



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
(916) 263-3180

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

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

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

MAJOR PROJECTS

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,



means actual personal delivery to a purchaser, trustor, or beneficiary of merchandise that is used or intended to be used in connection with a preneed arrangement. Any payment received for merchandise, where actual personal delivery of the merchandise will be delayed, shall be held in trust as provided in Business and Professions Code section 7735 *et seq.* until the merchandise is actually and personally delivered to, and is in the immediate possession of, the purchaser. Section 1262 would also provide that neither the delivery of a warehouse receipt nor any other form of "constructive delivery" constitutes delivery of merchandise within the meaning of section 7741. At this writing, this amendment awaits review and approval by the DCA Director and OAL.

• In response to comments made at the June 23 hearing, the Board decided to modify the language of its amendment to section 1258 and new sections 1258.1 and 1258.2, which would clarify disclosure requirements for the sale of caskets.

As originally proposed, the amendments to section 1258 would set forth detailed size, color, and typeface specifications for the required informational notice which must be placed on caskets represented as having a sealing device ("there is no scientific or other evidence that any casket with a sealing device will preserve human remains"). The modifications provide that, in cases where caskets are displayed or sold in catalogues, the required notice must appear on a page at the beginning of the catalogue and must be in at least ten-point, boldface type; no other notice, statement, price, information, picture, or other printing, other than borders or decorations, may appear on that page. The modified language also requires the notice to appear in at least eight-point boldface type at the beginning of the written price list required by Business and Professions Code section 7685.

As originally proposed, new section 1258.1 would require funeral directors to provide, meaning "give for retention," a written or printed price list containing the price range for all caskets offered for sale, and set forth detailed specifications for casket descriptions appearing on price tags. The modifications specify that the statement regarding the price range required by Business and Professions Code section 7685 shall differentiate between the price range for adult caskets, infant caskets, and child caskets, the price range for rental caskets, and the price range for alternative containers, and must include all caskets that are regularly offered for sale. All caskets and alternative containers included in the price range must be included in the

written statement required by section 7685, and all caskets regularly offered for sale must be either physically displayed in the funeral director's casket selection room or displayed photographically.

As originally proposed, new section 1258.2 would interpret Business and Professions Code section 7702 by defining the terms "casket," "alternative container," and "rental casket," establishing specific conditions (including disclosure to and written authorization from the purchaser/renter) for the use of such caskets, and exempting rental caskets and the use/reuse thereof from the provisions of section 7702. The modifications define "rental casket" as a specially designed device used to conceal a rental casket insert containing human remains for purposes of viewing and/or funeral or other ceremony, which may give the outward appearance of being a casket. Under section 1258.2, no part of the rental casket may come into contact with any human remains placed therein or placed within a rental casket insert placed therein, unless that part or lining is disposed of with the rental casket insert and human remains. A "rental casket insert" (formerly called an "alternative container," which term was deleted from the modified version) is an enclosure without ornamentation which has an interior lining and which is designed for the encasement of human remains for burial, cremation, or transit. Under section 1258.2, a rental casket insert shall be used for each human remains displayed in a rental casket and the remains shall be removed from the rental casket, in the rental casket insert, immediately at the conclusion of any viewing, ceremony, or other use.

On August 2, BFDE released these modifications for a 15-day comment period ending on August 17. At its August 19 meeting, the Board adopted further technical modifications to the language of sections 1258.1 and 1258.2, subject to another 15-day comment period. At this writing, the regulatory package awaits DCA and OAL review.

Death Summit Proposals Backburned by Staff. At its February 1994 meeting, BFDE discussed some of the proposals made at the September 1993 "Death Summit," at which industry leaders, consumer advocates, and state officials discussed the poor records of both BFDE and the Cemetery Board in policing abuses within the death services industry. At that meeting, the Board instructed staff to research all the proposals and set up a "priority work plan" under which it would review staff's recommendations at its future meetings from June 1994 until June 1995. [14:2&3 CRLR 56-57; 14:1 CRLR 43-44; 13:4 CRLR 48-49]

Under the "priority work plan," staff was to present the results of the Board's annual preneed trust report and its recommendations on the feasibility of establishing a consumer advisory council at the Board's June 1994 meeting. However, no such presentation was made or discussed at the Board's June or August meetings; in a telephone interview, Executive Officer Yanes indicated that his review of both issues was completed and that he had "informally" briefed the Board on his findings and recommendations.

Audit Contract Rescinded. At the Board's June 24 meeting in Anaheim, Executive Officer Yanes announced the rescission of the Board's contract with DCA's Internal Audit Office (IAO), under which IAO was to develop a preneed trust audit plan and policy for the Board and perform direct audits of BFDE licensees' preneed trust funds. IAO completed two audits for the Board, but Yanes was dissatisfied with their quality. [14:2&3 CRLR 56] Although rescission of the contract will save the Board \$45,000, it has no spending authority after January 1 (*see above*) and it must still find a way to audit the preneed trust fund of any licensee who wishes to assign its funeral director license within 90 days of the filing of the application for assignment. The Board recently acknowledged that it has not been complying with this requirement and that some assignee firms have taken over the assigned business before BFDE has approved the license assignment. Although BFDE directed Yanes at its April meeting to present recommendations on this matter at its June meeting, Yanes made no report; in a telephone interview, Yanes stated that his findings on the matter are "ongoing and have been submitted to the Board through service reports."

