



the Cemetery Board and BFDE into a single Board of Funeral and Cemetery Services, appropriated funding for the new board for the period of January 1–June 30, 1995, required the new board to adopt specified requirements to ensure the competence of persons handling preneed trust funds and endowment care funds, and tightened the specifications for appointment as a public member to the new board, died on August 31 after the Senate refused to concur in the Assembly's removal of the merger provision (*see* MAJOR PROJECTS).

SB 2036 (McCorquodale), as amended August 26, was signed by the Governor on September 26 (Chapter 908, Statutes of 1994). The bill 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, 1997 on the Cemetery Board; however, the 1994–95 Budget Act defunds the Board as of January 1, 1995, and the provisions of SB 2036 regarding the Board will be moot unless legislative action is taken to restore funding to the Board (*see* MAJOR PROJECTS).

AB 1392 (Speier). Existing law provides that any contract for goods or services offered by a funeral director, a cemetery authority, or crematory shall prominently disclose specific information. As amended August 17, this bill provides that the information must appear on the first page of the contract.

Existing law provides generally for the disposition of cremated remains and specifically requires crematory licensees to pay regulatory charges for each crematory, plus an additional charge of up to \$0.50 per cremation, and requires cemetery authorities to pay regulatory charges for each cemetery, plus an additional charge of up to \$1 per cremation. This bill requires crematory licensees to pay instead an additional charge of up to \$1 per cremation and makes other clarifying changes to these provisions.

Existing law provides that a funeral director or cemetery director shall have complete authority to control disposition of human remains and to proceed to recover usual and customary charges if certain circumstances exist. One necessary circumstance is the public administrator's failure to assume responsibility for disposition of the remains within 24 hours after having been given written notice. This bill extends the time limit from 24 hours to seven days from receipt of notice.

Existing law provides that a crematory regulated by the Cemetery Board shall knowingly cremate only human remains

in cremation chambers, along with cremation containers and items used for disease control. This bill provides that the cremation chambers may also be used to cremate personal effects of the deceased.

Existing law requires that, within a specified time period after a licensed crematory takes custody of a body, the crematory must store the body at a certain temperature, except as provided. This bill makes this requirement applicable only in cases in which a licensed crematory takes custody of a body that has not been embalmed. This bill was signed by the Governor on September 15 (Chapter 570, Statutes of 1994).

SB 1562 (Mello). Existing law defines the terms "burial" and "grave" for purposes of the law governing public cemetery districts. As amended April 27, this bill would have required a district that inter a decedent in a manner other than burial in the ground, as prescribed, to comply with certain requirements pertaining to the regulation of private cemeteries. This bill died in committee.

RECENT MEETINGS

At the Board's May 25 meeting, Executive Officer Ray Giunta reported that, after receiving numerous complaints, the Board had inspected Sunnyside Cemetery, found it to be in deplorable condition, and seized the cemetery's endowment care fund pursuant to Business and Professions Code section 9656.2. Further investigations revealed that the fund, which now contains less than half of the \$1 million it held in 1987, was used by the licensee for personal and professional expenses. Giunta stated that the Attorney General had been informed and was reviewing the case for purposes of license discipline. According to Giunta, the licensee has assigned all interest in the fund to the Board and intends to transfer the real property to the Board and cooperate with investigators. At its July 28 meeting, the Board authorized a group called "Friends of Sunnyside" to enter the office at Sunnyside Cemetery in order to organize the records, and approved a licensed contractor's bid for maintenance of the grounds.

At the Board's July meeting, Executive Officer Giunta announced several internal policy changes to the Board's complaint process, including his goals to open mail on a daily basis, acknowledge consumer complaints within three days, and provide preliminary findings within fourteen days. Giunta also secured Board approval to purchase new office equipment, including a fax machine, video camera, and two laptop computers and software; and introduced two new staff members.

FUTURE MEETINGS

September 29 in Sacramento.

CONTRACTORS STATE LICENSE BOARD

Registrar: Gail W. Jesswein
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The Contractors State License Board (CSLB) licenses contractors to work in California, handles consumer complaints, and enforces existing laws pertaining to contractors. The Board is authorized pursuant to the Contractors State License Law (CSLL), Business and Professions Code section 7000 *et seq.*; CSLB's regulations are codified in Division 8, Title 16 of the California Code of Regulations (CCR).

