



ment that is protected by the doctrine of judicial immunity.”

Finally, the Court addressed respondents' argument that strong policy reasons support the extension of absolute immunity to court reporters; according to respondents, given the current volume of litigation in the federal courts, some reporters inevitably will be unable to meet dead-lines, and absolute immunity would help to protect the entire judicial process from vexatious lawsuits brought by disappointed litigants when this happens. In rejecting this argument, the Court stated that cases of this kind are relatively rare, and respondents provided no empirical evidence demonstrating the existence of any significant volume of vexatious and burdensome actions against reporters, even in the circuits in which reporters are not absolutely immune. The Court also opined that if a large number of cases does materialize, and if it misjudged the significance of this burden, then a full review of the countervailing policy considerations by the Congress may result in appropriate amendment to the Court Reporter Act. Finally, the Court noted that there is no reason to believe that the federal judiciary, which is familiar with the special virtues and concerns of the court reporting profession, will be unable to administer justice to its members fairly.

RECENT MEETINGS

At CSRB's June 19 meeting, Executive Officer Rick Black requested permission to attend the meetings of CCRA on a regular basis in order to keep informed of its activities and to maintain communications with the trade association; he also requested permission to attend the National Court Reporters Association's (NCRA) annual convention in San Francisco and the annual conference of the Council on Licensure, Enforcement, and Regulation (CLEAR) in San Diego. Following discussion, the Board granted Black permission to attend the annual meetings of CCRA, NCRA, and CLEAR, and to attend the regular and council meetings of CCRA whenever it does not interfere with other business.

Also at its June 19 meeting, the Board directed staff to commence the rulemaking process to revise regulatory section 2480, which provides that CSRB's Executive Officer, upon completion of an investigation, is authorized to issue citations containing orders of abatement and fines for violations by a licensed CSR of the provisions of law and/or regulations referred to in section 2480, and sets forth a range of fines for specified violations. The Board agreed to propose amendments to section 2480(c) to provide that the untimely filing of transcripts and the failure

to file transcripts shall be subject to a fine no less than \$100 and no more than \$2,500. At this writing, the Board has not yet published notice of this proposed regulatory change in the *California Regulatory Notice Register*.

At its August 28 meeting, the Board discussed the criteria it uses to determine whether it should grant reciprocity to licensees of other states; generally, the Board requires that the exam administered by each state be "substantially the same" as the California exam in order to grant reciprocity. Rick Black explained that staff considers the following three criteria to determine whether an exam is substantially the same as California's exam: whether the examination had a written knowledge test; the speed of the machine portion of the test; and the percentage of accuracy required to pass the examination. Based on these criteria, the Board discussed whether it should recognize the Idaho exam as substantially the same as the California exam; the Board directed staff to contact Idaho officials to determine exactly what the current requirements are and to present its findings at CSRB's November meeting.

FUTURE MEETINGS

To be announced.

STRUCTURAL PEST CONTROL BOARD

Registrar: Mary Lynn Ferreira (916) 263-2540

The Structural Pest Control Board (SPCB) is a seven-member board functioning within the Department of Consumer Affairs. SPCB's enabling statute is Business and Professions Code section 8500 *et seq.*; its regulations are codified in Division 19, Title 16 of the California Code of Regulations (CCR).

SPCB licenses structural pest control operators and their field representatives. Field representatives are allowed to work only for licensed operators and are limited to soliciting business for that operator. Each structural pest control firm is required to have at least one licensed operator, regardless of the number of branches the firm operates. A licensed field representative may also hold an operator's license.

Licensees are classified as: (1) Branch 1, Fumigation, the control of household and wood-destroying pests by fumigants (tenting); (2) Branch 2, General Pest, the control of general pests without fumigants; (3) Branch 3, Termite, the control of wood-destroying organisms with insecticides, but not with the use of fumigants, and including authority to perform structural repairs and corrections; and (4) Branch 4, Wood Roof Cleaning and Treatment, the application of wood preservatives to roofs by roof restorers. Effective July 1, 1993, all Branch 4 licensees must be licensed contractors. An operator may be licensed in all four branches, but will usually specialize in one branch and subcontract out to other firms.

SPCB also issues applicator certificates. These otherwise unlicensed individuals, employed by licensees, are required to take a written exam on pesticide equipment, formulation, application, and label directions if they apply pesticides. Such certificates are not transferable from one company to another.