LEGISLATION

The following is a status update on bills reported in detail in CRLR Vol. 14, Nos. 2 & 3 (Spring/Summer 1994) at page 58:

SB 2037 (McCorquodale), which would have—among other things—merged BFDE and the Cemetery Board 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, creates a "sunset" review process for occupational licensing agencies within DCA, requiring each to be comprehensively reviewed every four years. SB 2036 imposes an initial "sunset" date of July 1, 1997 on BFDE; however, the 1994-95 Budget Act defunds BFDE 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).

■ LITIGATION

Funeral Security Plans, Inc. v. State Board of Funeral Directors and Embalmers is still pending in the Third District Court of Appeal, awaiting its third decision by that court. *Funeral Security Plans* is an important case interpreting several provisions of the Bagley-Keene Open Meeting Act, Government Code section 11120 *et seq.*, the statute governing meetings of state agencies. The case involves several critical issues: the scope of the "pending litigation" exemption to the open meeting requirement and the procedural requirements accompanying its use; the scope of the attorney-client privilege once the "pending litigation" exemption is properly invoked; the extent to which agencies subject to the Bagley-Keene Act may meet in closed session to discuss and decide whether to adopt an administrative law judge's proposed disciplinary decision, approve stipulated settlements, and grant petitions to terminate license probation and petitions to reinstate licenses or reduce penalties; and the legality of closed sessions of two-member advisory committees of state bodies subject to the Bagley-Keene Act. [14:2&3 CRLR 58; 14:1 CRLR 45; 13:4 CRLR 49] At this writing, a decision is expected in early October.

■ RECENT MEETINGS

At its June meeting, BFDE elected Barbara Repa as its new president and Lottie Jackson as its new vice-president and interim secretary. BFDE also said farewell to Virginia Anthony and Carol Weddle, two longtime Board members whose terms have expired.

At its August meeting, Executive Officer Richard Yanes presented newly-formatted "service reports" in several subject matter areas, including license actions; complaints, citations, and inspections; cases pending at the Attorney General's Office; notices of warning; and citations and fines.

Also in August, Executive Officer Yanes described the contents of a proposed Board newsletter which would be a means of communicating with licensees and the public. The newsletter would contain information on disciplinary actions, answers to questions which industry members may have regarding regulations and statutes, and tips for consumers on questions to ask a BFDE licensee. Yanes stated that he hopes to have the newsletter ready before the end of the year.

■ FUTURE MEETINGS

November 17 in Sacramento.

BOARD OF REGISTRATION FOR GEOLOGISTS AND GEOPHYSICISTS

Executive Officer: Dalton Pollard
(916) 445-1920

The Board of Registration for Geologists and Geophysicists (BRGG) is mandated by the Geologist and Geophysicist Act, Business and Professions Code section 7800 *et seq.* The Board was created by AB 600 (Ketchum) in 1969; its jurisdiction was extended to include geophysicists in 1972. The Board's regulations are found in Division 29, Title 16 of the California Code of Regulations (CCR).

The Board licenses geologists and geophysicists and certifies engineering geologists. In addition to successfully passing the Board's written examination, an applicant must have fulfilled specified undergraduate educational requirements and have the equivalent of seven years of relevant professional experience. The experience requirement may be satisfied by a combination of academic work at a school with a Board-approved program in geology or geophysics, and qualifying professional experience. However, credit for undergraduate study, graduate study, and teaching, whether taken individually or in combination, cannot exceed a total of four years toward meeting the requirement of seven years of professional geological or geophysical work.

The Board may issue a certificate of registration as a geologist or geophysicist without a written examination to any person holding an equivalent registration issued by any state or country, provided that the applicant's qualifications meet all other requirements and rules established by the Board.

The Board has the power to investigate and discipline licensees who act in violation of the Board's licensing statutes. The Board may issue a citation to licensees or unlicensed persons for violations of Board rules. These citations may be accompanied by an administrative fine of up to \$2,500.

The eight-member Board is composed of five public members, two geologists, and one geophysicist. BRGG's staff consists of five full-time employees. The Board's committees include the Professional Practices, Legislative, and Examination Committees. BRGG is funded by the fees it generates.

Governor Wilson recently appointed John Barna and James Rezowalli to BRGG; Barna is Director of College Relations at



Harvey Mudd College in Claremont, and Rezowalli is a licensed geophysicist and owner of JR Associates.