The thirteen-member Board—consisting of seven public members, two B-general building contractors, two C-specialty contractors, one A-general engineering contractor, and one member from a labor organization representing building trades—generally meets four times per year. The Board currently has five committees: administration/consumer education, enforcement, licensing, strategic planning, and legislation.

On August 4, Governor Wilson appointed Marilyn J. Dailey of Escondido and Douglas Barnhart of San Diego to CSLB; Dailey is a self-employed consultant, and Barnhart is president and chief executive officer of Douglas Barnhart, Inc., a contracting firm. Both appointments are subject to Senate confirmation; at this writing, the confirmation hearings have not yet been scheduled.

MAJOR PROJECTS

CSLB Continues to Crack Down on Illegal Contracting Activity in Earthquake Area. During the summer, CSLB's Unlicensed Activity Unit for the Southern Region continued to work with a multi-agency task force to catch unlicensed contractors soliciting earthquake victims and performing unlicensed construction repairs in the Los Angeles area; the task force commenced "sting" operations soon after the January 17 Northridge earthquake and Governor Wilson's call for greater consumer protection against unlicensed contractors operating in the affected area. [14:2&3 CRLR 48] CSLB investigators are receiving assistance from the Department of Consumer Affairs (DCA), the Employment Development Department, and



the state Labor Commission. In addition to undercover sting operations, the task force is now undertaking a new prong of attack on unlicensed contractors by performing random sweeps of construction sites in the Northridge area. The new action comes in response to a number of recent incidents in which earthquake victims paid unlicensed contractors to undertake repair work, only to never see the contractor again. To date, the stings and sweeps have resulted in at least 90 enforcement actions.

CSLB Implements Outreach Campaign. On July 22, in order to further promote the protection of consumers from unscrupulous and unqualified contractors, CSLB adopted an outreach campaign for 1994-95. The campaign seeks to raise the level of consumer awareness concerning the importance of hiring licensed contractors, as well as increasing "contractor awareness" of the requirements governing their profession. The campaign will include television commercials, public service announcements, talk show appearances by Board members and staff, distribution of a thirty-minute video entitled "Rebuilding After a Disaster," radio announcements, the distribution of newsletters and fliers, and the use of billboards and display racks in various locations.

CSLB Enforcement Action. In June, at the request of CSLB, the Attorney General's Office filed an accusation with the Registrar of Contractors against Gotech Builders, its predecessor company Systems Construction, and Gotech's owner, Jeffrey Charles Weiner, among others; according to the accusation, Gotech has illegally diverted \$961,000 from its clients and subcontractors during the last four years. According to Paula Watkins, head of CSLB's Southern California regional office, the named parties would allegedly enter into a contract to build a home on a person's property, take large down payments, and never build the home. If successful, the disciplinary action would prohibit the respondents from ever working for a licensed contractor or holding contractors' licenses in California, and would require them to pay restitution to the alleged victims. A hearing before an administrative law judge is expected to be conducted in late 1994.

Rulemaking Update. The following is a status update on CSLB rulemaking proposals discussed in detail in recent issues of the *Reporter*:

• On May 23, the Office of Administrative Law (OAL) approved CSLB's amendments to section 884, Title 16 of the CCR, which revise the recommended minimum and maximum civil penalty assessments which may be included in license cita-

tions. [14:2&3 CRLR 48; 14:1 CRLR 40; 13:4 CRLR 41]

• On July 22, CSLB adopted proposed amendments to section 832.07, Title 16 of the CCR, which would prohibit low-voltage system contractors (C-7) from installing low-voltage fire alarm systems; proposed amendments to section 832.36, Title 16 of the CCR, to specify the tasks that may be undertaken by plumbing contractors; and new section 832.28, Title 16 of the CCR, which would create and define a new specialty license classification for class C-28 lock and security equipment contractors. [14:2&3 CRLR 48; 14:1 CRLR 40; 13:4 CRLR 41] At this writing, the proposal awaits review and approval by DCA and OAL.

