



will review BBC's performance approximately one year prior to its sunset date; and specifies 11 categories of criteria under which BBC's performance will be evaluated. Following review of the agency and a public hearing, the Committee will make recommendations to the legislature on whether BBC 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 BBC would cease to exist and its powers and duties would transfer to DCA) or pass legislation extending the sunset date for another four years. This bill was signed by the Governor on September 26 (Chapter 908, Statutes of 1994).

**AB 3787 (V. Brown)**, as amended August 19, would have directed the Department of Health Services to establish sterilization, sanitation, and safety standards for persons engaged in the business of tattooing, body piercing, or permanent cosmetics, and to distribute those standards to county health departments; required practitioners of tattooing, body piercing, and permanent cosmetics to register with the county in which they practice, obtain a copy of the Department's standards and commit to comply with the standards, provide the county health department with a business address and the address at which the regulated activities are conducted, and pay registration and inspection fees, as specified; required county health departments to annually inspect the locations where tattooing, body piercing, and permanent cosmetics are practiced; and authorized county health departments to impose civil penalties for violation of sanitation standards or failure to register. On September 19, Governor Wilson vetoed this bill, stating that "[t]here is no evidence to suggest there is a public health problem," and that "[n]o case of serious infection resulting from these practices has been reported to the state in recent years."

**SB 1288 (Calderon)**. Existing provisions of the Unruh Civil Rights Act and related provisions prohibit various types of discrimination by business establishments, provide for the civil liability of a person who denies, aids, or incites a denial of these rights or makes any discrimination contrary to these provisions, and set actual damages at a minimum of \$250. As amended August 26, this bill instead provides for actual damages at a minimum of \$1,000. The bill would direct DCA, by June 1, 1995, to provide notice to BBC licensees that California state law prohibits gender-based pricing, as defined. The bill requires DCA, by June 1, 1998, to submit to the legislature, upon request, a summary of the number and subject of any

inquiries or comments by licensees in response to that notice; and, by June 1, 1995, to develop and make available to the public consumer information on the problem of gender-based price discrimination. This bill was signed by the Governor on August 26 (Chapter 535, Statutes of 1994).

**AB 2418 (Speier)**, as amended August 26, would have specifically provided that no seller of goods or services may discriminate, with respect to the price charged for goods or services of similar or like kind, against a person solely because of the person's gender. On September 30, Governor Wilson vetoed this bill, stating that "[d]iscriminatory gender-based pricing practices are illegal in California today" under the Unruh Civil Rights Act; Wilson also claimed that AB 2418 is "deficient because it failed to provide explicitly that businesses do have a right to base prices upon legitimate factors."

**SB 1498 (Hughes)**. Existing law prohibits a licensed cosmetology establishment from employing an unlicensed person who performs or practices cosmetology. As amended August 8, this bill provides that a student extern, as defined, may work at a licensed cosmetology establishment and receive school credit, as provided, for the work. The bill imposes various requirements on the externship program. This bill was signed by the Governor on September 30 (Chapter 1142, Statutes of 1994).

**AB 292 (Polanco)**, as amended August 18, would have required all licensed barbers, cosmetologists, manicurists, and estheticians to complete sixteen hours of continuing education (CE) during each two-year license renewal period. [13:1 CRLR 25] The bill would have provided for BBC approval of CE programs on health and safety topics, and required BBC to adopt regulations establishing standards for the approval of CE courses and for the effective administration and enforcement of its CE requirements. On September 24, Governor Wilson vetoed this bill, stating that the "continuing education requirements proposed by this bill would unnecessarily increase costs for licensees."

**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 have further defined the term "employee" to include booth renters in the cosmetology industry, unless specified conditions and requirements are met that would result in their being considered independent contractors. On September 11, Governor Wilson vetoed this bill. According to Wilson, the Employment Development Department currently

determines, on a case-by-case basis, the employment status of booth renters in the cosmetology industry; "[g]iven the complexity in the possible arrangements between salon owners and cosmetologists, a case-by-case determination would seem to make more sense. These are small businesses that should have the right to determine what arrangements would make their business most economically feasible."

