



to Senate confirmation, and that the Board's Registrar and employees are under the control of the Director of the Department of Consumer Affairs. [S. B&P]

AB 1800 (Friedman, T.), as amended June 22, would abolish the Department of Industrial Relations and instead provide for the Labor Agency supervised by the Secretary of the Labor Agency consisting of the Department of Occupational Safety and Health, the Department of Workers' Compensation, the Department of Rehabilitation, the Department of Labor Standards Enforcement, the Employment Development Department, the Department of Fair Employment and Housing, and CSLB. [A. L&E]

AB 1807 (Bronshvag), as amended September 8, would make the Contractors State License Law inapplicable to a licensee operating within the scope of the Geologist and Geophysicist Act, and would increase from \$5,000 to \$7,500 the amount of bond required as a condition precedent to the issuance, reinstatement, reactivation, or renewal of a contractor's license. [A. Inactive File]

AB 1981 (Horcher), as introduced March 5, would declare that provisions in an express or implied contract between contractors and their subcontractors and suppliers making payment thereof contingent upon payment of the contractor are contrary to public policy, void, and unenforceable. [A. Jud]

SB 949 (Rogers), as amended July 13, would generally provide that, with respect to all contracts between owners and original contractors for the construction of any private work of improvement, excluding residential construction, entered into on or after July 1, 1994, the retention proceeds withheld by the owner from the original contractor or by the original contractor from any subcontractor from any payment shall not exceed 10% of the payment and in no event shall the total retention withheld exceed 5% of the contract price. [A. Jud]

The following bills died in committee: **AB 2296 (Mountjoy)**, which would have provided that it is grounds for disciplinary action for any prime building contractor or subcontractor to fail to pay any subcontractor not later than ten days of receipt of each progress payment the respective amounts allowed the contractor on account of the work performed by the subcontractor, to the extent of the subcontractor's interest therein, whether or not such an agreement is in writing; and **AB 2044 (Hoge)**, which would have required the Registrar to provide public officials with on-line access to the Board's computer database containing informa-

tion on the status of licenses of all licensed contractors.

RECENT MEETINGS

At CSLB's July 22-23 meeting, the Board unanimously elected Phil Moore to serve as CSLB Chair and Paul Petersen to serve as Vice-Chair for 1993-94.

Also at CSLB's July meeting, Registrar David Phillips stated CSLB's intent to pursue enforcement of workers' compensation requirements, despite the Board's limited operating funds. The Board is considering exchanging data with the State Compensation Insurance Fund, which writes more than half of the workers' compensation policies now required for licensure by CSLB.

CSLB staff announced that—for the third year in a row—the San Diego District Office was recognized for the highest number of cases closed by consumer service representatives (CSR), cases closed by deputies, and legal actions handled per deputy. The office averaged 20.6 cases closed per deputy and 69 cases closed per CSR; the averages throughout CSLB are twelve cases per deputy and forty cases per CSR. The San Diego office also had no complaints over six months old during 1992-93.

CSLB's Ad Hoc Committee on Long Range Planning announced that it would develop and prepare specific recommendations to be presented to the full Board at the Strategic Planning Meeting scheduled for October. The Committee is discussing topics such as servicing, investigating, and resolving consumer complaints; improving communication with the consumer and with the industry; surety bonding; collecting non-licensee civil penalties; license classifications; and the future organization of CSLB.

CSLB Administrative Officer Linda Brooks reported that the Board's budget reserve balance of \$5.2 million represents only a 1.5-month reserve, rather than the desired three-month reserve. The Board's 1993-94 budget appropriation is \$31.6 million; of that amount, 5% is allocated to testing; 19.3% to licensing; 1.3% to executive/board expenses; 5.8% to services; 4.1% to information systems; and 64.5% to enforcement. Brooks noted that an analysis of the fund condition estimates a one-month reserve in two years, but a three-month reserve by 1997-98.

Finally, CSLB Licensing Deputy Bob Christensen explained that attempts to revise the application form for an original contractor's license may finally be successful after seven years of effort; the new application form is expected to be shortened, and all mandatory information and

instructions are to be retained by the applicant as a means to reduce CSLB's required storage space. Christensen distributed copies of a draft application and invited comments.

FUTURE MEETINGS

January 21 in San Diego.
April 22 in San Francisco.
July 22 in Los Angeles.