LEGISLATION

AB 2636 (Richter), as amended June 30, exempts real estate licensees acting within the scope of their license from the CSLL, and provides that this exemption does not authorize a real estate licensee or a property manager to act in the capacity of a contractor unless licensed by CSLB. This bill was signed by the Governor on August 26 (Chapter 361, Statutes of 1994).

The following is a status update on bills reported in detail in CRLR Vol. 14, Nos. 2 & 3 (Spring/Summer 1994) at pages 48-51:

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, 1998 for CSLB; creates a Joint Legislative Sunset Review Committee which will review CSLB's performance approximately one year prior to its sunset date; and specifies 11 categories of criteria under which CSLB's performance will be evaluated. Following review of the agency and a public hearing, the Committee will make recommendations to the legislature on whether CSLB 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 CSLB 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 2646 (Goldsmith). Existing law provides that only specified contractors may install fire protection systems; as amended April 14, this bill provides, in addition, that an owner-builder of an owner-occupied, single-family dwelling may install these systems. This bill was signed by the Gov-

ernor on July 9 (Chapter 185, Statutes of 1994).

AB 2719 (Frazee), as amended June 20, provides that violation of specified laws dealing with excavations and subsurface installations by a licensed contractor constitutes cause for disciplinary action. This bill also requires that misdemeanor criminal actions for violations of law applicable to home improvement contracts must be brought, or a complaint filed, within three years from the effective date of the contract. This bill was signed by the Governor on August 26 (Chapter 362, Statutes of 1994).

AB 3302 (Speier). Under existing law, a complaint against an individual licensed by CSLB alleging commission of any acts or omissions that may be grounds for legal action must be filed in writing with the Registrar within three years after the act or omission alleged as the ground for the disciplinary action. As amended August 22, this bill instead provides that a complaint against a licensee alleging commission of any patent acts or omissions that may be grounds for legal action shall be filed in writing with the Registrar within four years after the act or omission alleged as the ground for the disciplinary action, and a complaint against a licensee alleging commission of any latent acts or omissions, as defined, that may be grounds for legal action based on structural defects, as provided, shall be filed in writing with the Registrar within ten years after the act or omission alleged as the ground for the disciplinary action. This bill also provides that the revocation, suspension, or other disciplinary action of a license to act as a contractor by another state is grounds for disciplinary action in this state if the individual is a licensee, or applies for a license, in this state.

This bill also provides that when CSLB resolves a complaint, the Board shall notify the complainant in writing of its action and the reasons for taking that action and the contractor, provided that the contractor is licensed and the notification would not jeopardize an action or investigation that involves the contractor.

Under existing law, there is no prohibition against a licensee using the name or position of a public official in advertising or promotional materials. This bill prohibits the use of the name or position of a public official, as defined, in any advertising or promotional material by the licensee without the written authorization of the official and a disclaimer, as specified.

Existing law provides requirements applicable to arbitration provisions contained in specified real estate contracts. This bill imposes requirements applicable



to arbitration provisions contained in contracts for work on residential property with four or fewer units, as specified. This bill was signed by the Governor on September 30 (Chapter 1135, Statutes of 1994).

AB 2934 (Richter). Existing law creates the Construction Management Education Account, authorizes CSLB to make grants from the Account to qualified postsecondary educational institutions for the support of courses of study in construction management, provides for an advisory committee to recommend grant awards for the support of such courses, and requires that the membership of the committee consist of eleven members (including at least one representative from each of a list of specified contractor associations). As amended August 8, this bill adds other contractor associations to this list and specifies the mission and duties of the advisory committee. This bill was signed by the Governor on September 19 (Chapter 647, Statutes of 1994).

AB 3001 (Conroy), as amended August 17, requires a contractor who has been disciplined, as defined, two or more times within a ten-year period to disclose in a document, which must be provided prior to entering into a contract to perform work on residential property with four or fewer units, any citation, license suspension, or license revocation during the previous four years resulting from any violation of the CSLB by the contractor or any complaint or legal action relating to conduct regulated under the CSLB that resulted in an unfavorable judgment against the contractor. The bill also requires a contractor to provide in a document provided prior to entering into a contract for work on residential property with four or fewer units a notice that CSLB may be contacted for information on the contractor's license. A violation of these provisions is grounds for a penalty or license suspension or revocation, as specified. This bill was signed by the Governor on September 24 (Chapter 783, Statutes of 1994).

