



damages and injunctive relief based on restraint of trade and defamation. Wilcox's motion to strike was based on California's anti-SLAPP (strategic lawsuits against public participation) suit statute, Code of Civil Procedure section 425.16; in very general terms, a SLAPP suit is a meritless suit filed primarily to chill the defendant's exercise of First Amendment rights. CRA filed a cross-complaint against the plaintiffs in the *Saunders* action, as well as other individuals (including Wilcox and her reporting agency), for defamation and conspiracy to unlawfully restrain trade through a boycott of CRA's reporting services. The first amended cross-complaint alleged Wilcox distributed a memorandum to various other CSRs which stated, among other things, that many shorthand reporting agencies were banding together "to permanently put the Alliance to rest once and for all"; reporters were suing CRA and its members for extortion and racketeering; and reporters should tell attorneys representing insurance companies and their policyholders about this litigation so that the "threat" might be enough to make the insurers "back off" from entering into direct contracting agreements with CRA. The memorandum asked CSRs to contribute \$100 each to the *Saunders* lawsuit against CRA. The cross-complaint also alleged that Wilcox told CRA members she would no longer refer them any work or network with them because they were affiliated with CRA.

Characterizing the cross-complaint as a SLAPP suit, Wilcox filed a motion to strike it as to her and her reporting agency pursuant to Code of Civil Procedure section 425.16. The trial court denied the motion, finding that CRA proffered sufficient evidence in opposition to the motion to establish the probability it would prevail on its claims.

According to the Second District, section 425.16 requires the defendant to make a prima facie showing the plaintiff's suit arises "from any act of [defendant] in furtherance of [defendant's] right of petition or free speech under the United States or California Constitution in connection with a public issue." The defendant may meet this burden by showing that the act which forms the basis for the plaintiff's cause of action was a written or oral statement made before a legislative, executive, or judicial proceeding; or such a statement in connection with an issue under consideration or review by a legislative, executive, or judicial body; or such a statement was made in a place open to the public or a public forum in connection with an issue of public interest. Here, the Second District found that Wilcox's alleged defama-

tory statements were clearly made in connection with the underlying judicial challenge to direct contracting; the court found that the statements were made in the context of exhorting CSRs to contribute to the cost of pursuing that litigation. Thus, the Second District found that there is a strong showing those statements are rationally connected to the litigation itself.

For these and other reasons, the Second District directed the trial court to vacate its order denying Wilcox's motion to strike and to enter a new and different order striking the cross-complaint in its entirety as to cross-defendants Sondra Wilcox and Sondra K. Wilcox & Associates, Inc.

RECENT MEETINGS

At CRB's July 23 meeting, the Board's Code of Conduct Committee announced that it is considering changes to the CCR regarding a CSR's duties in relation to rough drafts and certified transcripts; for example, the Committee may propose regulatory language defining what a certified copy must look like, and requiring that a rough draft include a disclaimer on the first page thereof and in a footer throughout identifying it as a rough draft. The Committee added that CRB should more clearly define a reporter's responsibilities regarding these and other issues.

Also at the July 23 meeting, CRB's Public Relations/Advocacy Committee reported that the cost of publishing a licensee newsletter would be \$26,000 per year; the Committee is currently working on a budget change proposal to accommodate the added expense. The Committee also recommended that the Board add a user-friendly index to its lawbook, and noted that it is considering the addition of a "recommended practices" section to the lawbook; this section would be distinctly separated from the mandatory sections of the book and would offer practical advice to practitioners on the handling of various situations.

Also at its July 23 meeting, the Board agreed that it should not pursue the regulation of audio/video recorders, unless it can demonstrate a specific need; at this time, staff does not believe it can make such a showing, although it encouraged people to provide it with examples of abuses in that industry, if they exist. [12:4 CRLR 126]

FUTURE MEETINGS

October 14 in Ontario.
November 10 in Los Angeles.

