



implement the infraction authority granted to DCA's boards and bureaus by SB 2044 (Boatwright) (Chapter 1135, Statutes of 1992). [12:4 CRLR 78] Currently, a BEAR field representative is undergoing training in cooperation with DCA's Division of Investigation on legal and practical matters involved in issuing citations. Also, the three bureaus have created an Unregistered Activity Unit to monitor yellow pages and other public information sources in an effort to uncover possible unregistered activity to be targeted for infraction sanctions.

BEAR is also attempting to implement provisions of SB 2044 which provide that if, upon investigation, BEAR has probable cause to believe that a person is advertising in a telephone directory with respect to the offering or performance of services, without being properly licensed by the Bureau to offer or perform those services, the Bureau may notify the telephone company furnishing services to the violator to disconnect the telephone service furnished to any telephone number contained in the unlawful advertisement. According to BEAR Chief Keller, DCA is working with officials of the Public Utilities Commission to implement this authority.

Additionally, Keller reports that Bureau staff is attempting to communicate with firms which are now required to register with BEAR as a result of provisions of SB 2044 which expanded BEAR's scope of authority to include service dealers who repair cellular telephones, facsimile machines, photocopiers, and equipment used or sold for home office use.

**BEAR Chief Leads Effort to Streamline DCA.** As vice-chair of a steering committee appointed by DCA Director Jim Conran, Bureau Chief Keller is attempting to identify redundancies in DCA agencies' operations which could be eliminated or consolidated so that the agencies' limited resources would be redirected to enforcement and consumer protection activities. The steering committee is directing the work of five task forces which are investigating the following activity areas for possible efficiencies: complaint intake; complaint mediation; administration; enforcement; and applicant tracking/licensing. According to Keller, a number of possible efficiencies have been identified, such as consolidating the unregistered activity enforcement of various bureaus and/or agencies (*see supra*).

Keller is receptive to public comments and criticisms aimed at improving the operations of BEAR and DCA. According to Keller, DCA believes that "public involvement is a critical and irreplaceable element in carrying out its mission to protect and

empower the consumer while maintaining a fair and competitive marketplace."

**Personnel Changes.** BEAR Deputy Chief Curt Augustine is expected to return to the Bureau in February after serving ten months on special assignments. Other personnel changes include the retirement of longtime Program Manager George Busman on December 30; Richard Kuepper, BEAR's southern California Field Representative, was appointed to succeed him as of January 4.

## RECENT MEETINGS

On November 6, BEAR staff sponsored a post-Advisory Board public meeting; the keynote speech at that meeting was presented by Fay Wood, the last president of the Advisory Board. Wood noted the success of the Board in maintaining two-way communication between the Bureau and the public on behalf of the consumer. Along with all the former Board members in attendance, Wood pledged to continue to be available to the Bureau for project work in whatever capacity the Chief may request.

## FUTURE MEETINGS

According to BEAR Chief Keller, Bureau staff will conduct three public meetings per year in order to generate industry and public comments on key issues. Currently scheduled are a May 21 meeting in San Diego and a November 5 meeting in Los Angeles.

## BOARD OF FUNERAL DIRECTORS AND EMBALMERS

*Executive Officer: James B. Allen (916) 445-2413*

**T**he Board of Funeral Directors and Embalmers 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. The Board 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.

The Board 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

**Rulemaking Update.** On November 13, Office of Administrative Law approved the Board's adoption of section 1240 *et seq.*, Title 16 of the CCR. The new regulations establish a system for the issuance of citations and orders of abatement, set forth a range of fines for violations by funeral directors and embalmers of the Funeral Directors and Embalmers Law and the regulations adopted by the Board, and provide for an appeal process. The regulations also establish a system for the issuance of citations to nonlicensees who illegally engage in activity for which a license is required. [12:4 CRLR 79]

**Board Considers CFDA's Requests for Clarification.** By letter of October 27, the California Funeral Directors Association (CFDA) presented the Board with several questions regarding statutory interpretation of various provisions added to the Business and Professions Code by AB 3746 (Speier) (Chapter 797, Statutes of 1992); CFDA requested that the Board's clarification of the questions be set forth in regulation form. In response, the Board considered the questions and proposed regulatory responses at its November 23 meeting.

