



# REGULATORY AGENCY ACTION

will be subject to possible denial or revocation of his/her license.

**BBSE Seeks Revision to MFCC Weekly Log Sheet.** On December 13, BBSE was scheduled to hold a public hearing on its proposed amendment to section 1833, Title 16 of the CCR, which prescribes the log sheet containing a weekly summary of hours of experience gained toward licensure as an MFCC. The proposed amendments would modify the form to provide a place for certain identifying information; would add in a place to report telephone counseling and telephone practicum and a line showing the total number of hours per week; and would make other technical, nonsubstantive changes to the form. Due to a lack of a quorum at BBSE's December 13 meeting, consideration of the proposed amendment was postponed until the Board's January meeting.

**Budget Change Proposals Pending.** At BBSE's November 1 meeting, staff noted that two budget change proposals (BCPs) were under review by the Department of Finance. The first proposal would make two limited-term enforcement positions permanent. The second BCP would make one current limited-term receptionist position permanent, as well as add two additional permanent staff positions to handle the file room and miscellaneous support staff functions.

## LEGISLATION:

**SB 664 (Calderon)** would prohibit MFCCs and LCSWs, among others, from charging, billing, or otherwise soliciting payment from any patient, client, customer, or third-party payor for any clinical laboratory test or service if the test or service was not actually rendered by that person or under his/her direct supervision, except as specified. This bill is pending in the Senate Business and Professions Committee.

**AB 756 (Bates)** would provide that on or after January 1, 1993, any person applying for or renewing a license, credential, or registration as an LCSW, MFCC, school counselor, school psychologist, or school social worker, shall, in addition to all other requirements for licensure or renewal, have completed coursework or training in suicide prevention and intervention. This bill is still pending in the Assembly Health Committee.

**AB 1106 (Felando)** would create the Alcohol and Drug Counselor Examining Committee within BBSE and require the Committee to adopt regulations establishing certification standards and requirements relating to education,

training, and experience for persons who practice alcohol and drug abuse counseling. AB 1106 is still pending in the Assembly Health Committee.

**SB 738 (Killea)** would require BBSE and the Board of Psychology to establish required training or coursework in the area of domestic violence assessment, intervention, and reporting for all persons applying for an initial license and the renewal of a license of a psychologist, LCSW, or MFCC. This bill is still pending in the Senate Business and Professions Committee.

**AB 2085 (Polanco)**, as amended April 15, would require the trustees of the California State University and the regents of the University of California to collaborate with the California Conference of Local Mental Health Directors to develop a curriculum and practicum within their respective graduate social work programs to train social workers to work with seriously emotionally disturbed children and severely mentally ill adults, and to provide culturally appropriate services to ethnic minority populations. This bill is pending in the Assembly Higher Education Committee.

## RECENT MEETINGS:

At BBSE's November 1 meeting, the Board welcomed three new members: Jerry Miller, President of California Lutheran University in Thousand Oaks; Lorie Rice, Assistant Dean for Professional Relations, School of Pharmacy, University of California, San Francisco; and Jai Lee Wong, a consultant to the Los Angeles County Commission on Human Relations. The Board currently has one public member and two MFCC member vacancies.

Also at the November meeting, Department of Consumer Affairs (DCA) Director Jim Conran addressed the Board, stating DCA's support for the Board's efforts to promote consumer protection.

Also at the November meeting, staff reported on the status of BBSE's request for proposals which had been issued to test consultant companies to assist BBSE in developing a new occupational analysis for the MFCC program and redesigning a new written test based on the data collected. BBSE Executive Officer Kathleen Callanan reported that two bids were submitted and CTB MacMillan/McGraw-Hill (CTB) was chosen. Dr. Callanan noted that a questionnaire concerning the importance and frequency of identified tasks was mailed to a sample of 1,500 MFCCs; data from those questionnaires was to be evaluated by CTB and incorporated

into a new written exam in time for the March administration.

Also at its November meeting, the Board discussed its requirements for licensure as an LEP; staff estimated that no similar Board review had been conducted during the last decade. Staff noted that terms such as "equivalent degree" or "equivalent experience" are not adequately defined as they relate to LEP licensing requirements; the Board created an ad hoc committee to review the matter.

## FUTURE MEETINGS:

April 23-24 in Sacramento.  
August 6-7 in San Diego.  
November 5-6 in Sacramento.

## CEMETERY BOARD

*Executive Officer: John Gill  
(916) 920-6078*

The Cemetery Board's enabling statute is the Cemetery Act, Business and Professions Code section 9600 *et seq.* The Board's regulations appear in Division 23, Title 16 of the California Code of Regulations (CCR).

In addition to cemeteries, the Cemetery Board licenses cemetery brokers, salespersons, and crematories. Religious cemeteries, public cemeteries, and private cemeteries established before 1939 which are less than ten acres in size are all exempt from Board regulation.

Because of these broad exemptions, the Cemetery Board licenses only about 188 cemeteries. It also licenses approximately 142 crematories, 200 brokers, and 1,200 salespersons. A license as a broker or salesperson is issued if the candidate passes an examination testing knowledge of the English language and elementary arithmetic, and demonstrates a fair understanding of the cemetery business.

## MAJOR PROJECTS:

**Crematory Enforcement Program Attacked.** At an October 17 interim hearing before the Assembly Committee on Consumer Protection, Governmental Efficiency and Economic Development, both private individuals and state officials called into question the Board's ability to effectively monitor and regulate its licensees. The Committee conducted the hearing to evaluate the respective performances of the Cemetery Board and the Board of Funeral Directors and Embalmers (BFDE), and heard lengthy testimony regarding alleged violations of the law by Board licensees and the Board's failure to respond meaningfully to consumer complaints. Wit-



nesses testifying before the Committee included consumers, present and former industry employees, and former agency employees; topics ranged from the illegal dumping of ashes into unmarked pits to the dropping of coffins into graves filled with water. (See *infra* agency report on BFDE for related discussion of the Assembly Committee hearing.)