STRUCTURAL PEST CONTROL BOARD

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

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

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

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

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



On July 19, Governor Wilson appointed Nicholas E. Papadakis to fill a public member position on the Board; Papadakis, from Rancho Palos Verdes, is corporate secretary of Anchor Liquors.

MAJOR PROJECTS

Board Proposes Fee Increase for Applicator Examinations. On September 2, SPCB published notice of its intent to amend section 1948, Title 16 of the CCR, regarding certified applicator examination fees; the Board is proposing a \$5 increase in the fee which county agricultural commissioners may charge for administering SPCB's certified applicator examination, which all applicators are required to take. In 1990, SPCB entered into agreements under which county agricultural commissioners' offices throughout the state administer the examination; SPCB agreed to reassess the fee structure once the program was established. Counties have reported that the current fee of \$10 is insufficient to cover the costs of proctoring and scoring the examination, issuing the temporary applicator certificate, and completing and submitting the required documentation to SPCB. At this writing, SPCB is scheduled to hold a public hearing on the proposed fee increase at its October 21 meeting.

Section 8516 Requirement for Structural Reinspection Referred to Committee for Review. Business and Professions Code section 8516(b) requires that an inspection must be made before a registered company or licensee begins work relating to wood-destroying pests or organisms; section 8516(b)(12) requires the inspection report to disclose that a reinspection of the structure must be performed within four months of the original inspection, if the consumer requests such a reinspection and as long as an estimate or bid for making repairs was given with the original inspection. Prior to the Board's July 28 meeting, some structural pest control operators had asked for a determination of whether section 8516 requires them to reinspect structures if their bid was for chemical treatment only and not for structural repair. In response, DCA's legal office issued an opinion stating that the section requires reinspection of a structure if requested by the person ordering the original report, even if the company bid only on chemical treatment. At its July 28 meeting, the Board referred this matter to its Committee to Review Laws and Regulations, asking it to further clarify the repair and reinspection requirement.

Rulemaking Update. A large package of proposed changes and additions to SPCB's regulations adopted by SPCB at

its February 1994 meeting—covering subjects such as quality criteria for SPCB licensees, continuing education requirements, and "Notice of Re-Entry" sign specifications—has been dropped by the Board. Recent changes in SPCB staffing made it impossible to determine where each regulation stood in the process, and the Board decided to pull all the regulations which have not yet been approved by the Office of Administrative Law and start the process over again. Specifically, the rulemaking package would have amended sections 1919, 1937.14, 1937.16, 1950.5(h), 1970, 1970.4, 1971, 1973, 1983, 1990, 1991, 1996, and 1998, repealed section 1999.1, and adopted new sections 1974, 1990.1, and 1991.1, Title 16 of the CCR. [14:2&3 CRLR 107-08] The Board directed its legal counsel to review these sections, and will reintroduce the proposed regulatory changes either as a package or individually in the future.

LEGISLATION

The following is a status update on bills reported in detail in CRLR Vol. 14, Nos. 2 & 3 (Spring/Summer 1994) at pages 108-09:

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 SPCB; creates a Joint Legislative Sunset Review Committee which will review SPCB's performance approximately one year prior to its sunset date; and specifies 11 categories of criteria under which SPCB's performance will be evaluated. Following review of the agency and a public hearing, the Committee will make recommendations to the legislature on whether SPCB should be abolished, restructured, or redirected in terms of its statutory authority and priorities. The legislature may then either allow the sunset date to pass (in which case SPCB would cease to exist and its powers and duties would transfer to DCA) or pass legislation extending the sunset date for another four years. This bill was signed by the Governor on September 26 (Chapter 908, Statutes of 1994).