**SCR 28 (Calderon)**, as amended March 3, would have directed the Department of Fair Employment and Housing to conduct an undercover consumer investigation to identify businesses in the dry cleaning and cosmetology professions which practice gender-based price discrimination and take appropriate action to penalize such discrimination. This bill died in committee.

**AB 1392 (Speier)**, as amended August 17, is no longer relevant to BBC.

## RECENT MEETINGS

At its August 8 meeting, BBC announced that, in conjunction with the Department of Consumer Affairs, it will undertake an occupational analysis of barbering, despite little feedback from licensed barbers last year. [14:2&3 CRLR 41]

Also at its August 8 meeting, BBC elected Rosemary Faulkner to serve as president and Daniel Sierras to serve as vice-president.

## FUTURE MEETINGS

October 3 in Los Angeles.  
January 8-9 in Sacramento.

## BOARD OF BEHAVIORAL SCIENCE EXAMINERS

*Interim Executive Officer:*

*Scott Syphax*  
(916) 322-4910 and  
(916) 445-4933

Authorized by Business and Professions Code section 4980 *et seq.*, the eleven-member Board of Behavioral Science 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; Marsena Buck, LCSW; Karen Walton, LCSW; Selma Fields, MFCC; and public members Thomas Knutson, Jerry Miller, Lorie Rice, Jane Emerson, Jeanne Smith, and Stephanie Carter. BBSE welcomed new member Marsena Buck at its July 27 meeting. BBSE is currently functioning with one MFCC vacancy due to the resignation of Zalia Lipson.

## MAJOR PROJECTS

**Callanan Resigns as EO; Board Begins Search for Replacement.** On July 27, BBSE held an emergency meeting to accept the resignation of Executive Officer (EO) Dr. Kathleen Callanan, who had served in that position since 1985; the Board commended Callanan for her many years of service to the Board. BBSE then appointed Curt Augustine, Chief of the Bureau of Electronic and Appliance Repair, to serve as Interim EO; Augustine has previously served as Interim EO for the Acupuncture Committee and the Board of Registration for Professional Engineers and Land Surveyors. On September 15, BBSE named Scott Syphax as its Interim EO until it selects a permanent replacement for Callanan. Syphax formerly served as senior consultant to Senator Robert Presley.

Also at its July 27 meeting, BBSE agreed to place a cap of \$7,500 on advertising expenses relating to recruitment of the new EO. The Board also decided to form two groups, each consisting of two Board members, with one group from northern California and the other from southern California; each group will review half of the applications, score the applications using a standardized format, and compile the scores to reach a final group of the top twenty candidates to be interviewed by an interview committee to be appointed by the BBSE Chair. Based on the results of the twenty interviews, the top six candidates will return for a second interview before the full Board. The Board also agreed that one of the qualifications of the EO must be the possession of a baccalaureate degree from an accredited institution or a comparable entity; an advanced degree would be preferred.

At its August 25-26 meeting, the Board reported that it had received 141 applications thus far; the deadline for submitting an application was August 31. At this writing, the Board has not yet announced the date upon which it will be conducting the six final interviews.

**Board Looks at Sufficiency of Out-of-State Experience and Supervision.** AB 1807 (Bronshvag) (Chapter 26, Statutes of 1994) amended Business and Professions Code section 4980.90(a) to provide that MFCC experience gained outside of California shall be accepted toward BBSE's licensure requirements if it is "substantially equivalent" to that required by California law. [14:2&3 CRLR 44] This new language, which parallels the language used in Business and Professions Code section 4996.17 for LCSW experience, requires BBSE to make the determination of substantial equivalency. Consequently, BBSE staff developed a policy requiring that such experience be verified by a jurisdictional oversight body similar to BBSE in the state in which the experience was gained, and requiring candidates to submit a form signed by that body. This requirement has not appeared to be overly burdensome for LCSWs, as there are boards or other regulatory agencies in all but one state regulating that profession. However, many states do not regulate the practice of marriage and family therapy.

