



BOARD OF DENTAL EXAMINERS

Executive Officer:
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The Board of Dental Examiners (BDE) is charged with enforcing the Dental Practice Act, Business and Professions Code section 1600 *et seq.* This includes establishing guidelines for the dental schools' curricula, approving dental training facilities, licensing dental applicants who successfully pass the examination administered by the Board, and establishing guidelines for continuing education requirements of dentists and dental auxiliaries. The Board is also responsible for ensuring that dentists and dental auxiliaries maintain a level of competency adequate to protect the consumer from negligent, unethical, and incompetent practice. The Board's regulations are located in Division 10, Title 16 of the California Code of Regulations (CCR).

The Committee on Dental Auxiliaries (COMDA) is required by law to be a part of the Board. The Committee assists in efforts to regulate dental auxiliaries. A "dental auxiliary" is a person who may perform dental supportive procedures, such as a dental hygienist or a dental assistant. One of the Committee's primary tasks is to create a career ladder, permitting continual advancement of dental auxiliaries to higher levels of licensure.

The Board is composed of fourteen members: eight practicing dentists (DDS/DMD), one registered dental hygienist (RDH), one registered dental assistant (RDA), and four public members. BDE's current members are Gloria Valde, DMD, president; Stephen Yuen, DDS, vice president; Pamela Benjamin, public member; John Berry, DDS; Victoria Camilli, public member; Robert Christoffersen, DDS; Joe Frisch, DDS; Peter Hartmann, DDS; Martha Hickey, public member; Genevieve Klugman, RDH; Virtual Murrell, public member; Joel Strom, DDS; and Hazel Torres, RDA. BDE currently has one DDS/DMD vacancy.

MAJOR PROJECTS

Board Opposes Bill Aimed at Increasing Consumer Access to Dental Care. AB 221 (Areias), sponsored by the California Dental Hygienists' Association (CDHA), would create a new category of allied dental health professional called a "registered dental hygienist in alternative practice" (RDHAP); the bill would autho-

rize RDHAPs to independently provide specified dental hygiene services to homebound residents, at schools, and at institutions. Among other things, the bill would require BDE to adopt regulations specifying the scope of practice for RDHAPs, including supervision of dental assistants, within one year of the effective date of the Act; require RDHAPs to refer patients to a licensed dentist for dental diagnosis and dental treatment; add the RDHAP category to the list of persons whom health insurance companies may not exclude from reimbursement for covered services rendered to insureds, but in the case of managed care programs, limit reimbursement to persons who have actually contracted with the managed care program; add the RDHAP category to the list of persons authorized to provide specified services to Medi-Cal beneficiaries; and extend the hygienist Health Manpower Pilot Project (HMPP) until March 30, 1995.

According to CDHA, this bill would increase access to dental care for many persons who, due to restricted mobility or income, are unable to get preventive services which help avoid future expensive and complex dental or medical procedures; the bill is intended to increase access by creating a category of independent-practice registered dental hygienists required to have a minimum clinical practice experience and additional postgraduate education. Opponents, including the California Dental Association, are concerned that the bill removes direct dentist supervision of RDHs and implies that the "diagnosis" of a patient outside the dental office will be done by an RDH, who in many cases would be the first to see a patient.

However, under its HMPP authority, the state has conducted two projects to test independent RDH practice; an evaluation by the Office of Statewide Health Planning and Development (OSHPD) found evidence that dentist visits increased for some patients following a visit to a hygienist, and that hygienists' charges were lower for similar sets of services. The OSHPD report stated that the findings seem to be evidence of the potential for increased access to dental care associated with independent practice by dental hygienists, and that—based upon available evidence to date—it appears that there are potential benefits in relation to improved patient access to dental care and cost-effectiveness associated with the independent practice of dental hygienists as structured under the pilot project.

