



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



assessment of a penalty to a licensee for the cancellation of a scheduled onsite inspection and evaluation. [14:2&3 CRLR 53]

Under the proposed regulatory language, whenever a conscious sedation or general anesthesia permittee or applicant cancels an onsite inspection and evaluation, the permittee or applicant must provide BDE with a written reason for the cancellation. If the cancellation is fourteen days or more before the scheduled inspection, the fee paid by the permittee or applicant will apply to the next inspection. If the cancellation is less than fourteen days prior to the scheduled inspection, the permittee or applicant forfeits the fee and must pay another fee before scheduling another inspection. Following a second cancellation, all fees are forfeited and the permit is automatically suspended or denied unless a new onsite inspection is completed with thirty calendar days from the date of the second cancellation. A third cancellation shall be deemed a refusal to submit to an inspection and evaluation and shall result in the automatic denial or revocation of the permit as of the date of the third cancellation.

At this writing, the Board is scheduled to hold a public hearing on this proposed regulatory action on September 23 in Los Angeles.

Remedial Education Regulations. At its May meeting, BDE approved draft guidelines for dental schools regarding the remedial education mandated by AB 194 (Tucker) (Chapter 1299, Statutes of 1992) for license applicants who fail the skills examination three times. [14:2&3 CRLR 53; 12:4 CRLR 76] On September 16, BDE published notice of its intent to adopt section new section 1039, Title 16 of the CCR, which would define the exact nature of the remedial coursework required to make such an applicant eligible for re-examination. Under the proposed regulatory language, the remedial coursework must be taken at a dental school approved by the Commission on Dental Accreditation or a comparable organization approved by BDE; must be completed within one year from the date of notification of the applicant's third examination failure; and must be didactic, laboratory, or both. The proposed regulation would also require the applicant for re-examination to furnish evidence of successful completion of such coursework on a form provided by the Board and signed by the dean of the dental school where the work was completed.

At this writing, BDE is scheduled to hold a public hearing on the proposed adoption of section 1039 on November 4 in Millbrae.

LEGISLATION

Future Legislation. At its July 15-16 meeting, BDE discussed a proposal to add new section 168 to the Business and Professions Code; this new section would seek to ensure that prescriptions for dangerous drugs are issued properly and would require that a dentist examine a patient before writing any prescriptions. One BDE member expressed concern about proposed exceptions to section 168 included in the draft language; however, the Board agreed to pursue this piece of legislation.

Also at its July meeting, the Board voted to sponsor legislation adding new section 1700(e) to the Business and Professions Code, which would make it a misdemeanor for a licensee to practice dentistry while impaired by the influence of drugs or alcohol. Additionally, the Board decided to pursue two legislative changes regarding patient records. BDE will seek to amend Business and Professions Code section 1683 to tighten requirements on patient recordkeeping, and add new section 1680(g) to the Business and Professions Code to require dentists to furnish patient records and any other requested information within fourteen days of a written request from the Board.

SB 2101 (McCorquodale), as amended July 7, authorizes BDE and COMDA to include an examination on California law and ethics in their licensing examinations. This bill was signed by the Governor on September 30 (Chapter 1275, 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 53-54:

SB 2038 (McCorquodale), as amended August 18, is no longer relevant to BDE. A previous version of the bill would have eliminated COMDA and revised the composition of BDE to include six practicing dentists, two registered dental hygienists, two registered dental assistants, and four public members (see MAJOR PROJECTS).

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 BDE; creates a Joint Legislative Sunset Review Committee which will review BDE's performance approximately one year prior to its sunset date; and specifies 11 categories of criteria under which BDE's performance will be evaluated. Following review of the agency and a public hearing, the Committee will make

recommendations to the legislature on whether BDE should be abolished, restructured, or redirected in terms of its statutory authority and priorities. The legislature may then either allow the sunset date to pass (in which case BDE would cease to exist and its powers and duties would transfer to DCA) or pass legislation extending the sunset date for another four years. This bill was signed by the Governor on September 26 (Chapter 908, Statutes of 1994).

AB 2820 (Knight), as amended June 8, provides that it is unprofessional conduct for a licensed dentist to perform, or to hold himself/herself out as able to perform, services beyond the scope of his/her license or competency. This bill would exempt certain research from this provision. This bill was signed by the Governor on August 26 (Chapter 365, Statutes of 1994).

AB 2821 (Knight), as amended July 1, authorizes BDE to require licensees to complete a portion of their required continuing education by taking a certain number of hours of coursework in specific areas adopted in regulations by the Board. This bill was signed by the Governor on August 31 (Chapter 400, Statutes of 1994).

AB 559 (Peace), Existing law requires BDE to create and maintain a central file of all persons who hold a license from the Board; BDE's central file is required to contain prescribed information about each licensee, including (among other things) any judgment or settlement requiring licensees or their insurers to pay any amount of damages in excess of specified amounts for claims alleging negligence of those licensees. Existing law requires insurers providing professional liability insurance, or licensees who are uninsured, to report this information to BDE; under existing law, the reportable amount of damages for dentists is awards over \$3,000. As amended January 24, this bill—sponsored by the California Dental Association—revises the reporting requirement for insurers who provide professional liability insurance to dentists to instead require reporting of only those judgments or settlements over \$10,000 instead of \$3,000. This bill was signed by the Governor on September 10 (Chapter 468, Statutes of 1994).