The state's major trade association representing MFCCs, the California Association of Marriage and Family Therapists (CAMFT), objected strenuously to this policy at BBSE's August 25 meeting. CAMFT senior legal counsel Richard Leslie claimed, among other things, that the policy is being unlawfully implemented and should be promulgated through the rulemaking process. Because there are no MFCC oversight bodies in some states, CAMFT feels that BBSE should evaluate equivalency on a case-by-case basis rather than with a blanket policy; Leslie opined that applicants should be evaluated based on the essential conditions that must be fulfilled by state applicants such as the supervisor's qualifications, the type of experience, and the site where experience was gained.

In an analysis of the issue, board staff and Department of Consumer Affairs (DCA) legal counsel Kelly Salter determined that "[i]t is critical for licensure purposes that the individuals involved are bound by the laws of some jurisdiction which sets the standards for practice and ensures accountability, and invokes disciplinary action for unsafe practice and consumer protection. Without this, there is no equivalent way for California to be assured of the competency of practice of an out-of-state applicant and any possible consumer harm associated with that practice, as the California Board is aware with respect to its own registrants and licensees." BBSE staff contends that to accept

less—such as experience verified only by the applicant and an out-of-state supervisor who is not bound by California licensing law and cannot be held responsible for compliance with California licensing law—would be in violation of the Board's responsibility to the consumer to ensure that an applicant has completed a standard of training substantially equivalent to that required by California law.

Also at the August meeting, the Board's Legislative Committee—which had reviewed staff's policy at its June meeting—recommended that BBSE retain the policy while reviewing other states' processes, procedures, and standards of evaluation. The Board debated the definition of the term "substantial equivalency," and several Board members expressed a need to formally define it and amend the definition into BBSE's regulations. The Board decided to schedule a joint meeting of its Legislative and Licensing committees to determine what the law regarding out-of-state experience should be and discuss possible legislative or regulatory clarifications and/or modifications.

Both CAMFT and the Board were also concerned with the status of candidates currently awaiting a decision on their out-of-state experience; at the time of the August meeting, approximately nine candidates were in this position. Since BBSE has implemented electronic testing for the written examination (*see RECENT MEETINGS*), the candidates can take the written exam as soon as they are notified that their hours of supervision have been approved. However, the oral exam is only given twice per year and there is an application deadline to take the next administration of oral exams scheduled during September and October. At its August meeting, the Board voted to allow a one-time exception to this deadline for these candidates only. The Interim Executive Officer, BBSE Chair, and DCA legal counsel will review the pending cases in light of the Board's discussion of substantial equivalency and render their decisions as soon as possible in order to allow the qualified candidates sufficient time to sit for the written exam and, if they receive a passing score, to take the next oral exam.

**BBSE Transfers Complaint Evaluation and Monitoring to DCA.** At the Board's May 19-20 meeting, staff from BBSE and DCA's Division of Investigation (DOI) presented a joint proposal to transfer the responsibility for disciplinary complaint evaluation and case monitoring from BBSE to a dedicated unit within DOI; then-Executive Officer Kathleen Callanan introduced the proposal in an effort to reduce costs and increase the effectiveness



of the Board's enforcement program. Following discussion, the Board unanimously approved the proposal.

Under the previous system, BBSE was responsible for its own complaint evaluation and case monitoring processes, utilizing DOI to conduct investigations on a fee-for-service basis at the direction of Board staff. The Board agreed that under such a bifurcated system, investigations took longer and cost more because a significant amount of administrative time is spent in communications between Board staff and the investigators.

