



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
(916) 739-3028

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



REGULATORY AGENCY ACTION

Professions Code section 7544 *et seq.*, private security services encompass those who provide protection for persons and/or property in accordance with a contractual agreement. The types of services provided include private street patrols, security guards, watchpeople, body guards, store detectives, and escort services. Any individual employed to provide these services is required to register with the Bureau as a security guard. Any security guard who carries a firearm and/or baton on the job must possess a firearm permit issued by the Bureau. The Bureau operates to protect consumers from guards who unlawfully detain, conduct illegal searches, exert undue force, and use their authority to intimidate and harass.

Repossessioners. Repossession agencies repossess personal property on behalf of a credit grantor when a consumer defaults on a conditional sales contract which contains a repossession clause. Any individual employed by these services is required to be registered with the Bureau. Pursuant to the Repossessioners Act, Business and Professions Code section 7500 *et seq.*, the Bureau functions to protect consumers from unethical methods of repossessing personal property, such as physical abuse resulting in bodily harm, threats of violence, illegal entry onto private property, and misrepresentation in order to obtain property or information about property.

Private Investigators. Private investigators conduct investigations for private individuals, businesses, attorneys, insurance companies, and public agencies. The scope of their job generally falls within the areas of civil, criminal, and domestic investigations. Any private investigator who carries a firearm on the job must possess a firearm permit issued by the Bureau. Pursuant to Business and Professions Code section 7512 *et seq.*, the Bureau oversees private investigators to protect consumers and clients against investigators who misrepresent, impersonate, or make threats in order to obtain desired information; perform inadequate or incompetent investigations; fail to substantiate charges or charge more than the amount agreed upon; and alter, falsify, or create evidence.

Alarm Company Operators. Alarm company operators install, service, maintain, monitor, and respond to burglar alarms. These services are provided to private individuals, businesses, and public entities. Any employee responding to alarms who carries a firearm on the job must be registered by the Bureau and possess a Bureau-issued fire-

arm permit. Pursuant to the Alarm Company Act, Business and Professions Code section 7590 *et seq.*, the Bureau regulates this industry in order to protect clients from potential theft or burglary, invasion of privacy or misrepresentation by alarm companies, and failure on their part to render service as agreed.

Protection Dog Operators. Protection dog operators train, lease, and sell dogs for personal and/or property protection. They also provide patrol services using trained dogs. Individuals employed by any of these services must be registered by the Bureau. These services are employed by private individuals, business entities, and law enforcement agencies. Pursuant to Business and Professions Code section 7550 *et seq.*, the Bureau serves to protect against possible violations in this industry, such as inadequately trained or physically abused dogs, overcharges for services, invasions of privacy, or potential theft or burglary of property.

Medical Provider Consultants. Medical provider consultants are contract collectors who provide in-house collection services to medical facilities. They contact insurance companies and/or patients to try to collect on medical debts on behalf of the medical provider. Nevertheless, consultants cannot themselves collect on delinquent debts. Instead, they must turn the debt over to an independent, licensed collection agency in order to avoid any conflict of interest. Medical provider consultants may be licensed by the Bureau pursuant to Health and Safety Code section 1249.5 *et seq.*

Training Facilities and Instructors. These facilities provide required firearm training to licensed private investigators; power to arrest and firearm training to alarm agents who respond to alarm systems; and power to arrest, firearm, and baton training to security guards. Upon completion of training, individuals must pass examinations before they may be issued the appropriate permits. Pursuant to Business and Professions Code section 7552 *et seq.*, the Bureau regulates these facilities in order to ensure that required training is provided to licensed individuals, and that only those qualified possess the proper permits to provide service to the consumer.

Locksmiths. Locksmiths install, repair, open, modify, and make keys for locks. These services are provided to private individuals, businesses, and public entities. Pursuant to Business and Professions Code section 6980 *et seq.*, the Bureau regulates this industry in

order to protect clients from potential theft or burglary, invasion of privacy, and misuse of a locksmith's skills, tools, or facilities for the commission of a crime.

The purpose of the Bureau is to protect the health, welfare and safety of those affected by these industries. To accomplish this, the Bureau regulates and reviews these industries by its licensing procedures and by the adoption and enforcement of regulations. For example, the Bureau reviews all complaints for possible violations and takes disciplinary action when violations are found. The Bureau's primary method of regulating, however, is through the granting or denial of initial/renewal license or registration applications. Education is also utilized to assist in achieving Bureau goals.

Consumers and clients may pursue civil remedies to resolve complaints and disputes currently within the regulatory authority of the Bureau. In addition, class action suits may be filed on behalf of consumers by the Attorney General's office and local district attorneys against businesses which engage in repetitive unethical business practices.

Two advisory boards function within the Bureau to advise the Chief and the DCA Director on policy matters relating to their respective industries. The Collection Agency Board (CAB) acts pursuant to Business and Professions Code section 6863.5 *et seq.*, and the Private Security Advisory Board (PSAB) is created under Business and Professions Code section 7516 *et seq.*

MAJOR PROJECTS:

Permit Processing Time Regulations. On September 13 and October 11, BCIS conducted public hearings on its proposed repeal of section 613.5 and adoption of new section 601.4, Title 16 of the California Code of Regulations. To comply with the Permit Reform Act of 1981, Government Code section 15374 *et seq.*, proposed section 604.1 would set processing times for applications for licensure or registration, and provide maximum time periods for notifying an applicant whether an application is complete and time periods for issuing or denying a license or registration. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 68 for background information.) At this writing, BCIS is reviewing the public comments received; the proposed action awaits review and approval by the Office of Administrative Law.

