



the Council acted within its constitutionally-mandated authority in adopting the rule, finding that applicable statutes do not specifically require that court reporters be the "sole means" for making verbatim records of superior court proceedings. CCRA Executive Director Neil Ferstand characterized Staniforth's ruling as a "political decision"; at this writing, it is not known whether CCRA will appeal the decision or seek legislative changes.

In *U.S. v. Wilson*, No. 91-10308 (Feb. 16, 1994), the U.S. Ninth Circuit Court of Appeals held that a court reporter's failure to file an accurate, reliable, and timely record was grounds for reversing the conviction in the government's case against Dennis Wilson, who had been found guilty of ten counts of defrauding the government by providing worthless sureties for contractors on government projects. In reversing and remanding for a new trial, the Ninth Circuit concluded that Wilson made a substantial enough showing of judicial misconduct that it could not determine without reviewing the transcript whether he had been afforded a fair trial, and found that "[w]e cannot review the transcript because the court reporter has not prepared a usable transcript." Accordingly, the court held that the trial court's certification of the accuracy of the record was clearly erroneous, and that the absence of an accurate and reliable record indicates that Wilson's appeal has been impaired and, therefore, prejudiced by the delay that resulted in this inadequate record.

RECENT MEETINGS

At CRB's February 19 and May 12 meetings, the Board discussed the recent changes to Rule 30 of the Federal Rules of Civil Procedure; the revisions, which took effect on December 1, 1993, authorize parties to record deposition testimony by nonstenographic means without first having to obtain the permission of the court or an agreement from the other counsel. The Board noted that although legislation to amend Rule 30 has been introduced and passed by the House of Representatives (see LEGISLATION), no action was taken by the Senate before it adjourned. At the Board's May meeting, CCRA President Allen Edelist opined that a coalition of interested parties may succeed in urging the Senate to consider the proposal during the current congressional session.

At CRB's May 12 meeting, Board member Teri Jackson reported on the progress of CRB's Continuing Education Committee, noting that the Committee is developing a proposed core curriculum similar to what the National Court Reporters Association

has for the RPR program. Jackson reported that the Committee decided to draft a statement indicating the reasons for having continuing education; at this writing, the Committee is expected to present an updated report at CRB's July 23 meeting.

Also at its May meeting, CRB elected Teri Jackson to serve as Chair and Peggy Porter to serve as Vice-Chair.

FUTURE MEETINGS

July 23 in San Diego.

STRUCTURAL PEST CONTROL BOARD

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The Structural Pest Control Board (SPCB) is a seven-member board functioning within the Department of Consumer Affairs. SPCB's enabling statute is Business and Professions Code section 8500 *et seq.*; its regulations are codified in Division 19, Title 16 of the California Code of Regulations (CCR).

SPCB licenses structural pest control operators and their field representatives. Field representatives are allowed to work only for licensed operators and are limited to soliciting business for that operator. Each structural pest control firm is required to have at least one licensed operator, regardless of the number of branches the firm operates. A licensed field representative may also hold an operator's license.

Licenses are classified as: (1) Branch 1, Fumigation, the control of household and wood-destroying pests by fumigants (tenting); (2) Branch 2, General Pest, the control of general pests without fumigants; (3) Branch 3, Termite, the control of wood-destroying organisms with insecticides, but not with the use of fumigants, and including authority to perform structural repairs and corrections; and (4) Branch 4, Wood Roof Cleaning and Treatment, the application of wood preservatives to roofs by roof restorers. Effective July 1, 1993, all Branch 4 licensees must be licensed contractors. An operator may be licensed in all four branches, but will usually specialize in one branch and subcontract out to other firms.

SPCB also issues applicator certificates. These otherwise unlicensed individuals, employed by licensees, are required to take a written exam on pesticide equipment, formulation, application, and label directions if they apply pesticides. Such certificates are not transferable from one company to another.

SPCB is comprised of four public and three industry members. Industry members are required to be licensed pest control operators and to have practiced in the field at least five years preceding their appointment. Public members may not be licensed operators. All Board members are appointed for four-year terms. The Governor appoints the three industry representatives and two of the public members. The Senate Rules Committee and the Speaker of the Assembly each appoint one of the remaining two public members.