CFDA's first three questions concerned interpretations of Business and Professions Code sections 7685 and 7685.1. Section 7685 states that a funeral director shall provide to any person, upon beginning discussion of prices or of the funeral goods and services offered, a written statement or list which, at a minimum, specifically identifies a particular casket or casket by price and by thickness of metal, or type of wood, or other construction, interior and color, in addition to other casket identification requirements under federal regulations, when a request for specific information on a casket or caskets is made in person by any individual. Section 7685.1(a) requires funeral directors to place the price on each casket in a conspicuous manner; individual price tags on caskets must include the thickness of metal, or type of wood, or other construction, as applicable, in addition to interior and color information. CFDA's concerns regarding these sections are whether the term "provide" as used in section 7685 means give to the consumer for retention; whether



## REGULATORY AGENCY ACTION

identification by color means the manufacturer's color name or the generic color, and how this requirement applies to hardwood casket that are identified by shade, wood, and finish; and how the requirement for casket price tags affects caskets sold by catalog.

Board Executive Officer Jim Allen presented proposed draft language for new section 1258.1, Title 16 of the CCR, which would address each of these concerns. As drafted, section 1258.1 would state that the term "provide" as used in Business and Professions Code section 7685 means "to give for retention to persons who inquire in person about funeral arrangements or the prices of funeral goods or services." Further, the section would provide that "casket descriptions shall be sufficiently descriptive so as to provide a reasonably accurate impression of the casket including its color. The color description may be limited to the manufacturer's color name if that name is sufficiently descriptive. The description of wood caskets shall specify whether the finish is natural, painted, or stained; and, whether the finish is dark, medium, or light." Finally, section 1258.1 would provide that Business and Professions Code section 7685.1(a) is applicable to caskets displayed and/or sold by catalog or photograph, regardless of whether the funeral director may also have an actual display of caskets.

CFDA's proposed regulatory language to address these issues would similarly state that the statement or list required by Business and Professions Code section 7685 must be provided for retention by any individual requesting information in person on a casket or caskets; casket color is to be described in either the manufacturer's color or generic color, and the exterior color for wooden caskets is to be expressed in shade of color; and each funeral director shall in a conspicuous manner place a price tag on each casket offered for sale, which shall include a specified statement as to the casket's characteristics. The Board concluded that further analysis and comparison of the two proposals is required and sent both proposals to staff for further review.

Next, CFDA requested an interpretation of Business and Professions Code section 7745, which requires every funeral director to present to the survivor of the deceased who is handling the funeral arrangements or the responsible party a copy of any preneed agreement which has been signed and paid for in full or in part by or on behalf of the deceased and is in the possession of the funeral director. Pursuant to section 7745, the copy may be

presented in person, by certified mail, or by facsimile transmission, as agreed upon by the survivor of the deceased or the responsible party. A funeral director who knowingly fails to present a preneed agreement to the survivor of the deceased or the responsible party shall be liable for a civil fine equal to three times the cost of the preneed agreement, or \$1,000, whichever is greater. CFDA's questions regarding this requirement concern when the funeral director must present the copy of the preneed contract to the survivor or responsible party, the role of the Board in enforcement when violations are subject to civil penalties, and whether the Board may include sanctions for violation of this section in its citation and fine regulations (*see supra*).

Regarding the first issue, Executive Officer Allen drafted proposed regulatory section 1275.1, which would require that "[w]hen the survivor or responsible party is personally present, compliance with Business and Professions Code section 7745 shall require presentation of the preneed agreement upon beginning discussion of funeral arrangements, funeral goods or services, and before presentation of any other documents or price lists. If contact with the survivor or responsible party is not made in person, the presentation shall be made in one of the prescribed manners agreed to, as soon as practicable after contact is made with the survivor or responsible party, and before any funeral goods or services, other than removal and storage of the decedent's remains, are provided." CFDA objected to Allen's draft on the basis that it failed to address the situation when there are no known survivors and a responsible party is not identifiable. Accordingly, CFDA's proposed language would require the funeral director to present the copy "as soon as is practical" to the survivor or responsible party, and would provide that "[t]his requirement shall not apply when there is no known survivor or survivors of the deceased or when the individual prior to death has specifically prohibited his or her relatives by written instruction from selecting funeral arrangements and the funeral director is faithfully fulfilling the decedent's wishes pursuant to Section 7100 of the Health and Safety Code." Following discussion, the Board agreed that further review of these proposals is appropriate and referred the language back to staff.

