



FUTURE MEETINGS

September 2-3 (location to be announced).

December 16-17 (location to be announced).

CEMETERY BOARD

Interim Executive Officer:
James Diaz
(916) 263-2660

The Cemetery Board's enabling statute is the Cemetery Act, Business and Professions Code section 9600 *et seq.* The Board's regulations appear in Division 23, Title 16 of the California Code of Regulations (CCR).

In addition to cemeteries, the Cemetery Board licenses cemetery brokers, salespersons, and crematories. Religious cemeteries, public cemeteries, and private cemeteries established before 1939 which are less than ten acres in size are all exempt from Board regulation.

Because of these broad exemptions, the Cemetery Board licenses only about 188 cemeteries. It also licenses approximately 142 crematories, 200 brokers, and 1,200 salespersons. A license as a broker or salesperson is issued if the candidate passes an examination testing knowledge of the English language and elementary arithmetic, and demonstrates a fair understanding of the cemetery business.

The current members of the six-member Cemetery Board are industry members Iris Jean Sanders and Keith Hargrave, and public members Herman Mitschke, Lilyan Joslin, Brian Armour, and Linda Trujillo. Hargrave, vice president of the Chapel of the Light Mortuary and Funeral Home in Fresno, was recently appointed by Governor Wilson.

MAJOR PROJECTS

Executive Officer Resigns Under Pressure. Following his near-firing at the Board's January meeting, John Gill resigned as the Cemetery Board's Executive Officer at the Board's March 26 meeting; Gill held the post since 1972. Gill had been under fire from consumer organizations, state lawmakers, and the Department of Consumer Affairs (DCA) for more than a year because of allegations that he failed to aggressively pursue consumer complaints and that he had become too cozy with the death industry. [13:1 CRLR 27-28]

Board members Lilyan Joslin and Linda Trujillo were ready to fire Gill outright in January, but Board President Brian

Armour said the Board had never given Gill clear direction or a sense of its priorities such that it was unfair to terminate him.

However, a February 8 hearing before the Senate Business and Professions Committee's Subcommittee on Efficiency and Effectiveness in State Boards and Commissions ignited more pressure to fire both Gill and Board of Funeral Directors and Embalmers Executive Officer James Allen. At the hearing, consumers complained of numerous death industry abuses including mass cremations, misplaced corpses, improper burials, and price gouging. Inexplicably, neither Gill nor Allen attended the hearing.

Following the hearing, Gill began to negotiate with a Board subcommittee for a resignation on his own terms. Specifically, Gill sought to leave his post effective March 26 and then use up seven months' worth of accrued vacation time, resulting in separation from state service in October. At that point, Gill would have turned 50, would have twenty years of state service, and would be entitled to taxpayer-paid health insurance valued at \$5,500 per year and pension benefits worth up to \$13,000 annually. Because the Board did not have the funds to cash Gill out on March 26, and because most members agreed Gill is entitled to be paid for his vacation time, a majority of the Board agreed to accept Gill's resignation under these terms at its March 26 meeting (which Gill did not attend). Joslin and Trujillo dissented, noting their discomfort with the settlement agreement.

The Board's 4-2 vote to accept Gill's offer infuriated Assemblymember Jackie Speier, who was present at the March 26 meeting. Speier, chair of the Assembly Consumer Protection Committee and a longtime critic of both Gill and Allen, is investigating allegations that Gill—a certified public accountant—ran a private tax business from his state office, using state time and state phones. "I think the public has a right to be somewhat indignant about this," said Speier. Gill has denied these allegations. The terms of the settlement agreement also upset DCA Director Jim Conran, who vowed to ensure that the leave time accrued by DCA executive officers is properly monitored. Conran assured the Board that the Department would lend assistance during the transition, but stressed that it is up to the Board to ensure that its new staff is committed to the Board's consumer protection function.

During Gill's twenty-year tenure, only two licenses were revoked, despite thousands of consumer complaints and allegations by former Cemetery Board inspector

Al Ashuckian that Gill tipped off licensees that Ashuckian was coming for a "surprise" inspection. During 1991-92, the Board received over 150 complaints but conducted only four investigations and took no disciplinary action against any licensee.

Unable to afford another permanent executive officer until Gill is off the state payroll, the Board subsequently appointed Jim Diaz, chief of DCA's Bureau of Collection and Investigative Services, to serve as interim executive officer.

Legislative Analyst Calls for Board's Abolition. In February, the Legislative Analyst's Office (LAO) recommended that the state discontinue its existing regulatory schemes in thirteen currently-regulated areas, including the death industry. (See agency report on LAO for related discussion.) In determining whether the state should continue to regulate a particular area, LAO recommended that the state consider whether the board or bureau protects the public from a potential health or safety risk that could result in serious injury; whether the board or bureau protects the consumer from severe financial harm; and whether there are federal mandates that require the state to regulate certain activities. Based on these criteria, LAO recommended elimination of both the Cemetery Board and the Board of Funeral Directors and Embalmers. At this writing, this recommendation has not been introduced in legislation.

Board Vows Improvement in Consumer Protection, Adopts Citation and Fine Rules. At both its January and March meetings, members of the Cemetery Board pledged to move the agency in a new direction. Fearful of increasing Wilson administration and legislative oversight, the Legislative Analyst's repeated recommendations to abolish the Board or merge it with the Board of Funeral Directors and Embalmers (see above), and Assemblymember Jackie Speier's frequent calls for DCA to take over enforcement of the Cemetery Act, the Board pledged to use its powers more aggressively than it has done in the past.