BOARD OF DENTAL EXAMINERS

Executive Officer:
Georgetta Coleman
(916) 263-2300

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; Roger Simonian, DDS; Joel Strom, DDS; and Hazel Torres, RDA.



MAJOR PROJECTS

BDE Revises Information Disclosure Policy. At its July 22-23 meeting, BDE discussed its longstanding policy to release, in response to a consumer inquiry about a licensee, only licensing information which is a matter of public record and disciplinary information about BDE enforcement actions, such as accusations, statements of issues, and temporary restraining orders. However, during discussions at the Medical Board of California's (MBC) "Medical Summit" held last spring, the Center for Public Interest Law successfully urged MBC to make more information on licensee misconduct available to inquiring consumers. [13:2&3 CRLR 80] Accordingly, BDE staff recommended that the Board consider disclosing the following additional categories of information: (1) dental malpractice judgments of \$3,000 or more; (2) discipline taken by another state; (3) felony convictions; and (4) fully investigated discipline cases which have been forwarded to the Office of the Attorney General for prosecution.

At its July meeting, BDE's Enforcement Committee recommended that the Board release information in categories (1) and (2) above, but continue to review whether information in categories (3) and (4) above should be released. Following discussion, BDE adopted the Enforcement Committee's recommendations.

At its September 10 meeting, BDE staff informed the Board that MBC approved a new information disclosure policy that includes disclosure of malpractice judgments in excess of \$30,000, discipline taken by another state, completed investigations which have been transferred to the Attorney General, and felony convictions. Following discussion, BDE agreed to amend its new disclosure policy to include any information reported to it concerning felony convictions which are substantially related to the practice of dentistry and have occurred within the last ten years; however, the Board decided not to disclose cases which have been referred to the Attorney General and are awaiting the filing of accusations. Any information released to the public will be accompanied by a disclaimer indicating that BDE's information is not a complete record of a dentist's activities and should not be treated as such. (See COMMENTARY for a detailed discussion of this issue.)

BDE Considers Adoption of Regulations Concerning Transmission of Bloodborne Pathogens. The Patient Protection Act, enacted by SB 1070 (Thompson) (Chapter 1180, Statutes of 1991), re-

quires BDE to ensure that its licensees are informed of their responsibility to minimize the risk of transmission of bloodborne infectious diseases from health care provider to patient, from patient to patient, and from patient to health care provider, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission. The Act required the Department of Health Services (DHS) to promulgate guidelines and regulations as necessary to minimize the risk of transmission of bloodborne infectious diseases in the health care setting. In April, DHS released its Guidelines for Preventing the Transmission of Bloodborne Pathogens in Health Care Settings. [13:2&3 CRLR 82] The Act also provides that it constitutes unprofessional conduct for persons licensed under the Dental Practice Act to, except for good cause, knowingly fail to protect patients by failing to follow these Guidelines.

At its September 10 meeting, BDE discussed the possibility of adopting DHS' Guidelines as regulations pursuant to the Administrative Procedure Act; no other health-related board or agency—including DHS—has formally adopted the standards as regulations, even though the requirements are expected to have the force and effect of law and licensees will be subject to disciplinary action for failing to comply with them. Following discussion, BDE generally agreed to seek the adoption of the requirements as regulations, and to prepare a condensed summary of the requirements for distribution to licensees, with a disclaimer indicating that licensees are responsible for complying with the full set of standards as prescribed by the Board.

Special Permit Program Regulatory Changes Proposed. On July 23, BDE published notice of its intent to add sections 1027 and 1027.1, Title 16 of the CCR, to clarify some terms used in statutes authorizing BDE to issue special permits to instructors who meet specified qualifications. The "special permit law," Business and Professions Code sections 640-42, was enacted in 1976 to assist California dental schools in recruiting faculty members who are certified or qualified in dental specialties. This legislation allows BDE to issue a special permit to newly recruited specialists, enabling them to augment their salaries by engaging in patient care at the school along with their academic responsibilities. New section 1027 would define several terms used in the statute, including "graduation from a dental college approved by the Board," "specialty board," and "affiliated institution." New section 1027.1 would require

a special permit holder who is not certified as a diplomate of a specialty board to retain eligibility for certification as a diplomate so long as the special permit is in effect.