MAJOR PROJECTS

Board Takes Action on New Rule-making Package. On January 7, SPCB published notice of its intent to amend sections 1919, 1937.14, 1937.16, 1950.5(h), 1970, 1970.4, 1971, 1973, 1983, 1990, 1991, 1993, 1996, and 1998, repeal section 1999.1, and adopt new sections 1974, 1990.1, and 1991.1, Title 16 of the CCR. [14:1 CRLR 84-85] Following a February 25 public hearing, SPCB took the following actions on the rulemaking package:

-SPCB postponed action on its proposed amendments to section 1919, which would change the composition of its Research Advisory Panel by deleting the requirement that the public member of the Research Advisory Panel be a SPCB member; according to Department of Consumer Affairs (DCA) legal counsel Don Chang, Business and Professions Code section 8674 requires the Research Advisory Panel to include a SPCB member.

-SPCB adopted amendments to section 1937.14, which would require the quality of work completed by SPCB licensees or registered companies to comply with criteria listed in section 2516(c)(1)(2)(4)(6)(13), Title 24 of the CCR.

-SPCB adopted amendments to section 1937.16, which would require wood roof cleaning and treatment registered companies to issue a "Notice to Owner" form to inform property owners that a lien may be taken against their property if the registered company is not paid for the work performed.

-SPCB adopted amendments to section 1950.5, which would—among other things—decrease the number of continuing education (CE) credits obtainable for teaching Board-approved CE courses and publishing technical articles, and require an examination to be administered at the end of some CE courses; licensees must obtain a passing score of 70% or better in order to obtain a certificate of completion.

-SPCB adopted amendments to section 1970, which would make technical and grammatical changes to existing language regarding fumigation and pest control logs and records.



REGULATORY AGENCY ACTION

-SPCB adopted amendments to section 1970.4, which would require wood and roof cleaning and treatment registered companies to disclose the chemicals that will be used on a structure.

-SPCB adopted amendments to section 1971, which would delete the requirement that fumigators disclose the antidotes to lethal gases used in a fumigation because no such antidotes are available, and require that proper testing equipment be used by fumigators as required by the manufacturer's label instructions and all applicable laws and regulations.

-SPCB adopted amendments to section 1973, which would require licensees, following a fumigation, to perform proper testing after aeration using testing equipment for cleaning the structure as required by the manufacturer's label instructions and all applicable laws and regulations, in addition to posting the specified "Notice of Re-Entry" sign; the amendments would also require the Notice of Re-Entry sign to be printed in black lettering on a white background.

-SPCB adopted new section 1974, which would require that, prior to the commencement of fumigation, licensees post specified warning signs.

-SPCB adopted amendments to section 1983, which would make technical, non-substantive revisions to existing language in the section.

-SPCB adopted amendments to section 1990, which would require that the signature on an inspection report be an original signature; define the term "structural members"; require Branch 2 and Branch 3 licensees to report their findings of any evidence of carpenter ant infestation; and specify the language which must be included just prior to the first findings and recommendation on each separated report.

-SPCB adopted new section 1990.1, which would specify a procedure for reporting inspections by wood roof cleaning and treatment registered companies.

-SPCB adopted amendments to section 1991, which would clarify that licensees must recommend the replacement or reinforcement of a structural member which appears to be structurally weakened by wood-destroying pests to the point where it no longer serves its purpose to support or adorn the structure, and recommend the removal or covering of all accessible pellets and frass of wood-destroying pests.

-SPCB adopted new section 1991.1, which would establish reporting requirements for wood roof cleaning and treatment companies.

-SPCB postponed action on its proposed amendments to section 1993, which

would require that inspection reports comply with the requirements of Business and Professions Code section 8516 and define the different types of inspection and reinspection reports which must be submitted to the Board. SPCB sent the proposal back to its Committee to Review Laws and Regulations for further study.

-SPCB adopted amendments to section 1996, which would—among other things—specify that each recommendation for structural pest control work which requires the use of pesticides must state the name of the pesticide(s) to be used and the active ingredient(s).

-SPCB adopted amendments to section 1998, which would delete language that is duplicative of statutory law, and state that inspection reports must be filed pursuant to Business and Professions Code section 8516(h)(4).

-SPCB agreed to repeal section 1999.1, which specifies the formula for calculating the amount of time Branch 3 licensees may not work during license suspension; the Board determined the formula is unworkable and should be replaced by another regulation after further study.

