



bill is pending in the Assembly Transportation Committee.

**SB 295 (Calderon)**, as amended April 8, would limit the cost of a smog check test only to \$50, exclusive of the charges for the certificate. It would require an additional \$1 charge for the certificate; the proceeds of this charge would fund a program for individuals to report vehicles which emit unusual amounts of pollutants. This bill is pending in the Senate Transportation Committee.

**AB 691 (Hayden)** would require the use of refrigerant recycling equipment approved by ARB on and after January 1, 1993, in the servicing of vehicle air conditioners and other specified activities. This bill is pending in the Assembly Committee on Environmental Safety and Toxic Materials.

**SB 573 (Rosenthal)**, as amended May 8, would require BAR to establish a program for certifying a third party dispute resolution process used for arbitrating disputes relating to the warranties on used cars. This bill is pending in the Senate Committee on Insurance, Claims, and Corporations.

**AB 1118 (Johnson)**, as amended May 1, would require DCA to publish the rules and regulations to be followed in order to suspend or revoke the license of a Smog Check station or mechanic. This bill is pending in the Assembly Transportation Committee.

## LITIGATION:

**In Long and Wood v. Van De Kamp**, No. CV89-6488 SVW (Aug. 22, 1991), the U.S. District Court for the Central District of California held that Vehicle Code section 2805(a) is constitutionally defective and enjoined the California Attorney General from enforcing the statute, which authorizes warrantless searches without probable cause of automobile repair shops for the purpose of locating stolen vehicles. The court noted: "At first blush, section 2805 appears in a single stroke to offend every clause of the Fourth Amendment." The court held that the statute does not fall within the administrative search exception to the warrant requirement because section 2805 searches are conducted to gather evidence of criminal activity, not for administrative purposes, and because a valid warrantless administrative search may be conducted only on "business enterprises operating within certain pervasively regulated industries." The court noted that "[i]n California, automobile repair shops are subject only to a meager licensing statute, which cannot be stretched to take the place of a pervasive regulatory scheme."

## RECENT MEETINGS:

At the Advisory Board's November 8 meeting in Burlingame, BAR Chief of Field Operations/Compliance Division Keith Smith outlined the new approaches to the Smog Check Program being implemented by his division. In addition to focusing on enforcement of the Smog Check Program (as is currently done), Smith said that BAR will begin to focus on recognition and education as well. BAR hopes to implement this new focus in its undercover car operations by recognizing the stations which do well in the tests and educating mechanics at the stations which do not perform up to standards. In addition, BAR will be examining its mediation and enforcement programs in the auto repair area.

Wendy Wohl-Shoemaker, BAR's Chief of Administrative and Technical Services Division, told the Board about the programs her division is working on to improve quality assurance in the Smog Check Program. For example, BAR has begun offering workshops for Smog Check technicians aimed at improving their knowledge of how to check and repair newer, technologically advanced cars.

## FUTURE MEETINGS:

May 29 in Sacramento.

## BOARD OF BARBER EXAMINERS

*Executive Officer: Lorna P. Hill (916) 445-7008*

In 1927, the California legislature created the Board of Barber Examiners (BBE) to control the spread of disease in hair salons for men. The Board, which consists of three public and two industry representatives, regulates and licenses barber schools, instructors, barbers, and shops. It sets training requirements and examines applicants, inspects barber shops, and disciplines violators with licensing sanctions. The Board licenses approximately 23,519 barbers, 5,855 shops, and 19 schools.

BBE's enabling act is currently found at Business and Professions Code section 6500 *et seq.*; the Board's regulations are located in Division 3, Title 16 of the California Code of Regulations (CCR).

On July 1, 1992, BBE and the Board of Cosmetology (BOC) will merge, pursuant to AB 3008 (Eastin) (Chapter 1672, Statutes of 1990). The Business and Professions Code sections which establish BBE and BOC will be repealed and replaced with an enabling act creat-

ing the Board of Barbering and Cosmetology (BBC), which will provide for the licensure and regulation of persons engaged in the practice of performing specified acts relating to barbering, cosmetology, and electrolysis.

## MAJOR PROJECTS:

**Merger Preparation Continues.** On October 7 and 8, BBE and BOC held a strategic planning workshop aimed at facilitating the upcoming merger of the two boards. At the workshop, each board presented a proposed organizational chart for the new board. One of the major disagreements resulting from the merger negotiations involves BBE's concern that BOC has proposed unnecessary positions in upper-level management. For example, BBE believes that BOC's proposed creation of a Staff Services Manager and addition of three new Staff Service Analyst positions are unnecessary; however, BBE agrees that BOC's proposal to add four clerical positions is warranted. According to BBE, the emphasis should be on establishment inspections, and the new board should create additional inspector positions rather than staff management positions.

Following the merger, all existing positions at the two boards are scheduled to continue except for the boards' executive officers. Regarding the selection of BBC's EO, BBE has suggested that the current EOs of both BBE and BOC resign, and that the new board conduct a statewide recruitment process which would include both EOs as candidates.

BBE has retained System, a private consulting firm, to create a proposal for the organization of BBC. That proposal, which concerns only staffing requirements and structural recommendations, was scheduled to be submitted to the Department of Consumer Affairs on or before January 31. A December 5 interim report addressed the appointment of BBC's EO, and noted that a problem will arise if the new board's members are not appointed by July 1 and immediately begin selection of the new EO. The report recommended that, if possible, the DCA Director should appoint an interim manager pending appointment of the new board members and their selection of an EO.

On November 18 in San Francisco, BBE's merger task force held an open forum meeting. As was the case at the September open forum in San Diego, the most heated merger issue was whether the quality of barber shop inspections will be maintained after the merger. (See CRLR Vol. 11, No. 4



## REGULATORY AGENCY ACTION

(Fall 1991) p. 63 for background information.)