Following commencement of the proposed process, a BBSE complaint evaluation and case monitoring unit will be established within DOI; however, BBSE will continue to set policies and guidelines governing the investigation process. Staffing will consist of a case manager, an analyst, and one clerical worker, and will be funded by BBSE. Staff in this unit will receive and evaluate complaints and, following the Board's policies and parameters, determine whether an investigation should be opened. When a complaint results in the commencement of an investigation, the DOI unit will oversee the case progress through the entire investigation process, and will be authorized to shut down a case in progress. At the conclusion of the investigation, DOI will determine whether the case should be transmitted to the Attorney General's Office (AG) for the filing of an accusation, again using the policies and parameters set by BBSE. Previously, all cases were submitted to the AG due to a lack of BBSE staff to properly review investigations. With a more intensive review possible by DOI, the Board expects to cut costs because the AG will not be receiving and reviewing non-meritorious complaint investigations.

Currently, 51.9% of the Board's budget is spent on enforcement; under the proposal, BBSE's investigation budget is set at a fixed amount and DOI is responsible for maintaining the enforcement program within the budgeted amount. BBSE and DOI staff have projected that implementation of this proposal will reduce BBSE's cost for investigative services, consultants, and administrative actions by at least 15-20%. As initial implementation of this proposal, DOI staff is undergoing training by Christine Tippet, MFCC, LCSW, an examination and enforcement consultant to BBSE.

**BBSE Taping of Oral Examinations.** Early this summer, BBSE decided to discontinue the tape recording of oral examinations, and subsequently conducted an LCSW examination without taping. An August 4 letter to BBSE from CAMFT legal

counsel Richard Leslie and Executive Director Mary Riemersma alleged that the decision to eliminate the tape recording directly conflicts with Board regulations. Specifically, section 1815(c), Title 16 of the CCR, states that "an examinee may review the tape recording of his or her examination within the 30-day period provided in [section 1815(b)]." Regarding whether the regulation is permissive or mandatory, Leslie contended in his letter that "the permissiveness of the regulation applies only to the examinee, who has the option to listen to the tape." According to CAMFT, if BBSE wants to eliminate the tape recording of the oral examination, it must follow the formal rulemaking process set forth in the Administrative Procedure Act.

Dr. Norman Hertz of DCA's Office of Examination Resources delivered a report to BBSE's Licensing Committee and spoke at the Board's August 25 meeting regarding this matter; Dr. Hertz recommended the discontinuation of the taping of oral examinations as a cost-cutting measure, emphasizing that the appeal process is still available based on a paper trail, including any discrepancies between the two examiners' ratings which are noted on the rating sheets. Included in Dr. Hertz's report was a recommendation that candidates who win their appeal be allowed to retake the exam at no charge instead of automatically passing, as is the case currently. Following a great deal of discussion and public comment, BBSE voted unanimously to reinstate the taping of oral examinations.

**MFCC Supervisor/Supervision Regulations.** At its August 25-26 meeting, BBSE agreed to pursue proposed amendments to sections 1833 and 1833.1, Title 16 of the CCR, which will impose new requirements for supervisors of MFCC candidates who are attempting to satisfy the Board's supervised professional experience requirement; the approved version includes revisions made to an earlier draft as suggested by the Board's Legislative Committee at its April 14 meeting. [14:2&3 CRLR 43-44]

As revised, the proposed amendment to section 1833 would provide that the term "supervision" means responsibility for ensuring that the extent, kind, and quality of counseling performed by the supervisee is consistent with the training and experience of the supervisee, and that it includes specified activities. Another change to the draft deletes a statement that self-reporting alone is not sufficient supervision. The revisions also increase the maximum number of hours of direct supervisor contact which may be credited per week from three to five, and provide that the agreement between the supervisor

and the intern's employer need only describe the duties of the supervisor (not the employer). Also added was a requirement that the employer provide the supervisor with access to the clinical records of clients treated by the intern. In addition, the intern must be provided with a copy of any such agreement and must submit a copy to the Board with his/her application for licensure.