AB 3269 (B. Friedman). Existing law regulates home improvement salespersons and makes it a misdemeanor to act as a home improvement salesperson without being registered. As amended August 22, this bill provides that any security interest taken to secure any payment for the performance of any act or conduct relating to home improvement, as defined, that occurs on or after January 1, 1995, is unenforceable if the person soliciting the act or contract was not a duly registered salesperson at the time the homeowner signs the home improvement contract solicited by the salesperson. This bill was signed by the Governor on September 27 (Chapter 888, Statutes of 1994).

ABX 57 (Archie-Hudson). Existing law regulates the content and effect of home solicitation contracts, as defined; existing law defines "services" for purposes of these provisions to include, among other things, services furnished in connection with the repair, alteration, or improvement of residential premises. As amended August 19, this bill revises this definition to also include services furnished in connection with the restoration of residential premises; provides that any home solicitation contract or offer for the repair or restoration of residential premises signed and dated by the buyer within a prescribed time period from when a disaster, as defined, causes damages to the residential premises shall be void, except as otherwise provided; provides that, in addition to any other right to revoke an offer, a buyer has the right, within a prescribed time period, to cancel a home solicitation contract or offer for the repair or restoration of residential premises damaged by a disaster that was not otherwise void; provides that these contracts shall contain a statement describing the buyer's right to cancel, as specified; and specifies that the provisions added by this bill regarding home solicitation contracts or offers for the repair or restoration of residential premises damaged by a disaster shall not apply to a contract that is solicited by the buyer or his/her agent or insurance representative, as specified, and that is executed in connection with the making of prescribed emergency repairs or services, among other conditions.

Existing law provides that every person who willfully makes or publishes any false statement, spreads any false rumor, or employs any other false or fraudulent means or device, with intent to affect the market price of any kind of property is guilty of a misdemeanor. This bill provides that, upon the proclamation of a state of emergency, as specified, and for a specified period following that declaration, any person who sells or attempts to sell specified goods and services, as defined, at a price that is more than 10% of the price charged for that good or service by that person immediately prior to the proclamation of emergency is guilty of a misdemeanor and shall be punished by imprisonment in a county jail for not more than one year, by a fine not exceeding \$10,000, or by both that fine and imprisonment, subject to specified exceptions. This bill makes certain legislative findings and declarations regarding price gouging during disasters and emergencies. This bill was signed by the Governor on September 26 (Chapter 51X, Statutes of 1994).

ABX 36 (Katz, Bowen), as amended August 18, provides that, upon the procla-

amation of a state of emergency and for a period of thirty days following the declaration, it is a misdemeanor for any person, contractor, business, or other entity to sell or offer to sell any consumer food items or goods, goods or services used for emergency cleanup, emergency supplies or medical supplies, home heating oil, building materials, housing, transportation, freight, storage services, and gasoline or other motor fuels for a price that exceeds by 10% the price charged by that person for those goods or services immediately prior to the proclamation of emergency, unless that person can prove that an increase in price was directly attributable to additional costs imposed on it by the supplier of the goods, or for labor or materials used to provide the services, as specified. The bill also provides that, upon the proclamation of a state of emergency and for a period of 180 days following the declaration, it is a misdemeanor for any contractor to sell or offer to sell any repair or reconstruction services or any services used in emergency cleanup for a price that exceeds by 10% the price charged by that person for those services immediately prior to the proclamation of emergency, unless that person can prove that an increase in price was directly attributable to additional costs imposed on it by the supplier of the goods, or for labor or materials used to provide the services, as specified. The bill also provides for the extension of the provisions of the bill for additional 30-day periods, and provides that violation of these provisions is an unfair business practice and an act of unfair competition.

Under existing law, the conviction of a crime substantially related to the qualifications, functions, and duties of a contractor constitutes grounds for disciplinary action. This bill requires CSLB to take disciplinary action, as specified, against a contractor convicted of violating the provisions described above, or any substantially similar local ordinance in connection with the sale, or offer for sale, of repair or reconstruction services, as defined. This bill was signed by the Governor on September 26 (Chapter 52X, Statutes of 1994).