On September 10, BDE conducted a public hearing on this rulemaking package. In response to various comments, the Board discussed the proposed definitions and noted that the scope of some of the terms may warrant expansion. As a result of the comments, the Board tabled further consideration of the proposals until its November meeting.

OAL Approves Fee Revisions. On May 28, the Office of Administrative Law (OAL) approved BDE's amendments to section 1021, Division 10, Title 16 of the CCR, which eliminate the fee for the corporation annual report, reduce fees for retired licensees, and eliminate an obsolete provision regarding fictitious name permit renewal fees. [13:2&3 CRLR 64]

LEGISLATION

HR 729 (McNulty) is federal legislation which would provide that if a dental health care professional has been licensed by a state to provide dental health care, another state may not, in considering an application by the professional for a license to provide dental services, discriminate against the professional on the basis that the professional is not a resident of the state or that the professional was first granted a license by another state. This measure is pending in the House Energy and Commerce Committee.

The following is a status update on bills reported in detail in CRLR Vol. 13, Nos. 2 & 3 (Spring/Summer 1993) at pages 65-66:

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. As amended May 11, this bill provides 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 also authorizes BDE to suspend or revoke the registration of any service that fails to comply with the requirements of (1) above. This bill prohib-



its a service from reregistering with BDE if its registration is under suspension or if it had its registration revoked less than one year after that revocation. This bill was signed by the Governor on September 30 (Chapter 648, Statutes of 1993).

SB 1178 (Kopp), as amended August 26, requires a dentist to refund any amount paid by a patient for services rendered that constitutes a duplicate payment, and provides that violation of this provision constitutes unprofessional conduct. This bill was signed by the Governor on October 2 (Chapter 765, Statutes of 1993).

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 fictitious name 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 provides that, between July 1, 1995 and January 1, 1999, 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 additionally requires 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 was signed by the Governor on September 26 (Chapter 539, Statutes of 1993).

AB 502 (Moore), as amended July 7, provides 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 delivery system of each health care service plan (HCSP), as defined; the Commissioner of Corporations must notify the HCSP of deficiencies found by the team conducting the survey. Reports of all surveys, deficiencies, and correction plans are open to public inspection. However, existing law prohibits the public disclosure of deficiencies if they are corrected within 30 days of the date the HCSP was notified. This bill requires BDE to provide to the Commissioner a copy of any accusation filed with the Office of Administrative Hearings for

a violation of the Dental Practice Act relating to the quality of care of any dental providers of a HCSP. The bill also requires the Commissioner to provide the HCSP and the executive officer of the Board with a copy of information regarding the quality of care of dental providers obtained in the preparation of the survey that the Commissioner determines demonstrates clearly excessive treatment, incompetent treatment, grossly negligent treatment, repeated negligent acts, or unnecessary treatment. The bill provides that the disclosure of these reports does not operate as a waiver of confidentiality. The bill also provides that there shall be no liability on the part of, and no cause of action shall rise against, the state, Board, Department, Commissioner, or any officer, agent, employee, consultant, or contractor thereof, for the release of any false or unauthorized information pursuant to these provisions, unless the release is made with knowledge and malice. This bill was signed by the Governor on September 25 (Chapter 464, Statutes of 1993).

SB 842 (Presley), as amended July 14, permits BDE to issue interim orders of suspension and other license restrictions, as specified, against its licensees. This bill was signed by the Governor on October 5 (Chapter 840, Statutes of 1993).

AB 221 (Areias), as amended August 16, would 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. [13:2&3 CRLR 64] Additionally, this bill would provide that the fees for certification of an RDHAP shall not exceed \$250; 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), educational requirements, supervision levels, 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 persons 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. At its July 22-23 meeting, BDE reaffirmed its opposition to this bill. [S. *Appr*]

SB 1194 (Johnston). 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*]

AB 559 (Peace). Existing law prohibits HCSPs from requesting reimbursement for overpayment or reducing payments to a provider because the provider entered into a contract with another HCSP. As amended July 7, this bill would revise this prohibition to apply only to specialized dental HCSPs, and would require that nothing in this prohibition be construed to prevent specialized dental HCSPs from including cost containment provisions in contracts with providers, or from terminating contracts in the event that a provider does not comply with these cost containment provisions. [S. *InsCl&Corps*]

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*]

AB 1807 (Bronshvag), as amended September 8, would require insurers providing professional liability insurance to dentists to report settlements of \$10,000 or more to BDE.