At this writing, the changes adopted by SPCB await review and approval by the Office of Administrative Law (OAL).

Rulemaking Update. The following is a status update on SPCB rulemaking proposals reported in detail in previous issues of the *Reporter*:

• **Continuing Education Requirements.** In December 1993, OAL rejected the Board's amendments to sections 1950, 1950.5, and 1953, Title 16 of the CCR, regarding CE requirements, because—among other things—the text of section 1950 as submitted to OAL differed from that which was adopted by SPCB. [14:1 CRLR 84] At its February 24–25 meeting, SPCB adopted modified amendments to section 1950; on May 12, OAL approved the changes to all three sections.

• **Fumigation.** SPCB's proposed repeal of section 1994 is on hold pending the outcome of the Board's amendments to section 1993, which are being reviewed by SPCB's Committee to Review Laws and Regulations (*see above*). [14:1 CRLR 84]

• **Other SPCB Rulemaking.** On February 1, OAL disapproved SPCB's proposed amendments to sections 1990 (definition of a "separated report" and required disclosure language regarding a separated report), 1991(a)(8)(C)(3) (removal of evidence of wood-destroying pests), and 1996 (format for the completion of an inspection report), and its adoption of new section 1990.5 (procedures for reporting the inspection of a common interest project). [14:1 CRLR 84] According to OAL, the rulemaking

file did not meet the consistency, clarity, and necessity standards of the Administrative Procedure Act (APA), and SPCB failed to follow all of the APA's procedural requirements. The Board incorporated some of these proposals into the rulemaking package which was the subject of the February 25 public hearing (*see above*).

LEGISLATION

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 SPCB; create a Joint Legislative Sunset Review Committee within the legislature, which would review SPCB's performance approximately one year prior to its sunset date; and specify 11 categories of criteria under which SPCB's performance will be evaluated. Following review of the agency and a public hearing, the Committee would make recommendations to the legislature on whether SPCB 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 SPCB 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 2070 (Calderon), as amended May 3, would (among many other things) prohibit a fire department from charging registered companies a fee in excess of \$25 for receiving required notices of fumigations; provide a new licensure category called "structural pest control applicator," defined as any individual who is licensed by SPCB to apply a pesticide, rodenticide, or allied chemicals or substances for the purpose of eliminating, exterminating, controlling, or preventing infestation or infections of pests or organisms included in Branch 2, Branch 3, or wood roof cleaning and treatment on behalf of a registered company, and specify revised examination and application requirements for an applicator; increase certain civil penalties and fees; revise requirements applicable to inspection reports and other documents, as specified; and require the posting of inspection tags and completion tags, as provided. [A. *CPGE&ED*]

SB 250 (Kelley). Under existing law, applicants for licensing or certification as qualified applicators are required to elect to be examined for licensing or certification in one or more categories. As amended May



11, this bill would permit an applicant for licensing or certification as a qualified applicator to elect to be trained in the handling, control, and techniques of removal of Africanized honey bees. The bill would authorize the Director of Pesticide Regulation to develop or approve a program to train applicants in this specialty. The bill would also permit an applicant for a Branch 2 license from SPCB to be certified in the handling, control, and techniques of removal of Africanized honey bees, and require the Board to develop or approve such a program. Finally, SB 250 would provide that any hive or comparable apparatus that is not occupied by a live bee colony, and that is accessible to bees, is a public nuisance. [A. W&M]

AB 2780 (O'Connell), as amended May 18, would create the California Certified Home Inspectors Board to certify home inspectors. The bill would exempt certified home inspectors from the Architects Practice Act, the Professional Engineers Act, the Contractors State License Law, the Real Estate Appraisers' Licensing and Certification Law, and provisions governing structural pest control operators. [A. Floor]

The following is a status update on bills reported in detail in CRLR Vol. 14, No. 1 (Winter 1994) at page 85:

AB 1807 (Bronshvag), as amended March 23, authorizes SPCB to issue a citation if, upon investigation, it has probable cause to believe that a person is advertising in a telephone directory with respect to the offering or performance of services without being properly licensed, and to require the violator to cease the unlawful advertising. This bill was signed by the Governor on March 30 (Chapter 26, Statutes of 1994).