AB 221 (Areias), as amended August 26, would have created a new category of allied dental health professional called a registered dental hygienist in alternative practice (RDHAP), and authorized RDHAPs to independently provide specified dental hygiene services. [13:2&3 CRLR 64] Additionally, this bill would have required BDE, upon COMDA's recommendation, to adopt by January 1, 1996, regulations prescribing the functions to be performed



by RDHAPs (as an employee of a dentist and independently), educational requirements, supervision levels, and settings; and required an RDHAP to refer patients to a licensed dentist for dental diagnosis and dental treatment. This bill died on the Senate floor.

RECENT MEETINGS

At its July 15-16 meeting, BDE discussed its 1993-94 and 1994-95 budgets. The Board's 1993-94 budget was \$4.6 million, but projected expenditures will exceed that amount by \$129,000. BDE has filed a deficiency request to provide funds to cover the deficit and prove that the Board's 1994-95 budget needs to be increased. The Board noted that it currently has over \$2 million in its reserve fund which, if not used to cover the deficit, must be used to reduce licensing fees. COMDA reported that it will be considering the reduction of its fee structure at its next meeting.

BDE is currently reviewing the duties of dental assistants (DAs) and registered dental assistants (RDAs). By law, BDE must review the list of permissible functions for these categories proposed by COMDA once every seven years. Among these are three provisions which would restrict the performance of certain intra-office duties only to RDAs, prohibiting DAs from performing them. At a May 12 information hearing, dentists and DAs testified that in-office supervision makes DAs and RDAs equally capable of performing these procedures and is the best training method. At this writing, the Board is expected to make its decision regarding the proposed changes at its September meeting.

FUTURE MEETINGS

September 22-23 in Los Angeles.
November 3-4 in Millbrae.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Executive Officer:
Richard P. Yanes
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The Board of Funeral Directors and Embalmers (BFDE) licenses funeral establishments and embalmers. It registers apprentice embalmers and approves funeral establishments for apprenticeship training. The Board annually accredits embalming schools and administers licensing examinations. BFDE inspects the

physical and sanitary conditions in funeral establishments, enforces price disclosure laws, and approves changes in business name or location. The Board also audits preneed funeral trust accounts maintained by its licensees, which is statutorily mandated prior to transfer or cancellation of a license. Finally, the Board investigates, mediates, and resolves consumer complaints.

BFDE is authorized under Business and Professions Code section 7600 *et seq.* The Board consists of five members: two Board licensees and three public members. In carrying out its primary responsibilities, the Board is empowered to adopt and enforce reasonably necessary rules and regulations; these regulations are codified in Division 12, Title 16 of the California Code of Regulations (CCR).

MAJOR PROJECTS

Funding for BFDE Dies with Merger Bill. Intense pressure by the death services industry to defeat a bill to merge BFDE and the Cemetery Board 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 BFDE and the Cemetery Board into a single bureau within the Department of Consumer Affairs (DCA). On June 29, Senator McCorquodale amended the bill to create a merged Board of Funeral and Cemetery Services, rather than a merged bureau; this amendment sought to quell industry opposition to "bureau-izing" the boards, as voiced at a May 9 hearing before the Senate Business and Professions Committee. The amended bill also required the merged board to adopt several consumer protection provisions suggested by the Center for Public Interest Law at the May 9 hearing. [14:2&3 CRLR 55-56]

In late June, the legislature expressed 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.

In August, the death services industry 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. When the bill returned to the Senate, however, Senator McCorquodale urged his colleagues to reject the Assembly's removal of the merger provision; they agreed by a 28-2 vote on August 31, and the bill died. Thus, BFDE will run out of funding on January 1, and also lacks legislative authorization to spend any loan or excess funds it may obtain after that date. Recently, Board Executive Officer Richard Yanes indicated that the Board will "exercise every option to restore its funding," but declined to elaborate on specific options the Board might explore. (See COMMENTARY on page 4 for related discussion.)

Proposed Rulemaking. At its June 23 meeting, BFDE held a public hearing on its proposal to amend section 1258 and adopt sections 1258.1, 1258.2, and 1258.3, Title 16 of the CCR, to clarify disclosure requirements for the sale of caskets; adopt section 1262, to more clearly define and prohibit the practice of "constructive delivery" with regard to items paid for with preneed trust money; and revise section 1241, which currently sets forth grounds for the issuance of citations and fines. [14:2&3 CRLR 57-58] Following the hearing, the Board took the following actions at its June 24 meeting:

- The Board adopted without modification the proposed amendment to section 1241, which adds as grounds for the issuance of a citation any violation of regulatory sections 1258.1, 1258.2, 1258.3, and 1262, and Business and Professions Code section 7685.3. At this writing, this amendment awaits review and approval by the DCA Director and by the Office of Administrative Law (OAL).

- The Board also adopted without modification proposed new section 1258.3, which would require BFDE licensees, when presenting to any person a sales contract for funeral goods or services which also contains charges for cemetery or crematory goods or services, to include on the first page of the contract a statement informing the purchaser that information regarding the cemetery and cremation matters is available from the Cemetery Board. At this writing, this amendment awaits review and approval by the DCA Director and OAL.

- The Board also adopted without modification proposed new section 1262, its prohibition on the practice of "constructive delivery" of merchandise paid for with preneed trust funds. If approved, section 1262 would state that the delivery of merchandise, within the meaning of Business and Professions Code section 7741,