SB 2070 (Calderon), as amended August 8, prohibits a fire department from charging registered companies a fee in excess of \$25 for receiving required notices of fumigations; establishes a new licensure category called "structural pest control applicator," defined as any individual who is licensed by SPCB to apply a pesticide, rodenticide, or allied chemicals or substances for the purpose of elim-

inating, exterminating, controlling, or preventing infestation or infections of pests or organisms included in Branch 2, Branch 3, or wood roof cleaning and treatment on behalf of a registered company, and specifies revised examination, application and renewal requirements for an applicator; increases certain civil penalties and fees; revises requirements applicable to inspection reports and other documents, as specified; requires the posting of inspection tags and completion tags, as provided; and provides procedural guidelines regarding disciplinary action against licensees whose employees violate personal protection regulations. This bill was signed by the Governor on September 25 (Chapter 844, Statutes of 1994).

SB 250 (Kelley), as amended June 6, permits an applicant for licensing or certification as a qualified applicator to elect to be trained in the handling, control, and techniques of removal of Africanized honey bees; authorizes the Director of Pesticide Regulation to develop or approve a program to train applicants in this specialty; permits an applicant for a Branch 2 license from SPCB to be certified in the handling, control, and techniques of removal of Africanized honey bees; and requires SPCB to develop or approve such a program. This bill was signed by the Governor on July 20 (Chapter 298, Statutes of 1994).

AB 1851 (Connolly). Under existing law, fumigation shall be performed only under the direct and personal supervision of a licensed individual. Existing law provides a list of lethal fumigants, including chloropicrin, and a list of simple asphyxiants. As amended May 31, this bill removes chloropicrin from the list of lethal fumigants; defines the term "warning agent" as any agent used in combination with any fumigant that lacks warning properties and includes chloropicrin as a warning agent; authorizes SPCB to adopt and amend, by regulation, a list of warning agents; authorizes, instead of requires, SPCB to adopt, by regulation, a list of simple asphyxiants; and provides that furnishing a notice of work completed prior to the completion of the work specified in the contract is a ground for disciplinary action. This bill was signed by the Governor on July 20 (Chapter 282, Statutes of 1994).

AB 2780 (O'Connell), as amended August 25, is no longer relevant to SPCB.

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

RECENT MEETINGS

At its July 28 meeting, SPCB directed staff to apply for a "special local need permit" from the Department of Pesticide Regulation to modify the concentration of



methyl bromide used in fumigation. Currently, the methyl bromide fumigation solution consists of 99.5% methyl bromide and .5% chloropicrin, the tear-gas type of warning agent which alerts those re-entering a facility that the odorless methyl bromide has been applied. The permit would allow the mixture to contain 100% methyl bromide to which chloropicrin would then be added manually. According to the Board, this method provides a more effective warning than if chloropicrin is merely included in the original mixture; this method is currently used with Vikane, a sulfuryl fluoride fumigant.

Also at its July 28 meeting, the Board considered staff's recommendation to prescribe the minimum standard of chloropicrin to be used as a warning agent [14:2&3 CRLR 109]; following discussion, SPCB decided that it is more appropriate to follow the manufacturer's label for the amount of chloropicrin to be used in fumigation rather than to adopt a regulation prescribing a certain amount.

At its July 28 meeting, the Board decided to take no action on a proposal to establish a recovery fund which could reimburse consumers for damages caused by structural pest control operators who become insolvent or go out of business. [14:2&3 CRLR 109]

Also on July 28, the Board reported that a draft of its mission and vision statements had been prepared and would be presented at the October meeting. The Board also postponed until its October meeting discussion on whether it should establish a committee to review and revise the first page of the "Wood-Destroying Pests and Organisms Inspection Report," which was originally revised less than two years ago. [13:1 CRLR 70] SPCB also postponed a discussion of a delineation of the "gray areas" between structural and agricultural pest control until the Board receives input from county agricultural commissioners throughout the state.

■ FUTURE MEETINGS

October 21 in San Francisco.
December 8-9 in Sacramento.
February 25, 1995 in Oakland.