The amendments to section 1833 would also require that an MFCC trainee receive an average of at least one hour of direct supervisor contact for every five hours of direct face-to-face client contact in each setting in which the trainee is gaining experience; an MFCC intern would be required to receive an average of at least one hour of direct supervisor contact for every ten hours of direct face-to-face client contact in each setting in which the intern is gaining experience.

BBSE plans to amend section 1833.1 to state, among other things, that a supervisor who is approved by the American Association of Marriage and Family Therapy and who is providing supervision only to trainers at an academic institution which offers a qualifying degree must possess the requisite license and have been licensed as an MFCC, LCSW, psychologist, or physician who is certified in psychiatry, as specified, in California and/or any other state for at least two years prior to commencing any supervision. The changes would also require a supervisor to have a written plan for handling emergencies, and provide that in any setting which is not a private practice, a supervisor shall evaluate sufficient site(s), in the supervisor's discretion, where a supervisee will be gaining hours of experience toward licensure to determine whether the site(s) provides experience which is within the scope of MFCC practice, and is in compliance with the laws and regulations governing MFCC counseling and experience being gained toward licensure.

At this writing, BBSE has not yet published these proposed changes in the *California Regulatory Notice Register*.

## LEGISLATION

**Future Legislation.** At its May 19-20 meeting, the Board voted unanimously to sponsor legislation which would change its name to the Board of Behavioral Science (BBS) and directed staff to prepare the appropriate language.

Also at the May meeting, then-Executive Officer Kathleen Callanan provided the Board with an example of a case which was closed on the advice of the Attorney General's Office due to a lack of evidence sufficient to prove gross negligence; how-



ever, the Deputy Attorney General reviewing the case was extremely concerned about a perceived pattern of substandard care and a noticeable lack of any clinical records for over a decade of therapy. Accordingly, the Board discussed possible legislation which would authorize BBSE to order a licensee to submit to a professional competency examination, and which would require BBSE licensees to maintain written therapy records. Board Chair Dr. Judy Brislain referred this item to BBSE's Enforcement and Legislative committees for further study and recommendation.

The following is a status update on bills reported in detail in CRLR Vol. 14, Nos. 2 & 3 (Spring/Summer 1994) at pages 44-45:

**SB 2036 (McCorquodale)**, as amended August 26, creates a "sunset" review process for occupational licensing boards within DCA, requiring each to be comprehensively reviewed every four years. SB 2036 imposes an initial "sunset" date of July 1, 1999 for BBSE; creates a Joint Legislative Sunset Review Committee which will review BBSE's performance approximately one year prior to its sunset date; and specifies 11 categories of criteria under which BBSE's performance will be evaluated. Following review of the agency and a public hearing, the Committee will 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. This bill was signed by the Governor on September 26 (Chapter 908, Statutes of 1994).

**SB 2039 (McCorquodale)**, as amended August 25, requires BBSE and the Board of Psychology to revoke the license of any licensee or registrant who is found to have engaged in any act of sexual contact, as defined, with a patient, or with a former patient in described circumstances. 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] This bill was signed by the Governor on September 30 (Chapter 1274, Statutes of 1994).

**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 amended June 20, this BBSE-

sponsored bill also requires 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 provides 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, suspended, or other disciplinary action was taken against the individual under specified circumstances. This bill was signed by the Governor on September 10 (Chapter 474, Statutes of 1994).

**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 communication between the patient and the psychotherapist; and 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 August 17, this bill repeals the latter special provision and instead clarifies that the minor who has requested and received mental health treatment or counseling services is the sole holder of the psychotherapist-patient privilege. This bill was signed by the Governor on September 30 (Chapter 1270, 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 repeals that requirement and instead authorizes an intern to be either a paid employee or a volunteer, and provides that employers are encouraged to provide fair remuneration. This bill was signed by the Governor on June 24 (Chapter 116, Statutes of 1994).