BCIS Releases Collection Agency Bulletin. In its October 1991 *Collection Agency Information Bulletin*, BCIS discussed issues concerning treble dam-



ages and reminded licensees that they may not make demands for treble damages on non-sufficient funds checks without first having a court judgment for such damages. Licensees were also reminded that treble damages on partially paid checks will only be assessed on the unpaid portion of the check.

The *Bulletin* also reported that the Bureau has finally moved to its new site located at 400 R Street, Suite 2001, Sacramento, CA 95814-6234.

LEGISLATION:

SB 1083 (Robbins) would provide that persons licensed as collection agencies are deemed to be attorneys-in-fact for purposes of depositing or transferring client funds to or from individual or pooled client trust deposits with banks, and that the authorized signatures and instructions of these licensees on items deposited and transfers made to and from the trust deposits of their clients are valid, whether or not the principal-agent relationship is indicated on the item or instruction. This bill is currently pending in the Senate Judiciary Committee.

AB 1180 (Murray), as amended July 1, would substantially revise existing law applicable to private investigators. Among other things, AB 1180 would extend DCA's rulemaking authority to cover private investigators and their employees; extend that rulemaking authority to the establishment of procedures, qualifications, fees, and conditions under which licensed private investigators and security guards who hold valid firearms qualifications cards will be issued a permit by the DCA Director to carry a concealed firearm; and exempt from the Private Investigators Act guards or messengers of common carriers, banks, and other financial institutions while in and about the shipment, transportation, or delivery of any money, treasure, bullion, bonds, or other thing of value within California, if certain conditions are met. This bill is pending in the Senate Business and Professions Committee.

SB 315 (Deddeh), as amended June 20, would exclude newspaper carriers and other independent delivery contractors engaged in the collection of subscriptions or wholesale payments for newspapers from the term "collection agency" as used in the Collection Agency Act. SB 315 would also extend the sunset date of the Collection Agency Act from June 30, 1992 until June 30, 1993. This bill is pending in the Assembly Committee on Banking, Finance, and Bonded Indebtedness.

RECENT MEETINGS:

At its October meeting, PSAB reported that it is currently completing its stun-gun update and would report its findings in the next *Private Investigators Bulletin*. The Board also stated that, to ensure compliance with Board regulations, it would begin to perform "spot checks" on investigators with little or no prior warning. The Board reported that during summer 1991, licensees reported nineteen shootings and four fatalities. The Board also reported that it would release training manuals for taser gun use and a draft of the Disciplinary Review Committee's guidelines at its January meeting.

FUTURE MEETINGS:

To be announced.

CONTRACTORS STATE LICENSE BOARD

Registrar: David Phillips

(916) 366-5153

Toll-Free Information Number:
1-800-321-2752

The Contractors State License Board (CSLB) licenses contractors to work in California, handles consumer complaints, and enforces existing laws pertaining to contractors. The Board is authorized pursuant to the Contractors State License Law (CSLL), Business and Professions Code section 7000 *et seq.*; CSLB's regulations are codified in Division 8, Title 16 of the California Code of Regulations (CCR).

The thirteen-member Board, consisting of seven public members, five contractors and one labor member, generally meets every other month. The Board maintains six committees: legislative, enforcement, licensing, public information, strategic planning, and budget/administration. In addition, the Board maintains a Fire Protections Systems Ad Hoc Committee. Committees meet every one to three months, and present recommendations for requested action at the full Board meetings.

MAJOR PROJECTS:

CSLB Reconsiders Its Complaint Disclosure Policy. On October 3, representatives of the Department of Consumer Affairs (DCA) and CSLB met to discuss the Board's proposed amendment to its complaint disclosure policy, codified at section 863, Division 8, Title 16 of the CCR (Rule 863). The proposed amendment would preclude CSLB from disclosing pending complaints against a contractor to an inquiring consumer until such complaints are

fully investigated and referred for legal action. "Legal action" means referral of the complaint for the issuance of a citation, accusation, statement of issues, or the initiation of criminal action or injunctive proceedings. (See CRLR Vol. 11, No. 4 (Fall 1991) pp. 70-71; Vol. 11, No. 3 (Summer 1991) p. 69; and Vol. 11, No. 2 (Spring 1991) pp. 65-66 for extensive background information.)

In response to CSLB's proposed amendment, the Center for Public Interest Law (CPIL) raised numerous objections to the proposal, maintaining that the proposed amendment is contrary to the public interest because it is not authorized by the Business and Professions Code; CSLB has shown no necessity to justify revision of the rule; and the proposed amendment is contrary to CSLB's enabling statute. CPIL prefers the current version of Rule 863, which permits CSLB to disclose to an inquiring consumer the nature of complaints pending against a contractor once those complaints have survived a thorough screening process and have been referred to a CSLB Deputy Registrar for formal investigation.

DCA Director Jim Conran must approve the proposed amendment to Rule 863; if he rejects it, CSLB may forward the rule change to the Office of Administrative Law for approval only upon a unanimous Board vote. As a result of the October 3 meeting between the staffs of DCA and CSLB, the Board was scheduled to reconsider the proposed amendment to Rule 863 at its January 17 meeting in San Diego.

Other Proposed Regulatory Changes. On January 17, CSLB was scheduled to conduct a public hearing on two separate proposed regulatory revisions. First, CSLB proposes to amend section 832.07, Title 16 of the CCR, regarding Class C-7 Low Voltage Contractors. Among other things, the proposed changes would delete language authorizing C-7 low voltage contractors to install low voltage fire alarm systems. Because of the safety considerations involved in fire alarm system installation, representatives from the State Fire Marshal's office, several fire departments, and the fire alarm industry have expressed support for removing low voltage fire alarm systems from the scope of the C-7 classification. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 71 for background information.) C-7 contractors are currently authorized to install and maintain low voltage systems which are energy limited and do not exceed 91 volts, including telephone systems, sound systems, cable television systems, closed-circuit video