A comparison of educational requirements for RDHs and dentists indicates that

both groups take the same number of units in the following subjects: AIDS/HIV, biochemistry, caries and periodontal disease, cardiology and preventive dentistry, histology, immunology, medical emergencies, neurobiology, oral pathology, dental pharmacology, and physiology. Dentists take more units of head and neck anatomy, oral diagnosis, orthodontics, general pathology, and periodontology; RDHs take more units in radiology. In addition, RDHAPs would take another five units distributed among anatomy, gerontology, medical emergencies, medical history evaluation, oral pathology, and patient assessment.

At its March 12 meeting, BDE voted to oppose AB 221; the Board did not have a chance to review April 27 amendments to the bill prior to its May 6 meeting, and therefore tabled further discussion of the bill until its July 23 meeting in San Francisco.

Board Postpones Action to Reduce Fees. At its March 12 meeting, BDE again voted to postpone action on its license renewal fee reduction rulemaking proposal due to budgetary concerns. In July and December, the Board had published notice of its intent to amend section 1021, Division 10, Title 16 of the CCR, to reduce fees which support the dental license renewal program, eliminate the fee for the corporation annual report, and eliminate an obsolete provision regarding fictitious name permit renewal fees. This action was originally tabled at the September 1992 meeting because of uncertainty resulting from the budget crisis and the reserve transfers to the state's general fund. [13:1 CRLR 33] In addition to the fee changes listed above, the proposed action would reduce the biennial renewal fee for a licensee who has practiced dentistry for twenty years or more in California, has reached the age of retirement under the Social Security Act, and customarily provides his/her services free of charge or for a nominal charge to any person, organization, or agency.

BDE received no comments on the proposed action prior to the close of the public comment period on January 19; at its January meeting, despite considerable discussion of an expected budget deficit in 1993, BDE voted to adopt the regulatory language with an implementation date of July 1, 1993. However, continued concerns regarding a possible deficit caused BDE to vote at its March meeting to postpone implementation of the renewal fee reduction portion of the rulemaking. The Board did not, however, postpone its proposed regulatory action on the other portions of the rulemaking (elimination of the



fee for the corporation annual report, reduction of fees for retired licensees, and elimination of an obsolete provision regarding fictitious name permit renewal fees); these portions of the rulemaking package are currently at the Office of Administrative Law (OAL) awaiting approval.

Other BDE Rulemaking. On March 1, OAL approved BDE's changes to section 1043.2(b), Division 10, Title 16 of the CCR, to permit dentists who have completed a course which meets the 1982 Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry of the American Dental Association to be conscious sedation evaluators. [13:1 CRLR 34]

On April 23, OAL approved the Board's adoption of sections 1023-1023.8, Division 10, Title 16 of the CCR, implementing SB 650 (Alquist) (Chapter 521, Statutes of 1991), which authorizes BDE to conduct inspections of dental offices and issue citations, orders of abatement, and administrative fines for violations of the Dental Practice Act or any regulation adopted by BDE pursuant to that law. [13:1 CRLR 34]

The Board has withdrawn its proposed amendment to section 1017(d), Division 10, Title 16 of the CCR, which would clarify the continuing education waiver for disabled licensees. [13:1 CRLR 34]

LEGISLATION

AB 221 (Areias), as amended April 27, would make a number of major changes to the Dental Practice Act. Among other things, the bill would delete the reference to the term "dental auxiliaries" in the Act, replace it with the term "allied dental health professionals," create a new category of allied dental health professional called a registered dental hygienist in alternative practice (RDHAP), and authorize RDHAPs to independently provide specified dental hygiene services, as prescribed. Additionally, this bill would provide that the fees for certification of an RDHAP shall not exceed \$250; change COMDA's membership by adding an RDHAP member, and require that this member be appointed to COMDA prior to July 1, 1994; require BDE, upon COMDA's recommendation, to adopt by January 1, 1995, regulations prescribing the functions to be performed by RDHAPs (as an employee of a dentist and independently), the educational requirements, the supervision level, and settings; require an RDHAP to refer patients to a licensed dentist for dental diagnosis and dental treatment; include the RDHAP category within the list of licensed or certified per-

sons in the healing arts that an insured may not be prohibited from selecting; and include the RDHAP category to the list of persons authorized to provide specified services to Medi-Cal beneficiaries. (See MAJOR PROJECTS for related discussion.) [A. W&M]