Regarding the question concerning the Board's enforcement powers, Department of Consumer Affairs legal counsel Robert Miller stated that section 7745 does not authorize the Board to fine a licensee for violation of the provision; however,

Miller opined that the Board may be able to appoint someone to go to court and seek the "civil fine" mentioned in the statute. The Board directed Miller to research the matter further and report his findings at the next meeting.

Finally, CFDA requested clarification regarding Business and Professions Code section 9662, which requires disclosure of certain information regarding the Cemetery Board on the first page of any contract for goods and services offered by a cemetery authority or crematory; CFDA's concern is what obligation funeral directors have in presenting this information when cremation arrangements are handled by a funeral director, paid by cash advance, and the consumer has no direct dealing with the cemetery or crematory licensed by the Cemetery Board. CFDA proposed regulatory language providing that the disclosure required by section 9662 is applicable to all funeral directors' sales contracts which contain both funeral goods and services and cemetery or cremation services. Executive Officer Allen initially stated that the Board has no authority to interpret section 9662, because it is part of the Cemetery Board's enabling act and does make any reference to the Board of Funeral Directors and Embalmers, and suggested that the Board write a formal letter to the Cemetery Board asking it to address the issue. However, after several public comments expressing significant concern regarding the matter, the Board directed staff to research the issue further and make recommendations at the next meeting.

In addition to its questions regarding AB 3746, CFDA also requested clarification of section 1258, Title 16 of the CCR, which requires that there be prominently displayed, on every casket having or represented as having a sealing device of any kind, a notice stating that there is no scientific or other evidence that any casket with a sealing device will preserve human remains. According to CFDA, this regulation fails to address caskets sold by catalog or by special order; it does not address the use or prohibition of mitigating or additional language statements; and consumers have only a brief opportunity to see the disclaimer while the casket is being selected.

Accordingly, Board staff presented draft amendments which would require the notice to be clearly visible to the public; require that the statement be printed in at least ten-point, bold-face type on a card of no less than three inches by five inches in dimension and provide that no other notice, statement, price, information, picture, or other printing, other than borders or decorations, shall appear on the card;



and provide that in cases where caskets are displayed in and/or sold from catalogs or pictures, the notice shall be affixed to or printed on the face of the picture or the page containing the picture of any casket having or represented as having a sealing device.

CFDA presented its own proposed amendments to section 1258, which would provide that casket price lists required by Business and Professions Code section 7687 that offer for sale a casket or caskets represented as having a sealing device of any kind shall have prominently printed the following statement: "There is no scientific or other evidence that any casket with a sealing device will preserve human remains." Following discussion, the Board decided to incorporate aspects of both versions and directed staff to notice the proposed amendments.

Next, CFDA requested that the Board define and prohibit the practice of "constructive delivery" of funeral merchandise. Business and Professions Code section 7735 *et seq.* provides that no funeral director shall enter into or solicit any preneed arrangement, contract, or plan, requiring the payment of money or the delivery of securities to pay for the final disposition of a dead human body, funeral services, or the furnishing of personal property or funeral merchandise, unless the contract requires that all money paid directly or indirectly and all securities delivered under the agreement will be held in trust for the purpose for which it was paid or delivered until the contract is fulfilled according to its terms. However, Business and Professions Code section 7741 exempts from the "held in trust" requirement payment for merchandise that is delivered as soon as it is paid for. According to CFDA, some firms are engaging in constructive delivery of funeral or crematory merchandise by having consumers purchase the merchandise and enter into a warehouse contract to store the merchandise until death or revocation; when the merchandise is brought to the warehouse for storage, constructive delivery is alleged to have occurred. As a result, the funeral director or preneed marketer avoids the requirement that the purchase price be held in trust. CFDA recommended that the Board adopt regulatory language prohibiting the practice of constructive delivery for caskets and alternative containers.

As a result, Board staff drafted proposed section 1262, Title 16 of the CCR, which would state that the delivery of merchandise, within the meaning of Business and Professions Code section 7741, means actual personal delivery to a pur-

chaser, trustor, or beneficiary of merchandise that is used or is 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 shall constitute delivery of merchandise within the meaning of Business and Professions Code section 7741. The Board, which previously proposed section 1262 in 1990-91 but dropped it without action [11:1 CRLR 61; 10:1 CRLR 69], referred the matter to its Preneed Committee and requested that a report be presented at the next Board meeting.