AB 1392 (Speier), as amended July 1, 1993, would—among other things—provide that SPCB'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 1851 (Connolly). Existing law sets forth a list of lethal fumigants, including chloropicrin, and a list of simple asphyxiants. As amended April 28, this bill would remove chloropicrin from the list of lethal fumigants, define the term "warning agent" as any agent used in combination with any fumigant that lacks warning properties, and include chloropicrin as a warning agent. The bill would authorize SPCB to adopt and amend, by regulation, a list of warning agents; and authorize, instead of require, SPCB to adopt, by regulation, a list of simple asphyxiants.

Existing law specifies conduct that constitutes a ground for disciplinary ac-

tion by the Board. This bill would additionally provide that furnishing a notice of work completed prior to the completion of the work specified in the report is a ground for disciplinary action.

Existing law authorizes SPCB or county commissioners to levy a fine against a registered company acting as a prime contractor for any major violation committed by any licensee with whom the prime contractor has subcontracted, as specified. This bill would, instead, make that authorization applicable to the Board or county agricultural commissioners. [S. B&P]

AB 520 (Knight), which would have repealed the Structural Pest Control Act and its provisions creating the Board, died in committee.

RECENT MEETINGS

At its February 24-25 meeting, SPCB agreed to form a committee to draft a vision statement for the Board; DCA requested that SPCB adopt a vision statement which will be used as part of the Department's evaluation of SPCB for a performance-based budgeting program. Also, the Board noted that \$90,000 is available for technical research, and directed staff to survey all registered companies to determine desired areas of pest control research and to notify California researchers, especially at the major California universities, that funds are available for research projects in pest control.

Also at its February meeting, SPCB agreed to inform the Department of Pesticide Regulation that SPCB supports the issuance of citations and fines to individual employees and/or licensees instead of the registered companies they work for when appropriate; currently, an agricultural commissioner normally fines the pest control company rather than the employee and/or licensee who actually violated the pesticide regulations. SPCB believes that fining the individual responsible for the violation will increase overall compliance with the state's pesticide regulations.

Also in February, SPCB directed legal counsel to issue an opinion regarding licensure requirements for the removal of swarms of bees. The Board has received complaints that beekeepers are taking business away from structural pest control operators; SPCB has also received reports that consumers are improperly having beekeepers remove Africanized honey bees (killer bees) from structures. At SPCB's April 22 meeting, DCA legal counsel Don Chang presented his opinion regarding whether the removal of bees from structures constitutes the practice of structural pest control and must be licensed. Chang opined that under Business and Professions Code

sections 8505 and 8550(a), the removal of bees from structures constitutes the practice of structural pest control and requires licensure when a fee is charged; however, SPCB has no jurisdiction over bee removal where no structure is involved. SPCB unanimously adopted the legal opinion and noted that the danger to the general public of killer bee removal is increasing as they migrate into California.

At SPCB's February meeting, researchers reported on the status of their project to determine the best control method for drywood termites, noting that the final report on the research will be submitted after June. Another group of researchers reported on the efficacy of chloropicrin as a warning agent to prevent unauthorized entry during structural fumigations; based on the researchers' conclusion, the Board directed staff to draft a proposed regulation to require a minimum standard of 1.5 ounces of chloropicrin per 1,000 cubic feet fumigated.

At its April meeting, SPCB discussed staff's proposed regulation on the minimum standard of chloropicrin to be used as a warning agent; following discussion, the Board referred the proposal to its Technical Advisory Committee (TAC) for further analysis. The Board also referred to TAC for further discussion proposed amendments to section 1970(a), Title 16 of the CCR (making changes to the structural fumigation log) and Business and Professions Code section 8505.6 (addressing the sealing of structures attached to a structure being fumigated prior to fumigation).

Also at its April meeting, SPCB explored the idea of establishing a recovery fund for consumers to use when structural pest control operators go out of business. The Board directed staff to survey other state agencies to see how such recovery funds are operated and report back to the Board with its findings.

FUTURE MEETINGS

July 28 in San Jose.

October 20 in San Diego.

BOARD OF EXAMINERS IN VETERINARY MEDICINE

Executive Officer: Gary K. Hill
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Pursuant to Business and Professions Code section 4800 *et seq.*, the Board of Examiners in Veterinary Medicine (BEVM) licenses all doctors of veterinary medicine (DVMs), veterinary hospitals,