



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-



agreed with IAO's findings regarding People's, standing by the Board's calculation of \$57,351.31 as the amount of missing trust funds. Although BFDE has taken no action against the home, Allen characterized the case as "an ongoing matter."

**Board Approves DCA Audit Contract.** At its July 1 meeting, the Board approved a proposed contract with IAO; under the agreement, IAO will develop a preneed trust audit plan and policy for the Board and perform direct audit work. Although the Board will not be charged a fee for the preparation of the audit plan, it will be charged for the direct audit work; IAO estimates that fifty audits will cost \$45,000. Once a model is developed, IAO will make a few trial runs to test it; following any necessary corrections, IAO will finalize a two-year audit plan for the Board. Prior to this contract, the Board had no formal audit plan.

**DCA Convenes "Death Summit."** Long dissatisfied with the regulatory performance of both BFDE and the Cemetery Board, DCA convened a "Summit on Funeral and Cemetery Services" on September 22 in San Diego; members of both boards, DCA officials, industry representatives, consumer advocates, and community leaders met to discuss more efficient means of regulating the death services industry.

The day-long structured discussion opened with unambiguous remarks from DCA Director Jim Conran, who stressed the need for both boards to make immediate and meaningful reform. Conran compared the Summit to "the last chopper out of Vietnam—either board it or be left behind. We will not accept 'business as usual.' If we are not successful in this effort, the Wilson administration will take the lead to either sunset both boards or make them bureaus. The boards must take the lead and accept the responsibility of facilitating reform. You are either the leaders or you are the problem."

BFDE President Virginia Anthony spoke about the problems facing the Board from a member's perspective, attributing the Board's problems to a lack of continuity on the Board and a lack of funding. Anthony argued that financial constraints are primarily responsible for the Board's inability to regulate the funeral industry.

Consumer advocates participating in the Summit called on state government to precisely identify the flaws in the economic marketplace which justify some sort of regulation, and tailor the chosen regulatory mechanism to address those flaws. Center for Public Interest Law (CPIL) Supervising Attorney Julianne B. D'Angelo identified

two flaws in the death services marketplace: (1) consumers may suffer harm (loss of money) if Board licensees are incompetent or dishonest in their management of preneed funeral/cremation trust funds or endowment care funds; and (2) a general lack of information about the marketplace, due to consumers' failure or unwillingness to "comparison shop" in advance of need, an absence of the "repeat business" dynamic which forces incompetent or dishonest practitioners out of other industries, the industry's consistent use of boilerplate contracts which are filled with confusing jargon, and an absence of competitive price advertising by the industry in general.

D'Angelo argued that the state's existing regulatory system does little or nothing to address either flaw. In the area of trust fund investment and administration, neither board requires as a condition of licensure any education in trusts, investment practices, fiduciary duties, contracts, accounting, or auditing; and BFDE's licensing exam does not cover this area at all. D'Angelo stated that neither board has adopted meaningful regulations addressing the common consumer abuses in this area; neither board has a vigorous enforcement program to police violations of state law or regulations; and neither board requires the posting of a bond which is adequate to cover losses from trust funds due to incompetence or dishonesty. In fact, recent audits of BFDE's enforcement activity indicate that the industry pays no attention to state regulators (*see above*).

D'Angelo recommended a legislative removal of board licensees' ability to receive and manage trust funds. If the legislature chooses to allow licensees to continue offering this service, it should impose required education, training, and testing which guarantees competence in this area; stringent disclosure requirements and "plain English" contracts for goods and services, to ensure that consumers understand what they are purchasing and how much it costs; and a bond requirement which is sufficient in amount to cover the licensee's trust fund. Stating that "government need not and should not reflect the turf battles in this industry," D'Angelo also argued that the two boards should be merged for a more efficient use of resources, and expressed CPIL's view that no member of the new board should be an industry licensee.

Industry representatives, including Patsy Daniels from the California Funeral Directors Association and Mary Tripp from the Interment Association of California, focused on the boards' responsibilities to consumers in general and to citizens

who are licensees of the boards. Daniels called on both boards to regulate the industries only in areas where irreparable harm can be caused, prevent those who are not licensed from offering services, and provide a fair and consistent enforcement system. Karen Leonard of the California and Hawaii Federal of Funeral and Memorial Societies argued that both boards are plagued by a conflict of interest, and stated that the presence of industry members on both boards and the fact that both boards' funding comes exclusively from licensees gives industry members a feeling that they should control the boards. She stated that government should focus on controlling deceptive advertising in the death services industry, create a fund to pay for after-death services for indigent people, provide for comprehensive oversight of the industry with a sufficient number of inspectors and auditors, and educate consumers about the industry.

Next, the interim executive officers from each of the boards made presentations on the fiscal problems confronting both boards. BFDE Interim Executive Officer Neil Fippin blamed the current enforcement crisis on a lack of resources, explaining that the Board is short on auditors and lacks the funding to hire more. Fippin spoke of potentially sharing resources with both DCA and the Cemetery Board in an attempt to increase enforcement and efficiency. Fippin also claimed that the Board lacks the money to pay the Attorney General's Office to initiate any new disciplinary action. When asked whether the Board could increase revenue by initiating an active campaign of citations and fines, Fippin rejected the idea, stating that "it is not a substantial source of income."