SB 1194 (Johnston). Existing law provides for the Medi-Cal program, administered by the state Department of Health Services, pursuant to which medical benefits are provided to public assistance recipients and certain other low-income persons. Existing law provides for primary care case management, as defined, under the Medi-Cal program, and defines the term "primary care provider" for purposes of that program. As amended April 12, this bill would revise the definition of primary care provider to include primary dental care providers, as defined. [S. Appr]

SB 994 (Kelley). Existing law provides that it is not unlawful to participate in or operate a group advertising and referral service for dentists if certain conditions are met, including a requirement that participating dentists charge no more than their usual and customary fees to any patient referred and that the service register with BDE; existing law authorizes BDE to adopt regulations necessary to enforce and administer these provisions. As amended May 11, this bill would provide that it is not unlawful to participate in or operate a group advertising and referral service for dentists if, in addition to the above-described conditions, (1) any print, radio, and television advertising by the service clearly and conspicuously discloses that member dentists pay a fee to the service whenever this occurs, and (2) the advertising conforms with provisions of existing law regarding advertising by dentists. This bill would also authorize BDE to suspend or revoke the registration of any service that fails to comply with the requirements of (1) above. This bill would prohibit a service from reregistering with BDE if its registration is under suspension. It would also prohibit a service from reregistering with BDE if it had its registration revoked less than one year after that revocation. [A. Health]

SB 1178 (Kopp), as amended May 6, would require a dentist to refund any amount paid by a patient for services rendered that constitutes a duplicate payment, as prescribed. The bill would provide that violation of this provision constitutes unprofessional conduct. [A. Health]

AB 1789 (Harvey). The Dental Practice Act provides that it is grounds for disciplinary action, including criminal penalties, for a licensed dentist to practice or offer to practice dentistry under a false,

assumed, or fictitious name, unless issued a permit by BDE; the Act requires BDE to issue a permit, under prescribed conditions, to an association, partnership, corporation, or group of three or more dentists authorizing the practice of dentistry under a false, assumed, or fictitious name. As amended May 3, this bill would provide that, on and after July 1, 1995, any dentist or pair of dentists may practice dentistry under any false, assumed, or fictitious name if, and only if, the dentist or pair of dentists holds a permit. The bill would, in addition, require BDE to issue a permit to a dentist or pair of dentists authorizing the practice of dentistry under a false, assumed, or fictitious name under prescribed conditions. This bill would also repeal these provisions regarding false, assumed, or fictitious name permits for individual dentists or pairs of dentists as of January 1, 1999. [A. W&M]

AB 502 (Moore), as amended May 4, would provide that it is unprofessional conduct for a person licensed under the Dental Practice Act to require, either directly or through an office policy, or knowingly permit the delivery of dental care that discourages necessary treatment or permits clearly excessive, incompetent, grossly negligent, or unnecessary treatment or repeated negligent acts.

Existing law requires the Department of Corporations to conduct periodically an onsite medical survey of the health care delivery system of health care service plans. Existing law requires the Commissioner of Corporations to notify the plan of deficiencies found by the team conducting the survey. Existing law requires reports of all surveys, deficiencies, and correction plans to be open to public inspection, and prohibits the public disclosure of deficiencies if they are corrected within thirty days of the date the plan was notified. This bill would require BDE to provide to the Commissioner a copy of any BDE decision that results in disciplinary action for a violation of the Act by dental providers of a plan. The bill would also require the Commissioner to provide BDE or its executive officer with a copy of any report of a survey, deficiency, and correction plan containing information regarding the quality of care of dental providers. The bill would provide that the disclosure of these reports would not operate as a waiver of confidentiality.