In response, Executive Officer John Gill expressed support for the current enforcement program at the Board's November 22 meeting, and reported that all but four of the crematories licensed by the Board were the subject of unannounced inspections in 1991. In the course of those inspections, approximately 20% of the facilities were found to have some sort of violation. The Board has previously expressed concern that its infrequent inspections and current inability to fine or cite violators renders its enforcement program largely ineffective.

**Citation and Fine Regulations.** At its November 22 meeting, the Board discussed the possibility of drafting regulations to enable it to issue citations and fines to Board licensees. These regulations would implement Business and Professions Code section 125.9, which permits certain agencies with the Department of Consumer Affairs to establish a citation and fine system to remedy minor violations of statute or regulations by licensees. Currently, the Board's only recourse against an establishment found to be in minor violation of the law consists of a letter notifying the licensee of the violation; no corresponding penalty is assessed. The Board directed a subcommittee to study the issue for possible future action.

## LEGISLATION:

**AB 1540 (Speier)** would repeal the enabling statutes of the Cemetery Board and the Board of Funeral Directors and Embalmers, and enact the Cemeteries, Funeral Directors and Embalmers Act, with unspecified contents. This two-year bill is still pending in the Assembly Committee on Consumer Protection, Governmental Efficiency and Economic Development. The Board unanimously opposes this bill.

**Proposed Legislation.** The Cemetery Board plans to propose legislation which would increase current endowment care fund rates. In a previous attempt to increase these rates, the Board was unable to find an author for its legislation. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 76; Vol. 10, No. 1 (Winter 1990) p. 60; and Vol. 9, No. 4 (Fall 1989) p. 48 for background information.)

## LITIGATION:

On December 2, the California Supreme Court issued a ruling restricting the right of family members to bring emotional distress claims against funeral homes and cemeteries which mishandle human remains. *Christensen, et al. v. Superior Court*, No. S016890, is a class action in which family members and friends have charged a Pasadena mortuary and two crematoriums with the mishandling and mutilation of approximately 16,000 decedents. In the Supreme Court action, defendants challenged the Second District Court of Appeal's June 1990 decision which considerably expanded the scope of the plaintiff class by allowing close family members to sue for emotional distress damages where negligent mishandling of human remains is established; with regard to the intentional mishandling of human remains, the court held that all family members and close friends have standing to sue for intentional infliction of emotional distress. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 65; Vol. 11, No. 2 (Spring 1991) p. 62; and Vol. 10, No. 4 (Fall 1990) pp. 61 and 75 for background information.)

The Supreme Court agreed that the class of persons who may sue for emotional distress negligently caused by the defendants is not limited to those who have the statutory right to control disposition of the remains and/or those who contract for disposition. However, the court ruled that the class is not as expansive as that identified by the appellate court, holding that eligible plaintiffs must be "close family members who were aware that funeral and/or crematory services were being performed, and on whose behalf or for whose benefit the services were rendered." This standard eliminates relatives who did not know that the decedent had died or who were not born at the time the mishandling occurred, but later learned of the matter through the media. The court also stated that in order to recover damages, plaintiffs must prove that they suffered severe emotional distress caused by a well-founded substantial certainty that the remains of plaintiff's family member were among those mistreated.

Further, in order to establish a claim for intentional infliction of emotional distress, the conduct complained of must be "directed at the plaintiff, or occur in the presence of a plaintiff of whom the defendant is aware." Under this standard, the court held that the complaint failed to show that any of the plaintiffs has standing to sue for intentional infliction of emotional distress. The deci-

sion is viewed as a significant victory for the funeral industry.

## RECENT MEETINGS:

At its November 22 meeting, the Board again discussed Senator Marian Bergeson's request that the Board draft regulations regarding cremation contract disclosures. No further action is planned until a meeting with Senator Bergeson is scheduled so that the Board may determine what she specifically wants the regulations to address. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 67 for background information.)

Also at the Board's November meeting, Executive Officer John Gill announced that it is the Board's goal to conduct unannounced inspections on all Board-licensed crematories. Announced inspections will occur when the Board's field auditor conducts a financial audit of the cemetery.

## FUTURE MEETINGS:

To be announced.

## BUREAU OF COLLECTION AND INVESTIGATIVE SERVICES

Chief: James C. Diaz  
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The Bureau of Collection and Investigative Services (BCIS) is one of 38 separate regulatory agencies within the Department of Consumer Affairs (DCA). The Chief of the Bureau is directly responsible to the DCA Director.

Pursuant to the Collection Agency Act, Business and Professions Code section 6850 *et seq.*, the Bureau regulates the practices of collection agencies in California. Collection agencies are businesses that collect debts owed to others. The responsibility of the Bureau in regulating collection agencies is twofold: (1) to protect the consumer/debtor from false, deceptive, and abusive practices and (2) to protect businesses which refer accounts for collection from financial loss. The Bureau also plays an important role in protecting collection agencies from unlawful competition by the detection and prohibition of unlicensed activity within the industry.

In addition, eight other industries are regulated by the Bureau, including private security services (security guards and private patrol operators), repossessioners, private investigators, alarm company operators, protection dog operators, medical provider consultants, security guard training facilities, and locksmiths.

**Private Security Services.** Regulated by the Bureau pursuant to Business and