MAJOR PROJECTS

Parrish Resigns; BRGG Selects New EO. On June 30, John Parrish resigned as BRGG's Executive Officer; he had served in that position for less than eight months. During July and August, Michal Moore served as the Board's Interim EO. At its August 26 meeting, BRGG selected Dalton Pollard to serve as its new EO; Pollard has a bachelor of science degree from Stanford and a master of arts degree from the University of California at Los Angeles, both in geology. He worked as a subsurface petroleum geologist for Texaco in Canada from 1958 to 1962, and for Dow Chemical in California from 1962 to 1964; he has been a consulting geologist since 1964, except for a three-year period during which he was the exploration manager and president of a small oil company, managing its exploration and production activities in California, the mid-continent, and Gulf Coast areas.

Hydrogeology Regulations Approved. In March 1994, the Office of Administrative Law (OAL) disapproved BRGG's adoption of new section 3042 and amendments to section 3003, Title 16 of the CCR; the regulatory package defines the term "hydrogeology" and establishes a specialty certification program within BRGG for hydrogeologists. OAL's rejection of the proposed regulatory action was based on its findings that section 3042(c) was unclear, and that BRGG failed to properly respond to all of the comments received during the public comment period. Following OAL's disapproval, BRGG amended the proposed language and released the modified version for an additional 15-day public comment period. [14:2&3 CRLR 60; 14:1 CRLR 46; 13:4 CRLR 50] At its June 3 meeting, BRGG adopted the revised rulemaking package, which was approved by OAL on July 18.

Also at its June 3 meeting, BRGG agreed to establish, under the direction of the Executive Officer, a special committee to develop and administer a one-time hydrogeology examination to identify qualified individuals who can prepare and administer the regular hydrogeology specialty certification examination.

Citation and Fine Regulations. On May 19, BRGG's Professional Affairs Committee held a public hearing on the Board's proposed adoption of new sections 3062, 3062.1, 3062.2, 3062.3, 3062.4, 3063, 3063.1, 3063.2, 3063.3, and 3063.4, Title 16 of the CCR, which would implement BRGG's authority under Business and Pro-

fessions Code sections 125.9 and 148 by establishing a citation and fine system for the intermediate discipline of registrants and certificants for minor violations and of nonregistrants and noncertificants for engaging in activity for which registration or certification is required. [14:2&3 CRLR 59; 14:1 CRLR 46]

Under the proposed regulatory scheme, BRGG's Executive Officer would be empowered to issue citations, which may be accompanied by orders of abatement and/or a fine of at least \$500 but not more than \$2,500; the regulations specify ranges of fines for particular violations. In determining the fine, the Executive Officer must consider the gravity of the violation, the good faith of the person cited, and the history of previous violations. The citation must be in writing, must describe with particularity the offense for which it is being issued, must be served by certified mail on the cited individual, and must inform the cited individual of his/her right to appeal the citation by requesting an informal conference with the Executive Officer. If the Executive Officer affirms the citation after the informal conference, the cited individual is entitled to request a hearing before an administrative law judge.

At its June 3 meeting, BRGG adopted the proposed regulations, which await review and approval by OAL.

LEGISLATION

The following is a status update on bills reported in detail in CRLR Vol. 14, Nos. 2 & 3 (Spring/Summer 1994) at page 60:

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, 1997 for BRGG; creates a Joint Legislative Sunset Review Committee which will review BRGG's performance approximately one year prior to its sunset date; and specifies 11 categories of criteria under which BRGG's performance will be evaluated. Following review of the agency and a public hearing, the Committee will make recommendations to the legislature on whether BRGG 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 BRGG 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 1392 (Speier), as amended August 17, is no longer relevant to BRGG.

RECENT MEETINGS

At its June 3 meeting, BRGG noted that the Department of Parks and Recreation released a request for proposals (RFP) for various services including "water witching," the practice of using bent twigs or sticks to find buried springs or deep underground streams. Because the RFP also calls for geological investigative work to be performed, the Board stated that it is calling for a non-qualified person to practice geology. The Board directed its Executive Officer to notify the Department that the services required in its RFP are inconsistent with state law regarding the regulation of the practice of geology.

Also at its June meeting, the Board discussed its application review process; under the current process, an incoming application is reviewed by BRGG staff, then by the Executive Officer, and then by a professional member of the Board. The Board agreed to simplify this process so that the Executive Officer will refer applications to a professional member of the Board only if he has a problem or question regarding the file.

Also at the June meeting, then-Executive Officer John Parrish reported on BRGG's enforcement activities. According to Parrish, BRGG no longer has a backlog of enforcement cases; it has one case pending at the Attorney General's Office; and it is not receiving complaints at the same rate as in the past.

At its August 26 meeting, BRGG elected geologist Robert Lindblom as Board President and geologist Seena Hoose as Vice-President.

FUTURE MEETINGS

November 18 in Los Angeles.

BOARD OF LANDSCAPE ARCHITECTS

Executive Officer: Jeanne Brode
(916) 445-4954

Authorized in Business and Professions Code section 5615 *et seq.*, the Board of Landscape Architects (BLA) licenses those who design landscapes and supervise implementation of design plans. Prior to 1993, applicants were required to pass the written examination of the national Council of Landscape Architectural Registration Boards (CLARB) in order to qualify for licensure. However, following years of dissatisfaction, BLA decided in May 1992 to discontinue its use of CLARB's exam;