BOARD OF EXAMINERS IN VETERINARY MEDICINE

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Pursuant to Business and Professions Code section 4800 *et seq.*, the Board

of Examiners in Veterinary Medicine (BEVM) licenses all doctors of veterinary medicine (DVMs), veterinary hospitals, animal health facilities, and animal health technicians (AHTs). The Board evaluates applicants for veterinary licenses through three written examinations: the National Board Examination, the Clinical Competency Test, and the California State Board Examination.

The Board determines through its regulatory power the degree of discretion that veterinarians, AHTs, and unregistered assistants have in administering animal health care. BEVM's regulations are codified in Division 20, Title 16 of the California Code of Regulations (CCR). All veterinary medical, surgical, and dental facilities must be registered with the Board and must conform to minimum standards. These facilities may be inspected at any time, and their registration is subject to revocation or suspension if, following a proper hearing, a facility is deemed to have fallen short of these standards.

The Board is comprised of six members—four licensees and two public members. The Governor appoints all of the Board's DVM members; the Senate Rules Committee and the Assembly Speaker each appoint one public member. Board members serve four-year terms. The Board has eleven committees which focus on the following BEVM functions: continuing education, citations and fines, inspection program, legend drugs, minimum standards, examinations, administration, enforcement review, peer review, public relations, and legislation. The Board's Animal Health Technician Examining Committee (AHTEC) consists of the following political appointees: three licensed veterinarians, three AHTs, and two public members.

■ MAJOR PROJECTS

BEVM Considers Strategic Plan. At its July 7-8 meeting, BEVM reviewed a draft version of a long-term strategic plan for the Board. Among other things, the plan states that the Board's mission is to administer an examination that measures minimum competency, is job-related, and ensures that only those individuals possessing the necessary qualifications are eligible to practice veterinary medicine; maintain enforcement priorities, procedures, and a citation and fine program to help eliminate incompetent veterinarians and unlicensed practice in California; ensure that all premises (including mobile units) where veterinary medicine, dentistry, or surgery is practiced are maintained in a clean and sanitary condition; establish and enforce the minimum standards of veteri-

nary practice in California; establish programs in consumer education, and encourage veterinarians to provide consumers with written estimates of costs and copies or summaries of medical records; hold regular public meetings and regularly review all rules and regulations for relevancy and currency; and administer the Alcohol and Drug Diversion Program for substance-abusing veterinarians. Among other things, the Board's goals during 1994-99 include validated testing for license renewal at eight-year intervals; the assignment of a Board consultant to work with the investigator on each disciplinary case; the implementation of a mediation program; increased enforcement staff; the use of computer technology to improve testing; and the inclusion of educational information pertaining to minimum standards of practice during premises inspections.

At BEVM's September 15-16 meeting, the Board noted that the Department of Consumer Affairs (DCA) is concerned with the staff time and costs involved in some of the goals included in BEVM's strategic plan; DCA Interim Director Dr. C. Lance Barnett asked the Board to prioritize its goals and objectives and identify the costs and staff time associated with each goal. Following discussion, BEVM directed staff to identify the personnel years and actual costs involved with each goal and objective, and agreed to postpone the final completion of the strategic plan until those issues are resolved.

DCA Completes Occupational Analysis. At BEVM's July 7-8 meeting, Nick Fittinghoff, Program Analyst with DCA's Office of Examination Resources (OER), reported that DCA had completed the three-year occupational analysis of the practice of veterinary medicine. [14:2&3 CRLR 112; 11:3 CRLR 112; 11:2 CRLR 108] The purpose of the analysis was to establish a list of the tasks most commonly performed by veterinarians and the knowledge, skills, and abilities required to perform them; this information will be incorporated into BEVM's examination blueprint.

At BEVM's September meeting, Board members Nancy Collins and Al Aldrete reported that they spent six days reviewing the occupational analysis, and stated that they found many errors in the report; following discussion, the Board agreed to request that OER revise the report and make the necessary corrections, and to non-adopt the occupational analysis until all of the corrections are made.

BEVM Addresses Referral Controversy. At its September 15-16 meeting, BEVM discussed the legal May 27 opin-