Existing law exempts certain practices from the definition of the practice of dentistry. This bill would add verification of shade taking in certain circumstances to the list of exempt practices.

Existing law requires an applicant to practice dentistry to pass an examination testing an applicant's skill in dentistry, which may be supplemented by an oral examination. This bill would provide that, instead of being supplemented with an oral examination, the examination may be supplemented by a jurisprudence and ethics examination. This bill would also set minimum time periods after suspension or revocation of a license, certificate, or permit of a dentist at which a dentist could seek modification or termination of the sanction; this bill would also set forth considerations for BDE or the administrative law judge conducting the hearing.

Existing law requires dental assistants, as a condition of licensure, to have graduated from an educational program that meets specified requirements. Existing law sets maximum fees BDE may charge for curriculum review and site evaluation for educational programs not accredited by a Board-approved agency, the Council for Private Postsecondary and Vocational Education, or the Chancellor's Office of the California Community Colleges. This bill would also change the maximum fee provisions to apply to all programs that are not publicly funded. [A. *Inactive File*]



■ LITIGATION

On September 22, the Environmental Law Foundation (ELF) filed *ELF v. California Board of Dental Examiners*, No. 536308, in Sacramento County Superior Court. In the action, ELF seeks to compel BDE to comply with the Public Records Act (PRA), Government Code section 6250 *et seq.*

On January 1, 1993, SB 934 (Watson) (Chapter 801, Statutes of 1992) became effective, adding section 1648.10 to the Business and Professions Code and requiring BDE to publish a "Dental Materials Fact Sheet" summarizing and comparing the risks, costs, and efficacy of gold, porcelain, composites, and amalgam, the most commonly used dental restorative materials. In response to SB 934, the Board prepared and approved a fact sheet at its May 6 meeting. [13:2&3 CRLR 66]

On July 7, ELF requested copies of BDE records containing information on mercury or mercury compounds as used in dental materials or procedures; any health or safety effects relating to the use of mercury, mercury compounds, or dental amalgams; and all memoranda, letters, reports, studies, draft or proposed or final regulations, and any policy positions (including enforcement policies) regarding the use, replacement, safety, or health effects of mercury and mercury compounds and dental amalgams. Although the PRA requires an agency to respond to a PRA request within ten days of receipt of the request, ELF's complaint alleges that BDE failed to so respond within the ten-day period. On August 6, BDE Enforcement Coordinator Kathleen Mulvaney responded to ELF's request and provided only the fact sheet approved on May 6, stating that "[t]he fact sheet is the only information regarding the use of these materials, which would include mercury and mercury compounds. The Board [has] no policy regarding the use or health and safety effects of mercury in dental procedures."

On August 24, ELF challenged the adequacy of BDE's response to its request, noting that BDE failed to produce a copy of an April 29, 1993 letter to BDE Executive Officer Georgetta Coleman from San Diego attorney Carl Meyer in which Meyer criticized the type and extent of the information contained in the fact sheet. ELF argued that, although this letter is responsive to its PRA request, BDE failed to produce it, and reiterated its request for all of the documents requested in its original July 7 letter.

On September 2, BDE responded to ELF's August 24 letter, stating that BDE's

office "is currently undergoing renovation and the correspondence files are not available at this time." BDE also stated that "[t]he fact sheet on restorative materials was developed by a Member of the Board of Dental Examiners. The Member developed the fact sheet using research materials available to him personally. Again, the Board has no policy regarding the use of mercury in dental procedures." Thus, ELF filed its September 22 lawsuit, seeking to compel BDE to adequately respond to its request.

During this period of correspondence and cross-correspondence, the Department of Consumer Affairs' Legislative Unit released an opinion dated August 20 which discusses whether the use of mercury in dental amalgams exposes dentists to liability and the contents of BDE's fact sheet. Among other things, the Legislative Unit noted that Proposition 65 requires a person in the course of doing business to give clear and reasonable warning before exposing an individual to a chemical known to the state to cause cancer or reproductive toxicity; mercury has been listed by the state as a reproductive toxin, such that the use by dentists of dental amalgams containing mercury may trigger the Proposition 65 warning requirement.