This bill would also require the licensed dentists of a dental office consisting of three or more practicing dentists to designate a dentist-in-charge who is responsible for the compliance of the dental office with federal and state laws and regulations pertaining to the practice of den-



tristry. The bill would require the dentist-in-charge to create and maintain a readily retrievable record showing the name of the dentist-in-charge of the office, and require this record to be maintained for five years and available to a BDE representative upon request. The bill would provide that any violation of these provisions is unprofessional conduct. [A. W&M]

AB 559 (Peace). Existing law requires various boards that license certain health care professionals, including dentists, to create and maintain a central file of all persons who hold a license from the board. Under existing law, each board's central file is required to contain prescribed information about each licensee, including, among other things, any judgment or settlement requiring certain licensees or insurers to pay any amount of damages in excess of specified amounts for claims alleging negligence of those licensees. Existing law requires insurers providing professional liability insurance, or licensees who are uninsured, to report this information to the appropriate board. Under existing law, the reportable amount of damages is \$30,000 for physicians, \$10,000 for marriage, family, and child counselors, and \$3,000 for dentists and other licensees. As introduced February 18, this bill would revise the reporting requirement for insurers who provide professional liability insurance to dentists to instead require reporting of judgments or settlements over \$10,000 instead of \$3,000. [A. Floor]

AB 720 (Horcher), as introduced February 24, would prohibit any person other than a licensed physician, podiatrist, or dentist from applying laser radiation, as defined, to any person for therapeutic purposes, and would also provide that any person who violates this provision is guilty of a misdemeanor. [A. Health]

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

AB 1807 (Bronshvag). Existing law exempts certain practices from the definition of the practice of dentistry. As amended May 3, this bill would add verification of shade taking in certain circumstances to the list of exempt practices.

The bill would also provide that, in addition to other acts constituting professional conduct under the Dental Practice Act, it is unprofessional conduct for a person licensed under the Act to perform or hold himself/herself out as able to perform professional services beyond the scope of his/her license and field(s) of competence as established by his/her education, experience, training, or any com-

bination thereof. This includes, but is not limited to, the use of any instrument or device in a manner that is not in accordance with the customary standards and practices of the dental profession; the use of an instrument or device that has been reviewed and cleared for use by the U.S. Food and Drug Administration (FDA) shall be deemed to be in accordance with the customary standards and practices of the dental profession only if the use of the instrument or device is within the scope of its marketing clearance and the scope of practice of the licensee. This provision would not apply to research conducted by accredited dental schools or colleges or to research conducted pursuant to an investigational device exemption issued by the FDA. [A. W&M]

RECENT MEETINGS

At its January 22 meeting, BDE welcomed new members Robert Christoffersen, DDS, and Genevieve Klugman, RDH, to their first Board meeting. Appointed by Governor Wilson, Dr. Christoffersen is the executive associate dean of the University of the Pacific, School of Dentistry, and has been a faculty member at the School of Dentistry since 1967; in addition, Dr. Christoffersen has been a consultant to BDE for fourteen years. Ms. Klugman is an RDH for Gary P. Klugman, DDS, and has been an examiner for BDE for ten years. Also new to BDE is Karen Wyant, COMDA's new Executive Officer; prior to her appointment to COMDA, Wyant served with the Auctioneer Commission.

Also on hand at BDE's January and March meetings was Department of Consumer Affairs (DCA) Director Jim Conran. At the January meeting, Conran spoke to the Board about the loss of public trust in the Medical Board of California (see agency report on MBC for related discussion). Conran commended BDE on having an excellent staff and reminded BDE of the importance of keeping in touch with its staff; he also urged Board members to go out into the field with the investigators in order to better understand the enforcement process. At BDE's March meeting, Conran gave a presentation introducing the concept of "performance budgeting" to the Board, explaining that DCA is one of four agencies chosen to implement Governor Wilson's model of performance budgeting, which will require more accountability from boards and their staffs to establish productivity benchmarks. This program is aimed at helping government be more responsive to the consumer, while at the same time allowing the boards more control in moving funds within their