SPCB is comprised of four public and three industry members. Industry members are required to be licensed pest control operators and to have practiced in the field at least five years preceding their appointment. Public members may not be licensed operators. All Board members are appointed for four-year terms. The Governor appoints the three industry representatives and two of the public members. The Senate Rules Committee and the Speaker of the Assembly each appoint one of the remaining two public members.

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MAJOR PROJECTS

Board Proposes New Rulemaking Package. On September 3, SPCB published notice of its intent to amend sections 1973 and 1993, adopt sections 1974 and 1996(h), and repeal section 1994, Title 16 of the CCR. Specially, the package includes the following proposals:

- Business and Professions Code section 8505.7 provides that the space to be fumigated shall be vacated by all occupants prior to the commencement of fumigation and all entrances shall be blocked or otherwise secured against re-entry, until declared by a SPCB licensee to be safe for reoccupancy. Existing section 1973 specifies that following a fumigation a licensee must post a Notice of Re-Entry form and the form must be printed in red lettering on a white background. This proposal would amend section 1973 by specifying that the form must be printed in black lettering on a white background.

- Business and Professions Code section 8505.10 specifies the information that must be in a warning sign. Existing regulations do not specify the size of the warning sign; proposed new section 1974 would specify that warning signs shall be at least 11" x 17" in size. Section 1974 would also incorporate a sample warning sign as new Form 43M-15.



• Business and Professions Code section 8516 specifies that no registered company or licensee shall commence work on a contract relating to the absence or presence of wood-destroying pests or organisms until an inspection has been made. Existing section 1993 provides that all supplementary reports shall indicate the absence or presence of wood-destroying pests or organisms or conditions conducive thereto and shall be on the form prescribed by SPCB. Proposed amendments to section 1993 would specify that inspection reports shall comply with the requirements of Business and Professions Code section 8516, and would also define the different types of inspection reports which must be submitted to the Board. [13:2&3 CRLR 110-11] Among other things, section 1993 would provide that an original inspection report is the report of the first inspection conducted on a structure, and must be either a complete or limited inspection; a complete report is a report of an inspection of all visible and accessible portions of a structure; a limited report is a report on only part of a structure; a supplemental report is a report on the inspection performed on inaccessible areas that have been made accessible as recommended on a previous report; and a reinspection report is a report on the inspection of item(s) completed as recommended in an original report or subsequent report.

• Existing section 1994 provides that if a report is made on only part of a structure, it must be designated as a limited report. SPCB proposes to repeal section 1994 on the basis that its provisions are contained in the proposed amendments to section 1993 (see above).

• Business and Professions Code section 8538 requires a structural pest control operator/company to provide to the owner for whom work is to be done a clear written notice which specifies the pesticide proposed to be used and the active ingredient(s). Existing regulations do not require that the name of the pesticide to be used and the active ingredient(s) be specified in each recommendation. This proposal would add section 1996(h) to specify that each recommendation which requires the use of pesticides shall state the name of the pesticide to be used and the active ingredient(s).

At this writing, SPCB is scheduled to conduct a public hearing on these proposals on October 22 in San Diego.

Update on Other Proposed Regulatory Changes. The following is a status update on other SPCB rulemaking proposals reported in detail in previous issues of the *Reporter*.

• **Manufacturer's Recommendation on Termiticide Applications.** On June 18, SPCB published notice of its intent to amend section 1991, Title 16 of the CCR, which would require all preconstruction applications of termiticide to be made at not less than the manufacturer's label specifications. [13:2&3 CRLR 110] Following an August 6 public hearing, SPCB adopted the proposed change, which complies with an industry standard set by the major trade association (Pest Control Operators of California). At this writing, the proposed amendments await approval by the Department of Consumer Affairs (DCA) and the Office of Administrative Law (OAL).

• **Reinspection Language.** On June 18, SPCB published notice of its intent to amend section 1996, Title 16 of the CCR, requiring the inclusion of reinspection disclosure language on all inspection reports which contain corrective measures. Specifically, the proposed changes would require that a reinspection be performed when requested by the person who ordered the original inspection, provide that the request for reinspection must be made within four months of the original inspection, and require that the reinspection be performed within ten working days of the request for a fee not more than the original fee. [13:2&3 CRLR 110] Following an August 6 public hearing, SPCB adopted the proposed amendments to section 1996, which await review and approval by DCA and OAL.