CFDA also requested that the Board define and exempt rental caskets from Business and Professions Code section 7702, which provides that the use of any casket or part of a casket which has previously been used as a receptacle for, or in connection with, the burial or other disposition of a dead human body constitutes grounds for disciplinary action; however section 7702 does not apply to exterior casket hardware which is not sold to the purchaser. According to CFDA, casket companies currently market a rental casket that is an oversized casket with an alternative container inside; the alternative container is fully lined and much of the casket interior is attached with velcro to facilitate replacement after every use. According to CFDA, the alternative container is sold and the casket shell is rented and reused a dozen times or more. However, CFDA contends that some funeral directors have started placing a plastic lining in any casket normally offered for sale, renting that casket, and after its use returning that casket to normal inventory for sale. CFDA suggested that regulatory language be adopted defining the term rental casket, authorizing the use of rental caskets as defined, and providing that such caskets may be sold provided the consumer is made aware of the previous use.

In response, Board staff's proposed regulatory section 1258.2 would specifically exempt rental caskets from the scope of Business and Professions Code section 7702, if the purchaser/renter is notified in writing and prior to entering into any agreement, that the rental casket is designed to be reused and may have previously been used, agrees to the previous use and/or reuse, and acknowledges the

notification and express agreement in writing. The proposed rule would also define the term "rental casket" to mean a specially designed device used to surround, encase, and conceal an alternative container containing human remains, for purposes of viewing and/or funeral or other ceremony, and may give the outward appearance of being a casket; provide that no part of a rental casket, including its lining, shall come into contact with any human remains placed therein or placed within an alternative container placed therein, unless that part or lining is disposed of with the alternative container and human remains; require that a new alternative container must be used for each human remains displayed in a rental casket and the remains must be removed from the rental casket, in the alternative container, immediately at the conclusion of any viewing, ceremony, or other use, or as soon thereafter as reasonably practicable; and provide that no rental casket shall be used or reused after it has been soiled, stained, or otherwise contaminated by or from any human remains. In anticipation of receiving more input on the topic, the Board decided to wait until its next meeting before acting on this proposed regulatory language.

**Board Discusses Variations in Required Price Range Disclosures.** Also at its November 23 meeting, the Board discussed the requirement in Business and Professions Code section 7685 that funeral directors provide a statement to any person, upon beginning discussion of prices or of the funeral goods and services offered, which contains the price range for all caskets offered for sale. Board staff is apparently finding wide variations in price range disclosures, including the following:

-A funeral director specifies a price range for caskets of from \$50 to \$6,000. However, the \$50 "casket" is actually an alternative container used for direct cremations; the least expensive casket sells for \$450.

-A funeral director specifies a price range for caskets of from \$75 to \$9,000. However, the caskets ranging from \$75 to \$400 are all infants' and children's caskets; adult caskets start at \$500. The price range statement makes no distinction between infant and adult caskets.

-The funeral director specifies a price range for caskets of from \$500 to \$5,000. In the funeral director's casket storage area or garage, there are four or five cloth-covered, flat-top caskets that sell for \$225. According to an employee, these caskets are used for direct burials and direct ship-outs; they are neither displayed or offered for sale.



Staff noted that the intent of the casket price range disclosure is to provide the consumer with information. However, if this information is inconsistent, it is difficult for the consumer to make reasonable comparisons; if this information is misleading or deceptive, it is of no value to the consumer and may even be detrimental. As a result, staff recommended that there be some uniformity in the disclosures; for example, prohibiting the price range from containing prices for alternative containers and/or children's caskets. The Board agreed to continue its discussion of this issue at its January meeting.

**Board Drafts Mission Statement.** At its September 30 meeting, the Board discussed adopting a formal Board mission statement which would outline its purpose and general goals. Board member Barbara Repa emphasized that the Board must be careful not to make the goals too general or lofty, and destroy the benefit of such a statement—its use as a practical guide in making tough policy decisions. Vice-president Carol Weddle appointed Repa and Lottie Jackson to a committee to draft the statement.