By the end of the session, Summit facilitator Rob Eskridge summarized five topic areas identified by participants and the extent of participant agreement in each area:

*-Scope of Regulation:* Participants agreed that the boards should review areas of potential consumer harm and structure regulation accordingly.

*-Consumer Complaint Process:* Participants agreed that information should be exchanged more freely between consumers and the boards.

*-Investigation and Enforcement:* Participants generally agreed that the boards and DCA should share some resources. The boards agreed to convene a joint meeting in the near future to discuss the specifics. Participants also agreed that enforcement should be uniform and predictable.

*-Increased Resources:* No consensus was reached.



—*Board Structure and Appointments:* No consensus was reached.

Conran closed the meeting by stating that he would support the two boards in their improvement efforts, but stressed that he needs to see rapid progress. According to Conran, "The chopper has taken off, but I'm not sure where it's going to land." (See agency report on CEMETERY BOARD for related discussion.)

**Rulemaking Update.** On April 2, the Board published notice of its intent to amend section 1258 and add sections 1258.1, 1258.2, and 1258.3, Title 16 of the CCR; the changes are intended to clarify disclosure requirements for the sale of caskets. [13:2&3 CRLR 69-70] The Board was originally scheduled to hold a public hearing on these proposals on May 17; however, that hearing was canceled and has not been rescheduled.

The Board agreed at its February 3 meeting to propose the adoption of new section 1262, Title 16 of the CCR, regarding the practice of "constructive delivery" of funeral merchandise. [13:2&3 CRLR 70] Despite agreeing to publish the section for adoption, the Board has not done so to date.

## LEGISLATION

**AB 598 (Speier).** Existing law lists the person or persons who may, in a specified order of succession, control the disposition of the remains of a deceased person. As amended July 1, this bill authorizes a funeral director or cemetery authority to rely on the instructions given by a surviving child or children who make certain representations, in the absence of knowledge to the contrary. This bill also gives the funeral director or cemetery authority complete authority to control the disposition of the remains and proceed to recover the cost of the disposition in prescribed circumstances.

Existing law also provides that a funeral director shall not be liable in damages for cremated remains after they have been deposited with a cemetery. This bill instead provides that the funeral director shall not be liable for lawful disposition of the remains. This bill was signed by the Governor on October 11 (Chapter 1232, Statutes of 1993).

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

**AB 1392 (Speier),** as amended July 1, would—among other things—provide that the Board's executive officer is to be appointed by the Governor, subject to

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

**AB 1807 (Bronshvag),** as amended September 8, would require that the current address of the Cemetery Board and/or the Board of Funeral Directors and Embalmers, as appropriate, appear prominently on the first page of all contracts for specified goods and services. [A. Inactive File]

**SB 155 (Boatwright),** as introduced February 1, would require that a written authorization to cremate, provided to the authorizing agent by the funeral director or crematory and containing specified information, be signed, dated, and verified by the authorizing agent. This bill would require that funeral directors and crematories faithfully carry out the instructions of the authorizing agent, 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.

Existing law 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 ninety 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. [S. B&P]

## LITIGATION

Following its granting of BFDE's petition for rehearing on April 26, the Third District Court of Appeal released its decision on rehearing in *Funeral Security Plans v. Board of Funeral Directors and Embalmers*, 16 Cal. App. 4th 1672 (July 1, 1993); however, that opinion contained no substantial changes to the court's original decision summarized in the last issue of the *Reporter*. [13:2&3 CRLR 70] Among other things, the Third District interpreted the scope of Government Code section 11126(q), the "pending litigation" exception to the public meeting requirement of the Bagley-Keene Open Meeting Act, and concluded that the presentation of facts by legal counsel, deliberation, and decision-making are necessary components of "conferring with" and "receiving advice from" legal counsel for purposes of the "pending litigation" exception to the Act. The court also held that the Board did not comply with the Act's requirement that

"legal counsel of the state body shall prepare and submit to it a memorandum stating the specific reasons and legal authority for the closed session" whenever the Board meets in private under the "pending litigation" exception. Third, the court interpreted Government Code section 11126(d) to permit the Board to deliberate on an adjudicative matter in closed session only if evidence introduced in a public Administrative Procedure Act (APA) proceeding is being considered by the Board in rendering its decision. However, section 11126(d) does not allow the Board to go into closed session to receive new evidence and/or deliberate on petitions for termination of probation, reinstatement of a license, or reduction of a penalty not based on evidence introduced at a public administrative proceeding. Finally, the court held that the Board's two-member advisory committees are state bodies which must meet in public, pursuant to Government Code section 11121.7.

On behalf of the Board, the Attorney General's Office (AG) filed a petition for review with the California Supreme Court in early August. Among other things, the AG's petition disputes the Third District's finding that the Board's two-member advisory committees are state bodies which must meet in public under the Bagley-Keene Act and the court's interpretations of both Government Code section 11126(d) and the scope of the "pending litigation" exception to the Act.