SB 634 (Craven). Existing law makes various actions in connection with work by contractors a misdemeanor, including receiving or accepting completion certificates when work is not complete, failing to comply with requirements for home improvement contracts, and making various misrepresentations or engaging in fraudulent activities. As amended June 20, this bill requires restitution and increases the fines for a violation of those provisions



in connection with a scheme to defraud an owner in connection with repairs to a structure damaged by a natural disaster.

Under existing law, forgery, grand theft, and false pretenses are crimes. This bill provides for a one-year enhancement if those crimes are in connection with a scheme to defraud an owner in connection with repairs to a structure damaged by a natural disaster. This bill was signed by the Governor on July 9 (Chapter 175, Statutes of 1994).

AB 3436 (Martinez), as amended August 26, provides that, in a binding arbitration of specified claims pursuant to home construction or improvement contracts, the arbitrator shall, within ten days following his/her appointment, provide to each party a written declaration disclosing an affiliation with either party, if any, as specified. The bill further provides that either party may disqualify the arbitrator under specified circumstances. The bill requires that a notice of disqualification be served within fifteen days, as specified. This bill was signed by the Governor on September 25 (Chapter 804, Statutes of 1994).

SB 1844 (Mello). Existing law provides that a person who engages in the business or acts in a capacity for which a contractor's license is required may not bring an action for compensation for performance of any act or contract for which the license is required unless he/she was licensed during the time of the performance of the act or contract. However, under current law, a court may find substantial compliance with licensing requirements if the person can show during an evidentiary hearing (1) that he/she was duly licensed during any portion of the 90 days immediately preceding the performance of the act or contract for which compensation is sought, (2) that the person's license was in a category that would have authorized the performance of the act or contract, and (3) that the failure to comply with licensing requirements was the result of either an inadvertent clerical error, or other error or delay not caused by the negligence of the person. As amended July 1, this bill provides instead that a court may find substantial compliance with licensing requirements if the person who acted in the capacity of a contractor or who engaged in the business (1) was duly licensed in California prior to the performance of the act or contract, (2) acted reasonably and in good faith to maintain his/her proper license, and (3) did not know or reasonably should not have known that he/she was not duly licensed.

Existing law provides that the provisions concerning substantial compliance with licensing requirements shall have no

retroactive effect and shall apply only to proceedings commenced after January 1, 1992. This bill instead provides that the existing substantial compliance provisions shall apply to all contracts entered into on or after January 1, 1992, and to all actions or arbitrations arising therefrom. The bill provides that amendments contained in this bill relating to substantial compliance with licensing requirements shall apply to all proceedings commencing on or after January 1, 1995, except a legal action or arbitration commenced prior to January 1, 1995, or, if commenced after January 1, 1995, to a legal action or arbitration that was commenced prior to that date and was subsequently dismissed. This bill was signed by the Governor on September 11 (Chapter 550, Statutes of 1994).

SB 1694 (Wright). Existing law creates CSLB's Unlicensed Activity Unit as a demonstration project only in southern California, to enforce provisions prohibiting all forms of unlicensed activity. As amended April 19, this bill removes the limitation that the enforcement unit operate as a demonstration project only in southern California. This bill also allows the CSLB Registrar to issue a citation against an unlicensed individual who advertises to perform construction work or a work of improvement. This bill was signed by the Governor on August 31 (Chapter 413, Statutes of 1994).

AB 3475 (Mountjoy). Existing law requires an applicant for a contractor's license, for restoration of a license, or for continued use of a license after discipline to file a bond in addition to other required bonds. Among other persons, the requirement applies to any partnership, corporation, firm, or association of which any officer, director, member, partner, or qualifying person has had a license suspended or revoked as a result of disciplinary action. As amended May 17, this bill makes this requirement applicable to renewal of a license and to an application to change officers of a corporation after discipline. The bill makes the requirement applicable to any existing or new officer, director, member, partner, or qualifying person of any partnership, corporation, firm, or association, as specified.