To that end, at its January meeting the Board finally approved new Article 7.5, Division 23, Title 16 of the CCR, its proposed citation and fine regulations. [13:1 CRLR 28; 12:4 CRLR 66] The regulations include three tiers of violations with fines ranging from \$50 to \$1,500, depending upon the type of offense; the total fine may not exceed \$2,500 per investigation. Previously, short of revoking a license, the Board could only issue a warning letter to licensees who violated Board statutes or regulations.



The Office of Administrative Law approved the Board's citation and fine regulations on May 26.

LEGISLATION

AB 598 (Speier), as amended May 13, would toughen the state's cremation laws to prevent consumer abuse. Among other things, it would increase the Board's enforcement revenue by raising the per cremation regulatory fee from 50 cents to \$1; require the Cemetery Board to annually conduct a minimum of one unannounced inspection of each licensed crematory; add jewelry and mementos to the list of items which it is a crime to remove from human remains without the permission of the person having the right to control those remains; and require that any dental gold or silver, jewelry, or mementos removed from human remains be returned to the cremation container or urn, unless otherwise directed by the person having the authority to control the disposition of the remains.

Existing law prohibits the removal of cremated remains or charging for a cremation unless the cremated remains have been processed so they are suitable for interment; AB 598 would instead require that the remains be processed so they are suitable for placement in a cremated remains container, as defined, or an urn, as defined, and would require written notification regarding the processing of the remains to the person having the authority to control the remains.

Existing law prohibits certain types of commingling of the human remains of more than one person, and provides that violation of those provisions is a misdemeanor. This bill would revise those provisions and make them inapplicable to "residue," as defined. The bill would also require that a prescribed written acknowledgement, on a form including specified information, be filed and retained for at least five years by the person who disposes of or interments the remains.

AB 598 would prohibit a crematory from accepting human remains unless certain requirements are met, including accompaniment of the remains by specified documents. This bill would prohibit a crematory from holding human remains prior to cremation for more than 24 hours unless specified storage conditions are met. The bill would also require crematory operators to provide a written list of prices for various charges related to cremation, and to include a specified statement identifying the Cemetery Board as a source of information. AB 598 would also require crematory licensees to provide specified instruction to all crematory personnel, and

maintain a written plan of instruction for employees and a record to document that employees received training. [A. W&M]

AB 654 (Speier). The existing Private and Community Mausoleum and Columbarium Law sets different construction standards for mausoleums (buildings or structures used for the interment of uncremated human remains) and columbariums (buildings or structures used for the interment of cremated human remains). As amended April 12, this bill would revise these standards to reference recent codes, delete the distinction between community and private mausoleums and columbariums, revise certain procedures specifically related to mausoleums and columbariums (e.g., waterproofing, marble floor bases, crypt standards, skylight frames), and add certain requirements (e.g., crypt vents, skylight materials). [S. H&UA]

SB 155 (Boatwright). Existing law prohibits a crematory licensee from conducting any cremations of human remains more than 72 hours after death unless the remains have been preserved by refrigeration or embalming; this bill would delete this requirement. Existing law also prohibits a crematory licensee from conducting cremations unless the licensee has a contractual relationship with a cemetery authority for final disposition of cremated remains that are not lawfully disposed of or claimed by persons entitled to custody of the remains within 90 days; this bill would provide that notwithstanding that provision, cremated remains may be disposed of by a funeral director, cemetery authority, or crematory, after one year, by burial at sea, after certain notification requirements are met.

Among other things, this bill would also require funeral directors and crematories to faithfully carry out the instructions of the person who is the authorizing agent for cremation of the body of a deceased person, and provide that a funeral director who faithfully carries out those instructions is not liable for acts of the crematory, and the crematory that faithfully carries out those instructions is not liable for acts of the funeral director. [S. B&P]

SB 842 (Presley), as amended April 13, would permit the Cemetery Board to issue interim orders of suspension and other license restrictions against its licensees. [A. CPGE&ED]

RECENT MEETINGS

At the Board's March 26 meeting, Karen Leonard, representing the California Federation of Funeral and Memorial Societies, urged Board members to take a more active role in reviewing complaints

received against the death industry. She also stated that the Board should be comprised only of public members who have no pecuniary stake in governmental decisions affecting the death industry; she recommended that an advisory panel of industry experts could be formed to advise the Board on industry-related issues.

FUTURE MEETINGS

September 9 in Los Angeles.
December 1 in Sacramento.

BUREAU OF COLLECTION AND INVESTIGATIVE SERVICES

Chief: James C. Diaz
(916) 445-7366

The Bureau of Collection and Investigative Services (BCIS) is one of 38 separate regulatory agencies within the Department of Consumer Affairs (DCA). The Chief of the Bureau is directly responsible to the DCA Director.

The Collection Agency Act, formerly codified at Business and Professions Code section 6850 *et seq.*, expired at midnight on June 30, 1992, by operation of a sunset provision in the law. Thus, although its official name still refers to collection agencies, BCIS is no longer authorized to regulate the collection industry. [12:4 CRLR 68-69]

The Bureau still regulates eight other industries, including private security services (security guards and private patrol operators), repossessioners, private investigators, alarm company operators, protection dog operators, medical provider consultants, security guard training facilities, and locksmiths.

Private Security Services. Regulated by the Bureau pursuant to Business and Professions Code section 7544 *et seq.*, private security services encompass those who provide protection for persons and/or property in accordance with a contractual agreement. The types of services provided include private street patrols, security guards, watchpeople, body guards, store detectives, and escort services. Any individual employed to provide these services is required to register with the Bureau as a security guard. Any security guard who carries a firearm and/or baton on the job must possess a firearm permit issued by the Bureau. The Bureau operates to protect consumers from guards who unlawfully detain, conduct illegal searches,