• **Other SPCB Rulemaking.** Following a public hearing at its February 26 meeting, SPCB adopted proposed amendments to regulatory sections 1950, 1950.5, and 1953 (continuing education requirements), 1990 (definition of a "separated" and required disclosure language regarding a separated report), 1991(a)(8)(C)(3) (removal of evidence of wood-destroying pests), and 1996 (format for the completion of an inspection report), and new sections 1990.5 (procedures for reporting the inspection of a common interest project) and 1970.6 (fumigation warning signs). [13:2&3 CRLR 111] At this writing, the rulemaking record on this regulatory package is pending at DCA, and must thereafter be reviewed and approved by OAL.

LEGISLATION

SB 842 (Presley), as amended July 14, permits SPCB 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).

SB 1193 (Boatwright), as amended June 30, allows a registered company or

licensee to enter into and maintain a control service agreement respecting work applicable to wood-destroying pests or organisms, subject to specified requirements. The bill defines a control service agreement as any agreement, including extended warranties, to have a licensee conduct over a period of time regular inspections and other activities related to the control or eradication of wood-destroying pests and organisms. [13:1 CRLR 70-71; 11:4 CRLR 114]

Existing law requires every company that engages in the practice of structural pest control to register with SPCB. This bill prohibits the registration of companies that have an officer, director, qualifying manager, responsible managing employee, or an individual who otherwise exercises dominion or control over the company, who either (1) has a license or registration that is revoked or suspended at the time of the application because of disciplinary action, or (2) owns or has owned in the past more than a 10% interest in another sole proprietorship, partnership, corporation, or other organization whose license or registration revoked or suspended at the time of the application because of disciplinary action. This bill was signed by the Governor on July 30 (Chapter 269, Statutes of 1993).

SB 1083 (Calderon), as amended June 29, authorizes an individual licensed as both an operator and a field representative to request that both licenses expire on the same date. This bill also authorizes SPCB or a county agricultural commissioner to levy a fine against a registered structural pest control company acting as a prime contractor for work conducted under a Branch 1 license for certain major violations by subcontractors, which shall be paid into the Education and Enforcement Account in the Structural Pest Control Education and Enforcement Fund. This bill was signed by the Governor on September 8 (Chapter 384, Statutes of 1993).

SB 991 (Kelley). Existing law provides a comprehensive scheme for the regulation of structural pest control operators. Exempt from those provisions are, among others, authorized representatives of any educational institution or state agency engaged in research or study of pest control. As amended July 2, this bill enlarges the scope of that exemption to apply to authorized representatives of any educational institution or state or federal agency engaged in research or study of pest control, or engaged in investigation or preparation for expert opinion or testimony, as specified.

Existing law provides for the deposit of funds derived from certain pesticide use



report fees collected from structural pest control operators in the Structural Pest Control Research Fund. This bill authorizes the fee to be deposited with a bank or other depository approved by the Department of Finance and designated by the Research Advisory Panel or into the Structural Pest Control Research Fund, as determined by the Panel. This bill imposes specified requirements on those deposits. This bill was signed by the Governor on October 10 (Chapter 1077, Statutes of 1993).

AB 1392 (Speier), as amended July 1, would—among other things—provide that SPCB'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 1851 (Connolly). Section 8505.1 of the Business and Professions Code includes a list of lethal fumigants, including methyl bromide, and a list of simple asphyxiants. As amended May 17, this bill would require SPCB to publish that list of simple asphyxiants and make it available to the public. This bill would also remove methyl bromide from the list of lethal fumigants, and require SPCB to prohibit the use of methyl bromide as a fumigant for structural pest control purposes, commencing January 1, 1996. [A. W&M]

AB 520 (Knight), as introduced February 18, would repeal the Structural Pest Control Act and its provisions creating the Board. [A. CPG&ED]

AB 1807 (Bronshvag), as amended May 3, would authorize SPCB to issue a citation if, upon investigation, it has probable cause to believe that a person is advertising in a telephone directory with respect to the offering or performance of services without being properly licensed, and to require the violator to cease the unlawful advertising. [A. Inactive File]

RECENT MEETINGS

At its August 10 meeting, SPCB decided to continue accepting savings accounts assigned to the Board in lieu of bonds or insurance. SPCB Registrar Mary Lynn Ferreira had recommended that SPCB discontinue accepting savings accounts because of the problems in tracking these accounts and ensuring that the financial institution does not release the funds in the accounts back to the licensee. However, SPCB's legal counsel opined that statutory revisions would be required to discontinue the acceptance of such accounts.