Under existing law, the CSLB Registrar may issue a citation when the Registrar has probable cause to believe that a licensee or an applicant for a license has committed any acts or omissions which are grounds for denial, revocation, or suspension of the person's license. This bill provides that the disassociation of any officer, director, member, or associate from the license of any partnership, corporation, firm, or association whose license

has been cited pursuant to the above provision shall not relieve that person from responsibility for complying with the citation if he/she had knowledge of, or participated in, any of the prohibited acts for which the citation was issued. The bill also provides that the disassociation of any qualifying partner, responsible managing officer, or responsible managing employee from a license that has been cited pursuant to the above provision shall not relieve that person from responsibility for complying with the citation. This bill was signed by the Governor on July 9 (Chapter 192, Statutes of 1994).

AB 203 (Collins), as amended June 21, provides that one of the seven public members on CSLB shall be an active local building official appointed by the Governor. This bill was signed by the Governor on July 20 (Chapter 279, Statutes of 1994).

AB 443 (Aguiar). Existing law provides that every city or county that requires the issuance of a permit as a condition precedent to the construction, alteration, improvement, demolition, or repair of any building or structure shall, in addition to any other requirements, print certain declarations on any building permit issued, including a declaration verifying workers' compensation coverage and a certificate of exemption from workers' compensation insurance, as specified. As amended May 19, this bill revises the form of the workers' compensation declaration verifying coverage or exemption from coverage; requires the various declarations on the permit to be signed under penalty of perjury; and requires CSLB to semiannually compile and distribute to city, county, and city and county building departments a list of all contractors who did not secure payment of workers' compensation, as required by the workers' compensation law, during any period for which workers were employed during the preceding six months.

Existing law provides that every county or city that requires a permit for construction work on any building or structure shall require each applicant to have on file a certificate of workers' compensation insurance or a certificate of consent to self-insure, with specified exceptions. This bill instead requires that each applicant sign the workers' compensation declaration required to appear on the issued building permit pursuant to the above provision of law. The bill also requires contractors, at the time of permit issuance, to show their valid workers' compensation insurance certificate. This bill was signed by the Governor on July 9 (Chapter 178, Statutes of 1994).

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



The following bills died: **AB 2780 (O'Connell)**, which would have created the California Certified Home Inspectors Board to certify home inspectors; **AB 3300 (Speier)**, which would have, among other things, increased the amount of the required contractor's bond from \$7,500 to \$10,000; **AB 3292 (Bowen)**, which would have repealed an existing provision authorizing the CSLB Registrar to waive the written examination requirement for licensure applicants under specified circumstances; **AB 3294 (Bowen)**, which would have provided that a willful or deliberate failure by a CSLB licensee, or the agent or officer of the licensee, to pay money due for materials or services rendered in connection with the licensee's operations as a contractor, or the false denial of any amount due or the validity of the claim thereof with intent to secure for the licensee or the licensee's employer, or other person, any discount upon this indebtedness or with intent to hinder, delay, or defraud the person to whom this indebtedness is due, shall result in suspension of the contractor's license and may constitute a cause for other disciplinary action; **AB 3528 (Alpert)**, which would have created the San Diego County Construction Contractors Council in state government; and **SB 949 (Rogers)**, which would generally have provided that, with respect to all contracts between owners and original contractors for the construction of any private work of improvement, excluding residential construction, entered into on or after July 1, 1994, the retention proceeds withheld by the owner from the original contractor or by the original contractor from any subcontractor from any payment shall not exceed 10% of the payment and in no event shall the total retention withheld exceed 5% of the contract price.

■ LITIGATION

In *Home Depot U.S.A. v. Contractors State License Board*, No. 666739 (San Diego County Superior Court), Home Depot challenged CSLB's issuance of two citations against it for its advertisement and performance of certain installation services. [13:2&3 CRLR 61; 13:1 CRLR 31] In a July 18 decision, Judge J. Richard Haden ruled in favor of Home Depot and ordered CSLB to invalidate the two citations.

Home Depot began its "we install what we sell" installation program in San Diego County in April 1990; by November 1992, it had performed 50,000 installations and was making \$1.6 million per month in installations. According to the record, Home Depot—which is licensed as a B-general

building contractor—hires licensed specialty contractors to perform all installation work: Home Depot screens and qualifies the independent specialty contractors, investigates the installer's license to ensure it is current and proper, and pays the specialty contractors. The complaints which led to the two citations were filed by individuals who own or work for specialty contractor businesses which compete with Home Depot for installations.