budgets. Following Conran's comments, DCA's Chief Deputy Director Lance Barnett gave a more detailed presentation on performance budgeting and invited the Board to look into how BDE might benefit from the concept. Barnett suggested that the Board begin by developing a strategic plan and analyzing the outcomes or benchmarks the Board might want to incorporate into its strategic plan; at the conclusion of the presentation, the Board seemed to be in agreement that it should explore the concept further. (See agency report on DCA for related discussion.)

Also of concern to the Board at recent meetings is the effect of the increase in Attorney General (AG) fees on the Board's current budget; the AG line item is expected to be overexpended due to the increase in the hourly rate from \$75.50 per hour in fiscal year 1991-92 to \$90 per hour in fiscal year 1992-93. Board staff will submit a deficiency memo for a one-time budget augmentation but, given further AG rate increases projected for fiscal year 1993-94, the Board hopes to gain a permanent increase in its AG line item amount.

At its May 6 meeting, BDE approved a "Dental Materials Fact Sheet," as required by SB 934 (Watson) (Chapter 801, Statutes of 1992). [12:4 CRLR 76] The fact sheet summarizes and compares the risks, costs, and efficacy of gold, porcelain, composites, and amalgam, the most commonly used dental restorative materials; the fact sheet is intended to encourage discussion between patient and dentist in the selection of dental materials best suited to the patient's dental health, and is not intended to be a complete guide to dental materials science.

Also at the May meeting, Examination Committee Chair Stephen Yuen, DDS, suggested that BDE consider adding a law and ethics component to the Board's licensing exam; according to Dr. Yuen, 80% of the Board's investigations involve licensees who have seven years or less experience and lack knowledge of the law. DCA legal counsel Anita Scuri noted that legislation may be necessary to authorize BDE to take such action; accordingly, the Board voted to seek legislation that would allow it to add a law and ethics component to its exam.

In addition, BDE adopted a policy statement at its May meeting on dentists who prescribe nicotine-containing drugs such as the Nicoderm Patch; the Board's policy states that prescribing such drugs is within the scope of authority of dentists, but that all dentists should be aware of the fact that such prescriptions may have adverse systemic effects on the overall med-



ical condition of a dental patient which would more properly be treated by a licensed physician.

■ FUTURE MEETINGS

September 9-10 in Los Angeles.
November 18-19 in San Francisco.

BUREAU OF ELECTRONIC AND APPLIANCE REPAIR

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The Bureau of Electronic and Appliance Repair (BEAR) was created by legislative act in 1963. It registers service dealers who repair major home appliances, electronic equipment, cellular telephones, photocopiers, facsimile machines, and equipment used or sold for home office use. BEAR is authorized under Business and Professions Code section 9800 *et seq.*; its regulations are located in Division 27, Title 16 of the California Code of Regulations (CCR).

The Electronic and Appliance Repair Dealer Registration Law requires service dealers to provide an accurate written estimate for parts and labor, provide a claim receipt when accepting equipment for repair, return replaced parts, and furnish an itemized invoice describing all labor performed and parts installed.

The Bureau inspects service dealer locations to ensure compliance with BEAR's enabling act and regulations. It also receives, investigates, and resolves consumer complaints. If an investigation reveals an unregistered person engaged in activity for which BEAR registration is required, the Bureau is authorized to impose a fine not less than \$250 and not more than \$1,000. Grounds for revocation or denial of registration include false or misleading advertising, false promises likely to induce a customer to authorize repair, fraudulent or dishonest dealings, any willful departure from or disregard of accepted trade standards for good and workmanlike repair, and negligent or incompetent repair.