At its November 23 meeting, the Board reviewed the draft language submitted by the committee, which states that the Board's mission is to promote and protect the safety, health, and welfare of the consumer and support programs that foster consumer awareness. The committee also presented the following goals for the Board's consideration:

- **Enforcement:** to investigate all complaints and make the findings known to both parties in a fair and timely manner.
- **Regulation:** to protect consumers from fraudulent or deceptive practices in service and sales, and to guide members of the industry by clarifying, encouraging, and supporting appropriate regulations.
- **Education:** to foster consumer awareness, both of the regulations and laws that guarantee their rights and of how to enforce those rights; and to help consumers make informed choices by providing information about the products and services available and by exposing fraudulent or deceitful information, advertising, and other misleading practices.
- **Participation:** to encourage consumer participation in the complaint and regulation process with the assurance of full and sympathetic consideration.
- **Safety:** to protect against products and services that are hazardous to health or life.

In hopes of receiving more public comment, the Board decided to wait until its January meeting before acting on the proposed draft. Repa stressed that it is important

to get the industry's reaction to the draft and also encouraged the public to present written comments before the January meeting.

## LITIGATION

**In *Funeral Security Plans, Inc. v. Board of Funeral Directors and Embalmers*, No. 3CIV0011460** (Third District Court of Appeal), Funeral Security Plans, Inc. (FSP) is challenging the trial court's rejection of its allegations that the Board repeatedly violated the Bagley-Keene Open Meeting Act, Government Code section 11120 *et seq.* [12:4 CRLR 80] FSP, a seller of preneed funeral contracts, contends that the Board, its regulator, has routinely ignored requirements of the Act by conducting parts of its factfinding, deliberation, and actions on public business in improper closed sessions. At this writing, both sides have filed their briefs on appeal; the Third District has not yet scheduled oral argument. (See *supra* FEATURE ARTICLE for related discussion.)

On September 30 in *People v. Funeral Security Plans, Inc., et al.*, No. 205308, a separate action involving the Board and FSP, Riverside County Superior Court Judge Edward Webster granted the Board's request for a permanent injunction against FSP and ordered the appointment of a receiver to take custody of more than \$16 million in preneed funeral arrangement trust funds administered by FSP. According to the Board, approximately 90 licensed funeral homes and nearly 14,000 California consumers are potentially affected by FSP's improper administration of the trust funds; for example, the Board contends that FSP invested approximately \$16 million in trust funds into annuities issued by Individual Assurance Company (IAC), which thereupon entered into a reinsurance agreement with Funeral Security Life Insurance (FSLife), a wholly-owned subsidiary of FSP. Defendant David W. Newcomer, one of the individual trustees of the preneed funeral arrangement trust fund, is also president and one-third owner of both FSP and FSLife. [12:4 CRLR 80]

The court found that the defendants had engaged in unfair competition and unfair business practices in violation of Business and Professions Code section 17200. Specifically, the court found that defendants had engaged in the following activities:

- charged a surrender fee on the annuities to purchasers who died and were not brought to the agreed-upon funeral home;
- failed to allow the Board access to preneed trust records until the initiation of the lawsuit;

—failed to timely honor cancellation requests prior to the commencement of the lawsuit;

—appointed their two California lobbyists, Joseph Ternes and Robert Houston, as co-trustees with Newcomer;

—removed the institutional trustee, First Interstate Bank, contrary to the contract provisions in the purchasers' agreements;

—self-dealt with trust assets by purchasing IAC annuities which were reinsured with FSLife;

—created a conflict of interest with the beneficiaries of the trust;

—failed to keep the beneficiaries of the trust informed;

—failed to inform the Board about the reinsurance agreement; and

—failed to inform the co-trustees about the reinsurance agreement.

The court enjoined the defendants from engaging in various practices and ordered them to allocate additional interest income to the funeral homes; refrain from interfering with the Board's reasonable access to trust records; refund to canceling purchasers all annuity cancellation fees; reimburse purchasers of chapel caskets who canceled or stopped making payments by the amount paid in (approximately \$150,000); and reimburse the state for investigation costs and attorneys' fees (approximately \$420,000). The court also assessed civil penalties totaling \$362,025 based on a formula of \$25 per consumer, finding that defendants breached their trust as to each consumer.

Although the judgment was signed and entered, defendants were granted a stay pending their appeal of the decision.

## RECENT MEETINGS

At its September 30 meeting, the Board agreed to cut its meeting schedule from six times per year to four times per year, to help reduce expenditures. The Board also discussed consolidating licensing examinations, for both funeral directors and embalmers, as a possibility for immediate expenditure reduction.