## ■ LITIGATION

In *Johnson, et al. v. Superior Court of Los Angeles County (Michael Gass, Real Party in Interest)*, 25 Cal. App. 4th 1564 (June 15, 1994), the Second District Court of Appeal held that experts who assist specified occupational licensing boards in disciplinary matters are absolutely immune from civil liability for malicious prosecution.

In 1991, BBSE and the Board of Psychology initiated disciplinary proceedings against Michael Gass, a licensed psychol-

ogist. After evidentiary hearings, both boards declined to discipline Gass, who then filed civil actions for malicious prosecution against two licensed psychologists who had served as expert consultants to the boards. In defense of the boards' experts, the Attorney General's Office filed demurrers in both cases, arguing that the experts are absolutely immune from liability under Civil Code section 43.8. Concluding that the immunity afforded by section 43.8 was conditional and not absolute, the trial court overruled the demurrers; the experts appealed.

The Second District reversed. In 1990, the legislature amended section 43.8 as part of SB 2375 (Presley) (Chapter 1597, Statutes of 1990), which the court characterized as "a comprehensive reform of this state's system of discipline against medical practitioners." The 1990 amendment deleted conditional immunity "good faith" language from section 43.8, and the court's review of the bill's legislative history revealed an intent to confer absolute immunity from civil liability on expert practitioners who assist healing arts agencies in reviewing and prosecuting disciplinary actions. Otherwise, according to the court, "the threat of being sued for malicious prosecution would deter all but the most fearless experts from serving as consultants to the Boards. Without those experts, the Boards' disciplinary activities would soon grind to a halt."

On September 8, the California Supreme Court denied Gass' petition for review of the Second District's ruling.

## ■ RECENT MEETINGS

At its May 19-20 meeting, the Board completed the strategic planning process begun at its February 24-25 meeting [14:2&3 CRLR 45] by adopting a new committee structure. The Board established Enforcement, Legislative, Licensing, and Planning and Organization committees; each committee consists of four Board members, and most Board members sit on two committees.

Also at its May meeting, the Board voted to authorize a management study to justify staff augmentation. However, this matter was revisited at BBSE's August 25-26 meeting, when Interim Executive Officer Curt Augustine reported that the Board needed to pass a fiscal motion in order to authorize BBSE staff to allocate funds for the study. The Board voted unanimously to postpone the study until the Executive Officer search is over and the enforcement transition to DOI is complete (see MAJOR PROJECTS).

At BBSE's August 25-26 meeting, Curt Augustine reported that electronic testing



has been implemented. [14:2&3 CRLR 44; 14:1 CRLR 35] As of the August meeting, approximately 60 candidates had taken the electronic exam and reported that the new system is working well.

Also at the August meeting, the Board approved a standard complaint closure letter for use in closing disciplinary complaints filed against BBSE licensees in connection with their preparation of court-ordered evaluations in child custody disputes. This idea was introduced by then-Executive Officer Kathleen Callanan at BBSE's May meeting after she met with family court personnel in Alameda County. According to Dr. Callanan, an increasing number of malicious complaints are being filed against BBSE licensees by disgruntled litigants who are unhappy with a custody order in the family court system. Unless the complaints contain allegations which could be grounds for disciplinary action, they are closed without investigation. The closure letter explains the Board's reasons for closing the complaint and the litigant's alternative remedies, such as judicial review of the judgment.

## ■ FUTURE MEETINGS

November 17–18 in Sacramento.

February 23–24, 1995

(location to be announced).

May 18–19, 1995

(location to be announced).

August 24–25, 1995

(location to be announced).

November 16–17, 1995

(location to be announced).

