anesthesia permits must pass an onsite inspection and evaluation of the facility, equipment, personnel, and procedures utilized by the licensee; generally, a team of two BDE-approved evaluators must be convened to perform these inspections, and cancellations by the licensee create administrative problems and possible harm to the public.

Under the draft regulatory language, following the first cancellation, the permittee or applicant would be required to provide the Board with a documented description of the reason for cancellation; if the scheduled date is greater than two weeks away from the date of cancellation, there would be no penalty; and if the scheduled date is two weeks or less from the date of cancellation, the inspection fee paid by the licensee would be forfeited and a new fee must be paid in order to reschedule. After the second cancellation, the permittee or applicant would be required to provide BDE with a documented description of the reason for the cancellation; if the scheduled date is greater than two weeks away from the date of cancellation, the fee would be forfeited and a new fee must be paid in order to reschedule; if the scheduled date is two weeks or less from the date of cancellation, the fee would be forfeited and the holder's permit would be put on probation. Also, BDE would require that a new onsite inspection and evaluation be completed within one month from the date of cancellation or the permit would be automatically revoked.

At this writing, the Board has not yet published notice of its intent to adopt section 1043.5.

Special Permit Regulations Approved. On February 24, OAL approved BDE's adoption of sections 1027 and 1027.1, Title 16 of the CCR, which authorize BDE to issue special permits to full-time dental faculty certified or qualified for certification in recognized specialties of dentistry. [14:1 CRLR 42; 13:4 CRLR 44] Among other things, this action clarifies the definitions of the terms "affiliated institution," "college approved by the Board," and "specialty boards" and requires special permit holders who are not certified as a diplomate of a specialty board to retain eligibility for certification as a condition of permit renewal.

LEGISLATION

SB 2038 (McCorquodale), as amended May 18, would eliminate COMDA and



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revise the composition of BDE to include eight practicing dentists, two registered dental hygienists, two registered dental assistants, and two public members (*see* MAJOR PROJECTS). [*S. Appr*]

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, 1998 for BDE; create a Joint Legislative Sunset Review Committee within the legislature, which would review BDE's performance approximately one year prior to its sunset date; and specify 11 categories of criteria under which BDE's performance will be evaluated. Following review of the agency and a public hearing, the Committee would make recommendations to the legislature on whether BDE 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 BDE 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*]

AB 2820 (Knight), as introduced February 14, would provide that it is unprofessional conduct for a licensed dentist to perform, or to hold himself/herself out as able to perform, services beyond the scope of his/her license or competency. This bill would exempt certain research from this provision. [*S. B&P*]

AB 2821 (Knight). Existing law authorizes BDE to require all licensees, as a condition of licensure renewal, to continue their education by pursuing one or more courses of study satisfactory to the Board. As introduced February 14, this bill would further authorize BDE to require licensees to complete a portion of the required continuing education by taking a certain number of hours of coursework in specific areas selected by the Board. [*S. B&P*]

The following is a status update on bills reported in detail in CRLR Vol. 14, No. 1 (Winter 1994) at pages 42-43:

AB 1807 (Bronshvag). Existing law exempts certain practices from the definition of the practice of dentistry. As amended March 23, this bill adds 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 provides that, instead of being supplemented with an oral examination, the examination may be supplemented by a jurisprudence and ethics examination. This bill also sets minimum time periods after suspension or revocation of a license, certificate, or permit of a dentist after which a dentist could seek modification or termination of the sanction; this bill also sets 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 changes the maximum fee provisions to apply to all programs that are not publicly funded. This bill was signed by the Governor on March 30 (Chapter 26, Statutes of 1994).

AB 221 (Areias), as amended August 16, 1993, 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 independently), 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. [*S. Appr*]

AB 559 (Peace). Existing law requires BDE to create and maintain a central file of all persons who hold a license from the Board; BDE's central file is required to contain prescribed information about each licensee, including, among other things, any judgment or settlement requiring licensees or their insurers to pay any amount of damages in excess of specified amounts for claims alleging negligence of those licensees. Existing law requires insurers providing professional liability insurance,

or licensees who are uninsured, to report this information to BDE; under existing law, the reportable amount of damages for dentists is awards over \$3,000. As amended January 24, this bill—sponsored by the California Dental Association—would revise the reporting requirement for insurers who provide professional liability insurance to dentists to instead require reporting of only those judgments or settlements over \$10,000 instead of \$3,000. [*S. InsCl& Corps*]

The following bills died in committee: **SB 1194 (Johnston)**, which would have revised the definition of the term "primary care provider," for purposes of the Medi-Cal program, to include primary dental care providers; and **AB 720 (Horcher)**, which would have prohibited any person other than a licensed physician, podiatrist, or dentist from applying laser radiation to any person for therapeutic purposes.

RECENT MEETINGS

At BDE's March 17-18 meeting, COMDA recommended that BDE adopt a policy under which a person who holds a registered dental assistant-extended functions (RDAEF) license and subsequently obtains a registered dental hygienist license should be issued a registered dental hygienist-extended functions (RDHEF) license without further examination; according to COMDA, the RDAEF examination covers the same material as the RDHEF examination. Following discussion, the Board adopted the recommended policy.