Also at its August meeting, SPCB noted that it has prepared and released an information sheet containing definitions of commonly misunderstood terms that may

be used in agreements between licensees and their clients.

FUTURE MEETINGS

December 3 in Sacramento.

February 25 in Palm Springs.

BOARD OF EXAMINERS IN VETERINARY MEDICINE

*Executive Officer: Gary K. Hill
(916) 263-2610*

Pursuant to Business and Professions Code section 4800 *et seq.*, the Board of Examiners in Veterinary Medicine (BEVM) licenses all doctors of veterinary medicine (DVMs), veterinary hospitals, animal health facilities, and animal health technicians (AHTs). The Board evaluates applicants for veterinary licenses through three written examinations: the National Board Examination, the Clinical Competency Test, and the California State Board Examination.

The Board determines through its regulatory power the degree of discretion that veterinarians, AHTs, and unregistered assistants have in administering animal health care. BEVM's regulations are codified in Division 20, Title 16 of the California Code of Regulations (CCR). All veterinary medical, surgical, and dental facilities must be registered with the Board and must conform to minimum standards. These facilities may be inspected at any time, and their registration is subject to revocation or suspension if, following a proper hearing, a facility is deemed to have fallen short of these standards.

The Board is comprised of six members—four licensees and two public members. The Governor appoints all of the Board's DVM members; the Senate Rules Committee and the Assembly Speaker each appoint one public member. Board members serve four-year terms. The Board has eleven committees which focus on the following BEVM functions: continuing education, citations and fines, inspection program, legend drugs, minimum standards, examinations, administration, enforcement review, peer review, public relations, and legislation. The Board's Animal Health Technician Examining Committee (AHTEC) consists of the following political appointees: three licensed veterinarians, three AHTs, and two public members.

At its July meeting, BEVM welcomed new member Alberto Aldrete, DVM; Dr. Aldrete lives in Davis and practices in Sacramento.

MAJOR PROJECTS

Update on PES Conflict of Interest. For the past year, BEVM has been addressing a potential conflict of interest in its contract with Professional Examination Services (PES), which develops and prepares the National Board Examination and the Clinical Competency Test. The conflict focuses on a clause in the contract which authorizes the American Veterinary Medical Association (AVMA), a national trade association, to set the pass point for the examinations. According to the Department of Consumer Affairs' (DCA) Central Testing Unit, no state licensing board should allow, or appear to allow, a professional association such as the AVMA to control a passing score for a test that is part of the Board's licensing process. Although PES offered to have AVMA's National Board Examination Committee (NBEC)—not AVMA itself—uses psychometric procedures to set a criterion-referenced passing score for the exams, this proposal did not satisfy BEVM. Accordingly, the Board directed Executive Officer Gary Hill to strike the objectionable language from the contract and return the signed document to PES; the Board also agreed to work with PES and AVMA to eliminate this conflict in future years. [12:2&3 CRLR 113]

In a September 16 letter to California Veterinary Medical Association (CVMA) Executive Officer Richard Schumacher, BEVM President Nancy Collins stated that BEVM supports a transfer of authority for examination preparation and the examination contract from the AVMA to the American Association of Veterinary State Boards (AAVSB); according to Collins, this transfer of authority would remove any perception of a conflict of interest between the professional association and the regulatory process. Collins noted that the AAVSB Executive Board presented a resolution to the AVMA Executive Board in January 1993 asking it to form a committee to address the conflict of interest issue; the committee met in July and is tentatively scheduled to meet again on November 11 to formulate a recommendation to be presented to the AVMA Executive Board. Collins also noted that the conflict of interest issue was discussed at AAVSB's July meeting and that 33 attending states unanimously passed a motion to strengthen the AAVSB by establishing new or modifying existing articles of incorporation and bylaws to establish a nonprofit status whereby the corporation can accommodate and direct policies regarding regulatory issues such as the national licensing exams. In conclusion, Collins sought CVMA's support for the proposed transfer of authority.