## CEMETERY BOARD

*Executive Officer:*

*Raymond Giunta*

(916) 263-3660

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

**Funding for Cemetery Board Dies With Merger Bill.** Intense pressure by the death services industry to defeat a bill to merge the Cemetery Board with the Board of Funeral Directors and Embalmers (BFDE) recently backfired, and resulted in the defunding of both boards effective January 1, 1995.

SB 2037 (McCorquodale), as amended April 5, included a provision to merge the Cemetery Board and BFDE into a single bureau within the Department of Consumer Affairs (DCA). At its May 25 meeting, the Board voted unanimously to oppose the bill. On June 29, Senator McCorquodale amended SB 2037 to create a merged Board of Funeral and Cemetery Services, rather than a merged bureau; this amendment sought to ameliorate industry opposition to "bureau-izing" the boards, as voiced at a May 9 hearing before the Senate Business and Professions Committee. [14:2&3 CRLR 45–46]

In late June, the legislature underscored its support for the merger proposed in SB 2037 by including, in the 1994–95 Budget Act, a provision appropriating only six months' worth of funding to both boards. On July 7, Senator McCorquodale again amended SB 2037 to include—along with the merger provision—funding for the merged board for the second half of fiscal year 1994–95. Thus, SB 2037 moved into the Assembly as a budget trailer bill, with the funding provision clearly tied to the merger provision; deletion of the merger provision would jeopardize the funding provision.

Instead of accepting its fate and the legislature's compromise agreement to merge the boards into one board instead of a bureau, the Cemetery Board met on July 28, agreed to continue its opposition to SB 2037, and began to organize a campaign to convince the Assembly to kill the merger provision. The death services industry also intensified its pressure on the Assembly, and was successful in that the Assembly Consumer Protection Committee deleted the merger provision after an August 10 hearing, thus requiring return of the bill to the Senate for concurrence in the Assembly's amendments. On August

31, the Senate refused to concur in the Assembly's removal of the merger provision; SB 2037 died on the Senate floor, taking with it the funding for both boards beyond January 1, 1995. (See COMMENTARY on page 4 for related discussion.)

At this writing, the Board is scheduled to discuss its future at a September 29 meeting; the Board is expected to consider options for obtaining additional funding or ensuring that essential Board functions continue after its existing funds are depleted.

**Board Raises License Fees to the Statutory Ceilings.** On May 25, the Board held a public hearing on its proposal to amend sections 2310–24, Title 16 of the CCR, to increase virtually all of the fees it charges its licensees to the statutory maximums established in Business and Professions Code sections 9750–70. The Board proposed the fee increases to compensate for a projected operating deficit for 1993–94 and further projected shortfalls in coming years. [14:2&3 CRLR 46] At the May 25 hearing, some Board members expressed concern that not all of the individuals on the Board's mailing list had received notice of the proposed action. The Board adopted the proposed amendments contingent upon confirmation that the action had been properly noticed; the Board's legal counsel later verified that the notice provided was indeed sufficient. At this writing, staff is preparing the rulemaking file for submission to the DCA Director and to the Office of Administrative Law for review and approval.

**Updated Consumer Guide Not Forthcoming.** The Board's revised *Guide to Cemetery Purchases and Cremation Services* was initially scheduled for completion during the fall of 1993, but has been repeatedly delayed. The *Guide's* purpose is to answer questions consumers frequently ask concerning cemetery and cremation services. [14:2&3 CRLR 46] Speaking at the Board's July 28 meeting on behalf of the Guide Subcommittee, Board member Steve Doukas stated that final revisions are still a few months away, and that the *Guide* cannot be completed until the final disposition of pending amendments to the Cemetery Act is known. At this writing, a status report on the *Guide* is not on the agenda for the Board's September 29 meeting, so further delays are expected.

## ■ LEGISLATION

The following is a status update on bills reported in detail in CRLR Vol. 14, Nos. 2 & 3 (Spring/Summer 1994) at page 47:

**SB 2037 (McCorquodale)**, which would have—among other things—merged