Also at its March meeting, BDE considered three options for dealing with an examinee's failure to follow appropriate infection control guidelines during dental licensure examinations. The Board noted that it could (1) allow the candidate to continue after correcting the violation, which would result in time loss for that section only; (2) dismiss the candidate from the section of the test where the violation occurs, resulting in a failure of the test (although it is possible that the candidate could earn exemptions in other exam sections); or (3) dismiss the candidate from the entire examination, which would result in failure of the exam. Following discussion, BDE adopted option (2) as the policy it will enforce during examinations. At this writing, BDE is not expected to formally adopt this guideline as a regulation pursuant to the Administrative Procedure Act.

At its May 13-14 meeting, BDE continued to review the results of the occupational analysis of the RDA profession prepared by DCA's Central Testing Unit. [*14:1 CRLR 43*] As a result of the analysis



and in order to conform the Board's regulations to the actual practice of auxiliaries in California, COMDA presented the following recommendations to BDE regarding the permissible duties of dental assistants (DAs) and RDAs: allow RDAs to obtain bite registrations under direct supervision; allow only RDAs to place and remove rubber dams under direct supervision; allow DAs and RDAs to cure restorative or orthodontic materials in an operative site with a light-curing device under direct supervision; allow only RDAs to place, wedge, and remove matrices, under direct supervision; allow RDAs to take intra-oral impressions for orthodontic appliances, under direct supervision; allow only RDAs to place orthodontic separators, under direct supervision; reflect current practice by allowing DAs and RDAs to check for loose bands or damaged orthodontic appliances; and reflect current practice by allowing RDAs to perform the temporary cementation and removal of temporary crowns and removal of fixed orthodontic bands appliances. At this writing, the Board has not taken any action on these recommendations, all of which require regulatory changes; the Board has tentatively scheduled an informational hearing on this matter on July 16 in Millbrae.

■ FUTURE MEETINGS

July 15-16 in Millbrae.
September 22-23 in Los Angeles.

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

Board Faces Possible Abolition. As amended April 5, SB 2037 (McCorquodale) would abolish BFDE and the Cemetery Board and create in their place a single Bureau of Funeral and Cemetery Services under the supervision of the Department of Consumer Affairs (DCA) Director; the proposal is based on the results of interim hearings held last October by the Senate Subcommittee on Efficiency and Effectiveness in State Board and Commissions. [14:1 CRLR 44]

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 BFDE's April 28 meeting, Executive Officer Richard Yanes expressed hope that the legislation could be amended to merge the two boards into a single board instead of a bureau. Although it generally opposes a merger, the Board agreed that merger into an autonomous board would be preferable to the proposed bureau structure. Yanes informed the Board that in order to prevent "bureau-ization," BFDE must demonstrate to the legislature that it has made significant improvements in its enforcement, education, and administrative activities. Yanes indicated that BFDE would have this opportunity at a legislative hearing scheduled for May 9.

Also at the April meeting, Yanes suggested that two members of BFDE meet with representatives of the California Funeral Directors Association (CFDA), to identify what testimony and information CFDA and the Board would be submitting at the hearing; Board members Barbara Repa and Lottie Jackson volunteered to meet with CFDA members to coordinate their presentations. Jackson and Repa indicated that they might also contact various consumer groups for input.

At the May 9 hearing, CFDA representative Aaron Read testified that CFDA would like to support SB 2037, but does not believe that a bureau structure would adequately protect the public. CFDA argued against the merger, and offered several amendments aimed at improving the performance of BFDE, including pleasure appointments for Board members (instead of term appointments), DCA Director concurrence in the Board's selection of an executive officer, and a provision permitting Board members to expel a member "who is just not acting in the public interest." CFDA also protested that it was "powerless" to force a change in executive officers during the past several years or do anything else to enhance the performance of the Board. BFDE Executive Officer Richard Yanes testified that the Board opposes the bureau concept and prefers the amendments offered by CFDA.

Also at the May 9 hearing, Center for Public Interest Law Supervising Attorney Julianne D'Angelo argued that regardless of whether the boards are merged into a single board or bureau, they should be merged and required to address industry abuses which victimize vulnerable consumers. According to D'Angelo, BFDE is not committed to consumer protection in any meaningful way; the Board has been repeatedly warned by both the legislative and executive branches to clean up its act or face the consequences; and the funeral industry is plagued by common and routine abuses ranging from the embezzlement of preneed trust funds to deceptive marketing practices to the reprehensible treatment of human remains. Because BFDE and the Cemetery Board have failed to police these abuses in the industry, D'Angelo noted that aggrieved consumers are increasingly turning to the courts in major class actions across the state. She also characterized CFDA's protestations as "too little, too late," and questioned why CFDA, if it was truly concerned about the conduct of BFDE's previous executive officer and the well-documented abuses in the industry, had not petitioned the Board to adopt rules or sponsored legislation to resolve the problems.