A general building contractor is defined in Business and Professions Code section 7057 as "a contractor whose principal contracting business is in connection with any structure built, being built, or to be built, for the support, shelter and enclosure of persons, animals, chattels or movable property of any kind, requiring in its construction the use of more than two unrelated building trades or crafts, or to do or superintend the whole or any part thereof." To implement section 7057, CSLB adopted section 834(b), Title 16 of the CCR, which provides that a licensee classified as a general building contractor shall not take a prime contract (excluding framing or carpentry) unless it requires at least three unrelated building trades or crafts, or unless he/she holds the required specialty license(s); section 834(b) also states that a general building contractor shall not take a subcontract (excluding framing or carpentry) involving less than three unrelated trades or crafts unless he/she holds the required specialty license(s). CSLB cited Home Depot for its advertisement and performance of work in a single trade or craft as violative of section 834(b).

Home Depot argued that nothing in section 7057 precludes a B-general building contractor from accepting a contract in which two or fewer unrelated trades are involved, and that regulatory section 834(b) is thus inconsistent with the statute. Judge Haden agreed, noting that section 7057 "does not describe the contract a general contractor may take. 834(b) has simply added a new and additional restriction on the general building contractor not intended or apparently contemplated by the legislature in B&P section 7057. This additional restriction is not a reasonable interpretation of the legislative mandate."

Judge Haden also found that section 834(b) does not square with the public protection mandate of the Contractors State License Law. Because section 7057 permits a general building contractor to "do or superintend the whole or any part thereof," Judge Haden noted that Home Depot could lawfully build an entire house with its B-general building contractor license, and found that "[t]here is no legitimate argument that a general building contractor is

unqualified to do any aspect of work in connection with building a support, structure or enclosure." In this regard, Judge Haden opined that section 834(b) "was not adopted to protect the public but rather to restrain competition. It provides a monopoly to special license holders."

On August 16, CSLB filed a notice of appeal from the judgment in favor of Home Depot; at this writing, the appeal is still pending.

In *Vallejo Development Company v. Beck Development Company*, 24 Cal. App. 4th 929 (Apr. 29, 1994), the First District Court of Appeal held that Business and Professions Code section 7031(a), which bars claims by unlicensed contractors to enforce construction contracts, applies to a "master developer" which installs infrastructure improvements in an unfinished residential/commercial project through licensed, third-party general contractors. [14:2&3 CRLR 51-52] On June 30, the California Supreme Court denied Vallejo's petition for review.

■ RECENT MEETINGS

At CSLB's July 22 meeting, CSLB Registrar Gail Jesswein announced the following staff appointments:

- Karen McGagin has been appointed to the position of Chief Deputy Registrar, replacing Mickey Matsumoto, who recently retired. Prior to this appointment, McGagin was Deputy Director for Board Relations at the Department of Consumer Affairs.

- Beverly Spencer is now Supervisor of the Central Region; she replaced Warren Drayton, who retired in February. Spencer holds an inactive B-general building contractor license, has supervised the San Diego District Office, and was responsible for CSLB's judgment bond unit.

- Linda Brooks is CSLB's new Licensing Deputy, replacing Bob Christensen, who also recently retired; Brooks previously headed the Board's Administrative Unit.

- Robert Porter was appointed CSLB Legislative Liaison.

- Samuel Haynes was named Public Information Officer.

- Ronald Russo is CSLB's designated legal counsel from the Attorney General's Office.

Also at CSLB's July 22 meeting, Registrar Jesswein announced that, in response to the October 1993 oversight hearings by the Assembly Consumer Protection Committee, CSLB field staff will be implementing a new training program in the two subject areas of customer service excellence and mediation. [14:2&3 CRLR 52; 14:1 CRLR 39; 13:4 CRLR 42] Jesswein also reported that CSLB and pri-



vate consultants have developed an in-house educational program to help reach CSLB's goal of investigating the background and experience of 100% of its licensure applicants. As a result, all CSLB members and staff must attend mandatory classes in order to improve their abilities to promote consumer protection.

Jesswein also announced that the state's 1994-95 budget bill had been signed by Governor Wilson; as part of the budget, the Board will receive funds to hire additional staff for its public information unit and publish its quarterly newsletter, *California Licensed Contractor*.