■ MAJOR PROJECTS

BEAR Introduces Service Contract Legislation. After soliciting, receiving, and reviewing extensive input from representatives of businesses involved in the administration, sale, or servicing of service contracts, professional associations, and public interest groups, BEAR has introduced legislation which seeks to protect consumers from losing the value of

their service contracts when the responsible party is unable to perform its agreement to provide promised service during the life of the service contract. [13:1 CRLR 34] Service contracts are generally purchased at the time of sale of a product and become effective immediately upon their purchase. However, the product may be already covered, to some extent, for the same service by a manufacturer's or seller's warranty. In addition, consumers who have purchased service contracts from appliance and electronic retailers who subsequently go bankrupt often have no protection or recourse in identifying the party who is financially responsible for performing under the purchased service contract. According to BEAR, only 50% of consumers who purchase service contracts currently have recourse for addressing complaints arising from violations of the Song-Beverly Act, and nothing requires service contractors to disclose to consumers the party who is financially responsible for the performance of the contracts.

In response to these problems, BEAR conducted a number of meetings in an effort to develop legislative language that adequately addresses the problems without unduly burdening the industry. [13:1 CRLR 34; 12:4 CRLR 77] BEAR's efforts culminated in the introduction of SB 798 (Rosenthal), which would require service contractors to register with BEAR and prohibit a service contract administrator from issuing, making, underwriting, or managing a service contract unless he/she is insured under a service contract reimbursement insurance policy. SB 798 would also require service contracts to disclose to consumers the party financially responsible for the performance of the contract. This bill would provide that a service dealer or service contractor who does not operate a place of business in this state, but who engages in the electronic repair industry or the appliance industry or who sells or issues service contracts in this state is subject to the registration requirement and shall pay the required fees as if he/she had a place of business in this state (*see* LEGISLATION).

LAO Proposes To Eliminate BEAR. In its *Analysis of the 1993-94 Budget Bill*, one of the recommendations made by the Legislative Analyst's Office (LAO) for streamlining state government proposed that the legislature eliminate the state's regulatory role in thirteen currently-regulated areas. Particularly relevant to BEAR is LAO's recommendation that the state stop regulating several consumer-related business activities. In determining whether the state should continue to regulate a particular area, LAO rec-

ommended that the state consider whether the board or bureau protects the public from a potential health or safety risk that could result in death or 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 that the state remove its regulatory authority over activities currently regulated by BEAR, among other bureaus and agencies. At this writing, LAO's recommendation has not been amended into any pending legislation.

BEAR Revokes Licenses of Three Service Dealers. On April 1, Department of Consumer Affairs (DCA) Director Jim Conran announced that BEAR had revoked the registration of Allen Mac Wolff, owner of Compufix Computer Repair Depot #2 of Huntington Beach; Wolff was found to have violated the terms of his pre-existing probationary status by accepting consumers' goods for repair despite a court-ordered ban on such work. In addition to losing the ability to practice his trade in California, Wolff was ordered to pay restitution in the amount of \$4,000 to DCA and \$1,000 to the City of Long Beach.

On April 13, Conran announced that the owner of a Santa Rosa electronic repair service had similarly lost his privilege to do business in California after being found guilty of operating with an expired license. Paul Meeh, owner of Home TV Service, was also found to be in violation of twelve counts of the Business and Professions Code, including incompetence, improper invoicing, failure to provide written estimates, and failure to return parts. Conran noted that BEAR investigators worked closely with the Sonoma County District Attorney to effectuate this successful prosecution.

Finally, on April 22, Conran announced that the registration of Studio City electronic repairman Uzoma Godfrey Ojogho was revoked for grand theft and unlawful diversion of funds convictions substantially related to his business. In addition to losing his ability to practice his trade in California, Ojogho was found guilty of and sentenced to jail for six years on seven counts of grand theft, five counts of unlawful diversion of funds, four counts of making false financial statements, and one count of perjury.

BEAR Continues Active Role in SB 2044 Implementation. Along with the Bureau of Home Furnishings and Thermal Insulation and the Tax Preparer Program, BEAR is participating in a pilot project to implement the infraction authority