At this writing, the Supreme Court has not issued a ruling on the Board's petition for review.

## RECENT MEETINGS

At its July 1 meeting, the Board agreed to work with DCA staff to develop a job description for the Board's executive officer position; no such description is currently on file.

Also in July, Interim Executive Officer Neil Fippin described the fiscal problems the Board experienced during the 1992-93 fiscal year. Fippin pointed out that the Board paid \$82,521 to the Attorney General's Office for enforcement-related activities; this is 218% over the budgeted allotment for the year. Fippin estimated that the Board will have approximately \$166,000 in its reserve fund for 1993-94. According to Fippin, this will not be enough money to carry the Board through the end of the fiscal year at its current rate of spending; he indicated that the Board can improve its current financial status by increasing revenues, potentially by raising licensing fees.

DCA Director Jim Conran also addressed the Board at its July meeting, urg-



ing the Board to increase its efficiency and efficacy in regulating the funeral industry. Conran applauded the Board for adopting citation and fine regulations [13:1 CRLR 35; 12:4 CRLR 79], but noted that the Board has a long way to go in protecting consumers. Conran suggested that it may be more efficient if inspectors were shared by BFDE and the Cemetery Board; however, Conran deferred further discussion of ways to make the Board more efficient and reactive to consumer complaints to the September "Death Summit" (see MAJOR PROJECTS).

The Board met on September 2 in Sacramento to discuss the qualifications of applicants for its executive officer position; at this writing, a new executive officer has not been selected.

## ■ FUTURE MEETINGS

To be announced.

## BOARD OF REGISTRATION FOR GEOLOGISTS AND GEOPHYSICISTS

*Interim Executive Officer:*

*Vickie Mayer*

*(916) 445-1920*

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 per-

son 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.

In September, Governor Wilson appointed Monta K. Huber of Escondido as a new public member, and Seena N. Hoose of Cupertino as a new geologist member of BRGG.

## ■ MAJOR PROJECTS

### Hydrogeology Specialty Update.

BRGG is continuing to pursue its proposal to create a special hydrogeology certification program to test and regulate hydrogeological practice in California; hydrogeology is the interdisciplinary science of the study of water and its interrelation with rocks, soil, and humans, with an emphasis on groundwater. [13:2&3 CRLR 72; 13:1 CRLR 39; 12:4 CRLR 81] BRGG is sponsoring SB 433 (Craven), which would authorize BRGG to begin a certification program in this area, and to "grandparent in" currently registered geologists as certified hydrogeologists without examination if they have specified experience (see LEGISLATION). At its August 20 meeting, BRGG discussed a recent hearing on SB 433 before the Assembly Consumer Protection Committee, at which the bill was stalled and became a two-year bill. Committee members saw no reason for the bill, as BRGG is already authorized to create specialty certifications; further, the Committee is hostile to the "grandparent" clause and will probably request that it be removed. BRGG will consider whether it needs and/or wants to continue to sponsor SB 433 without the "grandparent" clause at a future meeting.

The Board also proposes to adopt new section 3042, Title 16 of the CCR, which would implement BRGG's authority to create a specialty certification in hydrogeology, and amend section 3003, Title 16 of the CCR, to define the term "hydrogeology" to mean "the application of the science of geology to the study of the occur-

rence, distribution, quantity, and movement of water below the surface of the earth, as it relates to the interrelationships of geologic materials and process with water, with particular emphasis given to groundwater quality."

To be certified under proposed section 3042, applicants must be registered as a geologist in California and have a knowledge of and experience in the geology of California; geologic factors relating to the water resources of the state; principles of groundwater hydraulics and groundwater quality (including the vadose zone); applicable federal, state, and local laws and regulations; principles of water well, monitoring well, disposal well, and injection well construction; elementary soil and rock mechanics in relation to groundwater, including the description of rock and soil samples from wells; and interpretation of borehole logs as they relate to porosity, permeability, or fluid character. Applicants would also have to submit an application and three reference letters from either registered hydrogeologists or registered geologists who are qualified to practice hydrogeology. Further, an applicant may be required to submit one or more hydrogeology reports prepared by him/her or with which he/she was closely associated during its preparation. Proposed section 3042 would exempt registered civil engineers from the need to obtain certification. At this writing, BRGG has not yet adopted the proposed regulation; staff is in the process of compiling and responding to all the comments made during the public comment period and preparing the Final Statement of Reasons on the proposed rulemaking, which will be presented for formal Board action at a future meeting.

Consulting Engineers and Land Surveyors of California (CELSOC) has lodged its opposition to proposed section 3042; CELSOC represents 1,200 firms throughout California, many of which are engaged in groundwater contaminant assessment and remediation, an area which may fall within the scope of section 3042. In defense of its position, CELSOC contends that section 3042 is not needed to protect the consumer; between the two of them, BRGG and the Board of Registration for Professional Engineers and Land Surveyors now adequately regulate hydrogeology; section 3042 would have little or no deterrence value; section 3042 would not increase the competence of hydrogeologists; hydrogeology is an interdisciplinary area which is not exclusive to the field of geology; and registration in this area by BRGG would invade the realm of several engineering disciplines.