Also at CSLB's July meeting, Enforcement Committee Chair John Chalker reported that consumer complaint "aging," or reply time, had recently increased to fifty-five days, in contrast to CSLB's goal of thirty-nine days. Chalker attributed the processing delay to the Northridge earthquake and the increase in complaints from the quake area. In reaction to the increase, Chief Deputy Registrar Karen McGagin stated that she would meet with all field staff and return to the Board with an analysis regarding the median age for complaint disposition.

Also at CSLB's July meeting, Licensing Committee Chair Nina Tate announced that the Committee will address three main topics over the next year: fiscal responsibility of contractors, increased education for applicants, and a new classification for home improvement contractors. Tate also suggested that CSLB establish a task force to examine bonding requirements in California, as well as the concept of a state recovery fund.

Finally, CSLB elected Bob Laurie to serve as Board chair and David Lucchetti to serve as vice-chair for 1994-95.

■ FUTURE MEETINGS

October 20-21 in San Jose.

BOARD OF DENTAL EXAMINERS

Executive Officer:
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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. In July, Governor Wilson appointed public member Dorothy Greaves of San Diego and Kit Neacy, DDS, of Los Angeles to BDE. Greaves is the former executive officer of the San Diego County Dental Society; Dr. Neacy is a self-employed periodontist. The Board is currently function with one public member vacancy.

■ MAJOR PROJECTS

Auxiliary Opposition Delays BDE/COMDA Restructuring. As amended May 18, SB 2038 (McCorquodale) would have abolished COMDA and restructured the composition of BDE to provide greater representation for dental auxiliaries on the Board. Under the McCorquodale bill, BDE would consist of six practicing dentists, two registered dental hygienists, two registered dental assistants, and four public members. The bill was based upon an April 1994 report of the Senate Subcommittee on Efficiency and Effectiveness in State Boards and Commissions; in its report, the Subcommittee noted that COMDA is an advisory body which makes recommendations to the Board's Auxiliary Committee, which in turn makes recommendations to the full Board on a limited range of issues related to auxiliary functions. 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 enti-

ties going through the same process." [14:2&3 CRLR 52-53; 14:1 CRLR 41]

However, opposition to the restructuring legislation was registered throughout the summer by both dentists and auxiliaries. Dental auxiliaries and their professional associations were particularly active in arguing that any proposal to abolish COMDA should be deferred until 1998 when the new Joint Legislative Sunset Review Committee undertakes its review of BDE and COMDA as part of the new "sunset" review process under SB 2036 (McCorquodale) (see LEGISLATION). Ultimately, Senator McCorquodale dropped the provision in favor of permitting comprehensive review of the BDE/COMDA structure as part of the Board's "sunset" review.

Infection Control Guidelines Approved. On June 29, the Office of Administrative Law (OAL) approved BDE's adoption of new section 1005, Title 16 of the CCR, which establishes minimum standards for licensees to follow to minimize the transmission of airborne pathogens in health care settings. [14:2&3 CRLR 53; 14:1 CRLR 42; 13:4 CRLR 44] In this action, BDE adopted as minimum standards for dental procedures the recommendations, precautions, and regulations set forth in three specified documents issued by the U.S. Centers for Disease Control. The protocols include minimum standards for protective attire; barrier precautions; use, care, and sterilization of sharp instruments; handwashing; and waste disposal. The Board has instituted a cite and fine program to enforce the use of these protocols by licensees.

In anticipation of OAL's approval of these infection control guidelines, BDE drafted proposed regulatory language regarding a licensure applicant's failure to follow these guidelines during an examination. BDE is considering amendments to sections 1007 and 1035, Title 16 of the CCR, to provide for the dismissal of an examinee from an examination for failure to follow the infection control protocols in new section 1005. At this writing, BDE has not completed drafting the specific language for this proposed rulemaking action.

Onsite Inspection of Conscious Sedation/Anesthesia Permittees. Existing law authorizes BDE to require an onsite inspection and evaluation of a licentiate and the facility, equipment, personnel, and procedures utilized by the licentiate prior to the issuance or renewal of a general anesthesia or conscious sedation permit. On July 29, BDE published notice of its intent to adopt section 1043.5, Title 16 of the CCR, which would provide for the