During the course of the September meeting, new member Barbara Repa was elected Secretary for the remainder of 1992.

At the end of the September meeting, Executive Officer Jim Allen presented his report on license actions. Board member Barbara Repa questioned one of the specific name changes that Allen had approved, and asked if Board members had any means to affect these decisions. Allen explained that all authority to approve such changes has been delegated to the executive officer, but added that, in order



to receive different perspectives, he submitted all proposed name changes to competing businesses in the petitioner's community, and to all Board members, before making a final decision.

## ■ FUTURE MEETINGS

July 23 in southern California.  
October 28 in northern California.

## BOARD OF REGISTRATION FOR GEOLOGISTS AND GEOPHYSICISTS

*Executive Officer:*  
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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. Recently, two vacant public member positions on BRGG were filled: Robert Lindblom was appointed to one of the vacancies by Governor Wilson, and Assembly Speaker Willie Brown appointed John Larson, former chair of the Fair Political Practices Commission, to the other vacant seat.

## ■ MAJOR PROJECTS

**Hydrogeology Specialty Update.** The Board is continuing to seek the creation of a hydrogeology specialty under its aegis; hydrogeology is the application of the science of geology to the study of the occurrence, distribution, quantity, and movement of water below the surface of the earth, especially the interrelationships of geologic materials and processes with water, and with particular emphasis given to groundwater quality. [12:4 CRLR 81] Only licensed geologists would be eligible for certification as a hydrogeologist, but an applicant could apply for both registration as a geologist and certification as a hydrogeologist at the same time. Although the Board has decided to commence the rulemaking process necessary to create the hydrogeology specialty, notice of BRGG's intent to adopt such regulations has not been published in the *California Regulatory Notice Register* at this writing. Also, the Board has yet to sponsor the necessary legislation enabling it to certify hydrogeologists and to permit—through a grandparent clause—certain qualified geologists presently practicing hydrogeology to be certified without having to pass the specialty examination (*see infra* LEGISLATION).

**Examination Development and Validation Process Update.** According to BRGG, the development and validation of its licensing examination by Donnoe & Associates is proceeding on schedule, and was expected to be presented to the Board by the scheduled deadline of January 1993. [12:4 CRLR 81] At its November 6 meeting, the Board discussed the exam, the first part of which contains 240 multiple choice questions designed to test the applicants' knowledge on a variety of topics including fundamental geology, California geology, investigative techniques including mapping, field data collection,

and lab analysis and procedures, and knowledge of legal and regulatory aspects of the practice of geology. Board members questioned why only 4% of the multiple choice questions is devoted to testing California-specific geology issues; staff explained that the entire examination tests what geologists in California are doing generally, and that the 4% can be viewed as testing knowledge regarding issues specifically unique to California as opposed to other states.

The second half of the examination will test applicants' ability to use their knowledge through essay questions of a practical problem-oriented type. Additionally, the written test will include a section on the understanding and interpretation of geologic reports and the communication of findings both to other professionals and to lay people. Besides testing the knowledge and competence of prospective geologists, the Board hopes that the new test will also determine the adequacy of geological educational programs in the state's universities.

The Board also noted that its new examination is designed to be graded on a curve; however, section 3031, Title 16 of the CCR, currently provides that "[e]very applicant receiving a grade of 70% or more in BRGG's licensing examination shall be deemed to have passed the examination." The Board noted that it may need to amend section 3031 to allow for a criterion passing score system.

**BRGG Revises Application Procedures.** At its November 6 meeting, the Board discussed its procedure for reviewing application files. Currently, all applicant files are forwarded to professional members of the Board for review. However, staff estimates that the annual number of applicants—already at 1,282—will continue to grow by 11–12% per year; the Board agreed that this places an undue burden on the professional Board members. Accordingly, the Board agreed that only the applications of candidates deemed to be unqualified will be given mandatory final review by the professional members; additionally, a small percentage of the files of qualified applicants will be reviewed by the professional members to ensure quality control.

Also, the Board noted that staff currently sends out requests for letters of reference on behalf of all applicants; BRGG agreed that the burden of obtaining letters of reference should be on the applicants themselves. Accordingly, the Board directed staff to inform applicants of their responsibility to obtain letters of reference and ensure that they are sent to BRGG within 45 days of the examination date.