



information on BEAR's use of telephone disconnects in enforcement.)

## RECENT MEETINGS:

At its October 4 meeting, BEAR's Advisory Board was addressed by Bonnie Guiton, Secretary of the State and Consumer Services Agency, DCA Director Jim Conran, DCA Chief Deputy Director C. Lance Barnett, and DCA Deputy Director of Consumer Services Linda Smith-Gaston, among others. These guests generally voiced their intention to ensure that DCA's boards, bureaus, and agencies are committed to protecting California consumers.

Also at its October 4 meeting, BEAR's Advisory Board discussed service contract administration and the Bureau's plans to conduct several public hearings to receive testimony on related issues. (See *supra* MAJOR PROJECTS.) Representatives from several third-party service contract administrators, including Maycor Appliance Parts and Service Co., Inc. and General Electric Consumer Service, addressed the Board regarding service contract administration, responding to Board inquiries regarding the necessity and stability of such companies. BEAR's Manufacturer and Service Contractors Liaison Committee reported that it is currently compiling a list of companies which sell service contracts in California and researching legislation from other jurisdictions pertaining to service contracts.

Also at its October meeting, the Advisory Board discussed methods of providing BEAR with more meaningful authority to enforce statutes and regulations relating to the electronic and appliance repair industry, including unregistered activity. DCA Deputy Director Tom Maddock suggested creating an infraction penalty to cover first and second offenses; these penalties would require court appearances within fourteen days, and a misdemeanor bench warrant could be issued by the court for failure to appear. BEAR Deputy Chief Curt Augustine noted that DCA may seek legislation which would allow the Bureau to disconnect telephones of unregistered dealers who advertise in media such as the Yellow Pages; currently, BEAR is using telephone disconnection as a form of enforcement against registered dealers who are in violation of state regulations. (See CRLR Vol. 11, No. 2 (Spring 1991) pp. 72-73 for background information.) DCA may also seek legislation to extend BEAR's jurisdiction to include repairs to facsimile machines, photocopiers, and cellular telephones.

BEAR Chief Marty Keller announced that the Bureau may seek legislation to raise its fee ceiling to offset potential financial difficulties during the 1992-93 fiscal year. However, Keller expressed his commitment to avoiding fee increases if at all possible.

Also at its October 4 meeting, the Board reelected Fay Wood as president and elected Ted Linton as vice-president for 1992.

## FUTURE MEETINGS:

May 1 in San Jose.  
August 7 in San Diego.  
November 6 in Los Angeles.

## BOARD OF FUNERAL DIRECTORS AND EMBALMERS

*Executive Officer: James B. Allen*  
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The Board of Funeral Directors and Embalmers 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. The Board 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:

*Assembly Committee Drafts Legislation to Implement Industry Reforms.* On October 17, the Assembly Committee on Consumer Protection, Governmental Efficiency and Economic Development held a public hearing to address various complaints regarding the performance of the Board of Funeral Directors and Embalmers and the Cemetery Board. Hearing participants contended that the Board of Funeral Directors and Embalmers has failed to follow up on consumer complaints; has

not conducted any investigations since its inspectors were laid off last May; and has ignored evidence of fraud, kickbacks by florists, and mutilation of corpses.

Donald Hudgens, a former inspector for the Board, testified that regulation of the industry has been so lax that funeral homes often violate regulations repeatedly because they know that no disciplinary action will be taken against them. Two investigators from the Assembly Office of Research confirmed Hudgens' statements and testified that their initial examination of Board investigatory files indicated that no action had been taken on certain complaints; however, an examination three weeks later revealed that letters had been added to the files indicating that action had been taken. Although the investigators implied that these letters might have been backdated and added to the file after their initial review, Board Executive Officer James Allen emphatically denied those allegations. However, Allen acknowledged that the Board transferred all of its inspectors and auditors to other state agencies in May 1991, because it had run out of money and expected no incoming revenue until license fees became due in January 1992. In the meantime, consumer complaints accumulated; 187 cases awaited inspection as of September. Allen also admitted that much of the criticism aimed at the Board is accurate, stating that "previous administrations have not been supportive of the Board's effort to make improvement." Allen further blamed the Board's troubles on budget constraints, lack of Board staff, and the funeral industry's ability to successfully lobby against increased fees and industry reform.

Committee Chair Jackie Speier characterized the Board's actions as "scandalous and unacceptable," and noted that the Board should have anticipated its budget needs more competently and increased its fees to pay for inspections. However, Speier concluded that even when the agency had inspectors on its staff, there was little evidence that it adequately disciplined funeral homes that violated regulations.