### LEGISLATION:

**Future Legislation.** At BBE's December 9 meeting in Long Beach, the Board voted to pursue urgency legislation proposed by BOC, consisting of four clean-up amendments to the merger bill, AB 3008 (Eastin) (Chapter 1672, Statutes of 1990). In support of the proposed amendments, the boards agree that AB 3008 contains "several provisions and oversights which frustrate the effective and efficient implementation of the legislature's intent in combining the boards."

Specifically, the boards propose to amend Business and Professions Code section 7347, which concerns the fee and application for licensure to operate an establishment. The proposed amendment would clarify that an application is required whether a person, firm, or corporation is applying to operate a new establishment or obtain ownership of an existing establishment; and that where the application is for an existing establishment, BBC may establish a fee in an amount less than the fee established by AB 3008. BBE agreed to pursue this amendment if the language is clarified to indicate that BBC may not establish inconsistent licensing fees for applicants seeking to operate an existing establishment.

Business and Professions Code section 7396 concerns the form and content of licenses issued by BBC. The proposed amendment would delete the requirement that the license contain a photograph of the licensee, and allow BBC to utilize any method as it deems appropriate to verify licensure status.

BOC and BBE propose to add new section 7427 to the Business and Professions Code, to allow BBE's fees in effect prior to June 30, 1992, to remain in effect until they are changed by BBC.

The boards also propose to add new section 94330.5 to the Education Code to require that before the Council for Private Postsecondary and Vocational Education (CPPVE) may issue a license to a cosmetology or barbering school, the school must comply with the provisions of Division 3, Chapter 10 of the Business and Professions Code, as enacted by AB 3008, and that CPPVE shall notify BBC in writing of the licensure of any school and of any disciplinary action taken against a school.

### RECENT MEETINGS:

At BBE's October 21 meeting, Board member Elton Pamplin raised an issue concerning the use of interpreters at ad-

ministrative hearings, suggesting that a BBE staff member always call to determine whether an interpreter would be needed for each hearing. At a previous hearing, a problem arose when there was no interpreter for a respondent who stated that he did not understand English. BBE legal counsel Gus Skarakis commented that the notice of hearing sent to each respondent states that the person should contact BBE and that the Board will supply an interpreter if needed; Skarakis stated that BBE's policy is adequate and complies with the law.

The Board also discussed the transfer of student hours completed at barber colleges, which require 1,500 hours, to apprenticeship programs, which require 2,000 hours. Although section 266, Title 16 of the CCR, prohibits the transfer of hours between a barber college and an apprentice training program, the regulation does not address the special circumstances involved when a school closes. The Board discussed whether, in this limited situation, students with at least 750 hours should be permitted to transfer those hours to an apprenticeship program, but made no decision on this matter.

Also at the October meeting, BBE continued its ongoing discussion regarding the shave requirement on the barber licensing examination. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 59; Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 73-74; and Vol. 9, No. 4 (Fall 1989) p. 46 for background information.) This time, the discussion focused on the tools used to perform the shave. For various reasons, including the AIDS problem, the Board discussed the possibility of giving barber students a choice of razors to use, including safety razors and electric razors. Students are now required to use a traditional barber's razor or a modern version called an injector razor. Board member Edna Mayhand noted that authorizing the use of safety razors would require a change to BBE's licensing examination, as several requirements on the exam cannot be performed with a safety razor. The Board postponed further action on this issue until a future meeting.

At the Board's December meeting, some BBE members expressed confusion as to BBC's jurisdiction over barber schools following the merger, contending that BBC will retain some sort of joint approval authority with CPPVE regarding the accreditation and licensure of barber/cosmetology schools. However, the confluence of SB 190 (Morgan) (Chapter 1307, Statutes of 1989), AB 1402 (M. Waters) (Chapter 1239,

Statutes of 1989) and subsequent clean-up legislation appear to have transferred both BBE's and BOC's jurisdiction over the approval and discipline of schools to CPPVE. (See CRLR Vol. 10, No. 4 (Fall 1990) pp. 69-70 and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 82-83 for background information.) Thus, it appears that BBC will have an impact on schools only in that it is authorized to establish the required curriculum for admission to examinations and licensure, and may refuse admission to examinations to those who have completed a curriculum which does not fulfill the requirements set forth in BBC regulations.

### FUTURE MEETINGS:

To be announced.

### BOARD OF BEHAVIORAL SCIENCE EXAMINERS

*Executive Officer: Kathleen Callanan (916) 322-4910 and (916) 445-4933*

Authorized by Business and Professions Code section 4980 *et seq.*, the eleven-member Board of Behavioral Science Examiners (BBSE) licenses marriage, family and child counselors (MFCCs), licensed clinical social workers (LCSWs) and educational psychologists (LEPs). The Board administers tests to license applicants, adopts regulations regarding education and experience requirements for each group of licensees, and appropriately channels complaints against its licensees. The Board also has the power to suspend or revoke licenses. The Board consists of six public members, two LCSWs, one LEP, and two MFCCs. The Board's regulations appear in Division 18, Title 16 of the California Code of Regulations (CCR).

### MAJOR PROJECTS:

**Board Creates Task Force to Address MFCC/LCSW Experience/Supervision Issues.** For well over one year, BBSE has struggled with several issues related to the prelicensure experience requirements for MFCCs and LCSWs. The precise issues raised pertain to the fine details of the extremely complex licensure scheme for MFCCs and LCSWs, as recently overhauled in AB 3657 (Vasconcellos) (Chapter 1356, Statutes of 1986) and SB 2658 (Watson) (Chapter 1091, Statutes of 1988), respectively. However, the Board's inability to resolve the details appears to have given rise to a wholesale reexamination of both licensure schemes, with particu-