The Legislative Unit also concluded that BDE's fact sheet is "probably misleading" for two reasons: (1) it "minimizes the controversy over the use of amalgam fillings by stating 'The preponderance of scientific evidence, to date, fails to show that exposure to mercury from amalgam restoration poses a health risk, except for a small number of allergic and/or sensitive patients.' Although most of the scientific evidence currently available does not show that amalgams pose a health risk, there is not a preponderance of conclusive scientific evidence on the subject"; and (2) contrary to the requirements of SB 934, "the chart attached to the dental materials fact sheet fails to compare the risks of the materials. In fact, the risk associated with the use of mercury is dismissed by the sentence quoted above, stating that scientific evidence fails to show exposure to mercury from dental amalgam poses a health risk."

In conclusion, the Legislative Unit found that "the fact sheet that the Board of Dental Examiners has prepared ignores the controversy over the use of dental amalgams and, given the current debate and the possibility of liability, may give a false sense of security to dentists. Depending on the level of mercury finally determined safe from a developmental and reproductive toxicity standpoint, dentists

and amalgam manufacturers may have a duty under Proposition 65 to warn patients receiving fillings of the exposure to mercury."

At this writing, BDE has not yet filed an answer to ELF's lawsuit, and no court hearing has been scheduled.

■ RECENT MEETINGS

At its July 23 meeting, BDE welcomed Roger Simonian, DDS, to his first Board meeting; Dr. Simonian, who has been practicing in Fresno for twenty years, commented that his reasons for being involved are to protect the consumer and to uphold the standards of dentistry.

In response to BDE's May 23 adoption of a policy concerning the prescribing of nicotine-containing drugs by dentists, representatives from the U.S. Department of Health and Human Services (DHHS) expressed their concern regarding certain wording in the policy statement. [13:2&3 CRLR 66] Among other things, the policy states that dentists should be aware of the fact that the prescription of nicotine-containing drugs may have an adverse systemic effect on the overall medical condition of a dental patient which would more properly be treated by a licensed physician; DHHS recommended that that provision be deleted. At BDE's July meeting, Deputy Attorney General (DAG) Alan Mangels pointed out that the original language was included as a disclaimer to protect BDE from possible lawsuits or liability. Following discussion, BDE rejected this and several other proposed changes, but agreed to revise the policy to provide that prescribing appropriate medicine for the treatment of an existing dental condition is within the scope of dentistry, rather than "appears to be" within the scope of dentistry.

At its September 10 meeting, BDE discussed its Clinical Needlestick Protocol for Clinicians, Dental Assistants, and Patients, which must be followed if a potential infection-spreading incident (needlesticks, punctures, or cuts) occurs in a licensure examination setting. The Board is concerned about maintaining the anonymity of candidates taking the dental examination, as well as determining the identity of the injured person and participating individuals. BDE agreed to revise its incident/accident exposure form to request the examinee's (clinician's) testing number only, and the name and address of other parties involved in the incident, among other things.

Also at its September 10 meeting, BDE denied a request from a firm known as California CPR to amend to section 1017, Title 16 of the CCR, which provides—



among other things—that as part of his/her continuing education requirements, each licensee shall complete, at least once every two years, a course in basic life support approved by the American Red Cross (ARC) or the American Heart Association (AHA). According to BDE staff, California CPR proposed that section 1017 be amended to delete the ARC/AHA approval requirement after it was unable to receive approval from ARC or AHA for its home study video entitled *CPR Re-Recognition Course*. Following discussion, BDE denied California CPR's request, but established a subcommittee to determine the merits of California CPR's video course.

Finally, BDE adopted a protocol for handling requests for modification to terms of probation imposed on licenses issued pursuant to Business and Professions Code section 1718.3, which provides that a license which is not renewed within five years after its expiration may not be renewed, restored, or reissued thereafter, but the holder of the license may apply for and obtain a new license if specified requirements are met; the section authorizes BDE to impose conditions on any license issued pursuant to section 1718.3, as it deems necessary. Following discussion, the Board adopted a policy stating that any individual who applies for and has been issued a license pursuant to the provisions of Business and Professions Code section 1718.3 with terms or conditions placed on that license shall not be eligible to petition the Board to change the terms or conditions for a period of at least one year.