As a result of Speier's investigation, her office is in the process of drafting legislation for the 1992 session which would dissolve the Cemetery Board and the Board of Funeral Directors and Embalmers and create the Board of After-Death Goods and Services (BADGS), an eight-member board consisting of a licensed funeral director appointed by the Governor, an owner/operator of a licensed crematorium appointed by the Governor, an owner/manager of a



## REGULATORY AGENCY ACTION

licensed cemetery appointed by the Governor, and five public members, at least two of whom would be affiliated with a funeral/memorial society (no industry financial interests). Of the public members, one would be appointed by the Governor, two by the Assembly Speaker, and two by the Senate Rules Committee. The bill would also attempt to improve the enforcement program by establishing a citation and fine program, among other things.

The Department of Consumer Affairs (DCA) generally agrees that reforms must be implemented because the Board is not adequately protecting the public, and has acknowledged support for the proposed legislation. Richard Steffen, Chief Consultant of the Assembly Consumer Protection Committee, received comments on the proposed legislation through January 3.

**Regulatory Changes Approved.** On December 19, the Office of Administrative Law (OAL) approved the Board's amendments to section 1257, Title 16 of the CCR, which increase the various licensing fees of funeral directors and embalmers to the statutory maximum. OAL also approved the Board's adoption of section 1259, Title 16 of the CCR, which converts the Board's annual license renewal schedule to an anniversary date renewal schedule. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 77; Vol. 11, No. 2 (Spring 1991) p. 74; and Vol. 11, No. 1 (Winter 1991) p. 61 for background information.)

### LEGISLATION:

**SB 637 (Roberti)**, as amended April 30, would require, on and after July 1, 1995, that an applicant for licensure as an embalmer submit evidence to the Board that he/she has attained an associate of arts degree, an associate of science degree, or an equivalent level of higher education; require that such applicants complete a course of instruction of not less than one academic year in a Board-approved embalming school; authorize the Board to require such applicants to pass the National Board exam; and require the Board to adopt regulations requiring continuing education of licensed embalmers. This bill is pending in the Assembly Committee on Consumer Protection, Governmental Efficiency and Economic Development.

**AB 1540 (Speier)** would repeal the enabling statutes of the Board of Funeral Directors and Embalmers and the Cemetery Board, and enact the Cemeteries, Funeral Directors and Embalmers Act, with unspecified contents. This bill is also pending in the Assembly Consumer Protection Committee (see

*supra* MAJOR PROJECTS for related discussion).

**AB 1981 (Elder)**, as amended May 2, would, commencing July 1, 1992, require any person employed by, or an agent of, a funeral director who consults with a family of a deceased person or its representatives concerning the arranging of funeral services to be licensed by the Board as an arrangement counselor, or to be designated as an arrangement counselor trainee, with specified exceptions. This bill would also set forth qualifications and licensure requirements for an arrangement counselor's license. This bill is pending in the Senate Business and Professions Committee.

### 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 mis-

handling 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 decision is viewed as a significant victory for the funeral industry.

In **Funeral Security Plans, Inc. v. Board of Funeral Directors and Embalmers**, No. 3CIV0011460 (Third District Court of Appeal), Funeral Security Plans, Inc. appeals the trial court's rejection of its allegations that the Board repeatedly violated the Bagley-Keene Open Meeting Act, Government Code section 11120 *et seq.* (See CRLR Vol. 11, No. 3 (Summer 1991) p. 77; Vol. 11, No. 2 (Spring 1991) p. 74; and Vol. 11, No. 1 (Winter 1991) p. 62 for background information.) FSP's opening brief is due by March 17; the Board's responding brief will be due by May 1.

### RECENT MEETINGS:

At its October 18 meeting, the Board discussed its need to adopt alternative methods for increasing revenue. One specific method may be the creation of a "cost recovery system" which would enable the Board to request an administrative law judge, as part of a proposed decision in a disciplinary hearing, to direct the accused licensee to reimburse the Board for the costs of its investigation against that licensee. Assemblymember Speier carried a similar bill for the Board of Accountancy in 1991 (see CRLR Vol. 11, No. 4 (Fall 1991) p. 57 for background information on AB 1783), and other DCA boards have expressed interest in the concept. The Board requested public comments concerning this matter.

The Board's December 12 meeting was cancelled.

### FUTURE MEETINGS:

To be announced.