■ FUTURE MEETINGS

To be announced.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Interim Executive Officer:

Neil Fippin
(916) 263-3180

The Board of Funeral Directors and Embalmers (BFDE) licenses funeral establishments and embalmers. It registers apprentice embalmers and approves funeral establishments for apprenticeship training. The Board annually accredits embalming schools and administers licensing examinations. BFDE inspects the physical and sanitary conditions in funeral establishments, enforces price disclosure laws, and approves changes in business name or location. The

Board also audits preneed funeral trust accounts maintained by its licensees, which is statutorily mandated prior to transfer or cancellation of a license. Finally, the Board investigates, mediates, and resolves consumer complaints.

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

Executive Officer Resigns Under Pressure. On June 1, then-BFDE Executive Officer James Allen resigned, following the May 25 release of the Department of Consumer Affairs' (DCA) Internal Audit Office (IAO) report which was highly critical of his performance. [13:2&3 CRLR 68] The IAO report led to additional pressure from state agency officials and politicians; on May 26, State and Consumer Services Agency Secretary Sandra Smoley, DCA Director Jim Conran, and Assemblymember Jackie Speier, chair of the Assembly Committee on Consumer Protection, Governmental Efficiency and Economic Development, held a joint press conference at which they demanded that Allen step down. Allen had been the Board's Executive Officer for the last ten years.

At its July 1 meeting, the Board selected DCA Chief of Management and Information Services Neil Fippin to serve as Interim Executive Officer, and expressed hope that it would hire a permanent executive officer by late September. The Board met on September 2 in Sacramento to discuss the qualifications of various applicants; at this writing, however, the Board has not selected a new executive officer.

Allen Responds to IAO Audit. Prior to announcing his resignation, James Allen responded to the IAO audit in a May 21 letter to C. Lance Barnett, DCA's Chief Deputy Director. [13:2&3 CRLR 68] Allen first contended that the report "may have been 'directed' by someone outside the [IAO]," and argued that outside direction is contrary to IAO's purpose. Allen then admitted that the Board has problems in auditing its licensees' preneed trust funds, but claimed that the "several serious deficiencies" outlined in the May 25 audit should have been mentioned earlier in the 1991-92 audit and in follow-up reports. Allen indicated that he and his staff have been "trying very hard to im-

prove" their audit performance and have "already begun to discuss the development of uniform workpaper procedures and policies." Allen formally requested that IAO assist the Board in developing a formal written audit program. He then addressed some of the more specific findings of the audit:

- **Mission Chapel.** The IAO audit found that, in 1991, BFDE told Mission Chapel to take several corrective actions and make restitution to 18 consumers; to date, Mission Chapel has failed to make any of the corrective actions and disputes 17 of the 18 refund recommendations, and BFDE has taken no action. Allen indicated that the Mission Chapel matter has been "reassigned," that appropriate corrective action and restitution would be sought, and that disciplinary action may be initiated.

- **Fowler-Anderson Funeral Directors.** In 1992, BFDE told Fowler-Anderson to take several corrective actions and make 22 refunds. The licensee has ignored the corrective action orders entirely; with regard to the refund recommendations, it agreed to eight, disputed ten, and failed to address four. It has failed to make any restitution, even in the cases in which it agrees restitution is warranted, and the Board has taken no action. Allen stated that this matter has also been "reassigned," corrective action and restitution would be sought, and disciplinary action may be initiated. According to Allen, the home has been sold and the new owners had no part in the preneed trust problems. Allen expressed belief that all parties seemed "willing to work toward a resolution of this matter without the need for costly disciplinary proceedings."

- **Jesse Cooley Funeral Home.** Here, BFDE apparently completed its audit and made several corrective action recommendations in 1990, but failed to communicate them to the licensee until 1993. Allen indicated that the funeral home has informed the Board that it has complied with all recommendations for corrective action; in addition, it has resumed filing annual reports and filed "missing reports." However, actual compliance had not been verified by BFDE at the time of Allen's response. Allen recommended that no disciplinary action be taken "at this late date," but indicated that disciplinary action may be appropriate if Cooley has not complied with the Board's recommendations or if violations continue.

- **People's Funeral Home Trust Reserve Fund.** BFDE found that this fund might be missing anywhere from \$57,000 to \$154,000; IAO criticized the Board's audit as so lacking in quality that neither conclusion can be supported. Allen dis-