



## REGULATORY AGENCY ACTION

No. 1 (Winter 1992) at page 53:

**AB 1180 (Murray)**, as amended May 7, would amend Business and Professions Code section 7548 to provide that no licensed private patrol operator, qualified manager, or registered security guard shall, during the course and scope of licensed activity, carry a concealed weapon, unless the person has been issued a permit to carry a pistol, revolver, or other firearm capable of being concealed upon the person in a concealed manner by a local law enforcement agency pursuant to Penal Code section 12050. [S. Jud]

**SB 315 (Deddeh)** 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. [A. BF&BI]

**SB 1083 (Robbins)** would have provided 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 died in committee.

### RECENT MEETINGS:

At PSAB's January 17 meeting, the Board reviewed and approved the following as its goals for 1992: (1) pursuing more input from industry members, specifically regarding training, discipline, and BCIS services; (2) having each member of the Board's committees monitoring Discipline Review Committee (DRC) operations attend one DRC meeting during the year; (3) encouraging interaction between the private security industry and law enforcement agencies, with a focus on new techniques, information sharing, and safety issues; (4) establishing a proposed private security training program by the end of the year; (5) continuing a closer relationship between the Advisory Board and the DRCs; and (6) involving all Board members in committee assignments. PSAB also formed a new committee to promote a liaison with law enforcement agencies.

Also at its January 17 meeting, PSAB unanimously re-elected Bruce Westphal as Chair; Alex Stiglitz as Vice-Chair; and Francis Stoffels as Secretary.

At CAB's February 5 meeting, DCA Director Jim Conran addressed the Board, emphasizing his intent to work with all of the DCA boards, bureaus, and agencies in a proactive manner. Conran also noted that he will be taking an active role in addressing many of the concerns of DCA agencies.

Also at its February 5 meeting, CAB discussed medical provider consultants (MPCs) who receive and deposit funds in their own accounts to be held for the provider, noting that such consultants must be licensed as collection agencies. However, Health and Safety Code section 1249.51 provides that so long as the activities of a MPC licensee are limited to authorized activities, the MPC is not required to be licensed as a collection agency. The Board expressed concern that many unlicensed companies are presently engaged in activities which require licensure as a MPC, collection agency, or both. Chief Diaz noted that staff will thoroughly investigate this issue and present its findings at a future meeting.

### FUTURE MEETINGS:

PSAB: October 9 in Bakersfield.

CAB: October 9 in Palm Desert.

### CONTRACTORS STATE LICENSE BOARD

Registrar: David Phillips

(916) 366-5153

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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:

*OAL Approves Revised CSLB Com-*

*plaint Disclosure Policy.* At its January 17 meeting, CSLB unanimously adopted proposed amendments to its complaint disclosure policy, codified at section 863, Division 8, Title 16 of the CCR (Rule 863). The amendments preclude CSLB from disclosing pending complaints against a contractor 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. Previously, CSLB staff were authorized to disclose to an inquiring consumer the fact that a complaint had been filed against a contractor once the complaint had survived a screening process and been assigned to a CSLB deputy registrar for formal investigation. [12:1 CRLR 53; 11:4 CRLR 70-71; 11:3 CRLR 69]

The Board's decision followed an October 3 meeting between the staffs of the Department of Consumer Affairs (DCA) and CSLB, during which DCA staff expressed an unfavorable opinion of the proposed amendments. When questioned by Center for Public Interest Law intern Marc Doss at its January 17 meeting, neither the Board nor staff would explain the reasons for DCA's dissatisfaction with the amendment. Without discussion, the Board voted to submit the rulemaking file to DCA Director Jim Conran, who approved the amended version of Rule 863; the Office of Administrative Law (OAL) approved the amendment on April 10. Accordingly, as of July 1, pending complaints against contractors will not be disclosed to inquiring consumers until an investigation has been completed and the complaint has been referred for legal action.

*Other Regulatory Action.* Following a January 17 public hearing, the Board approved its proposed amendment to section 832.07, Title 16 of the CCR, regarding Class C-7 Low Voltage Contractors. [12:1 CRLR 53-54] C-7 contractors are currently authorized to install and maintain low voltage systems which are energy limited and do not exceed 91 volts, including low voltage fire alarms; the proposed changes would delete authorization for C-7 low voltage contractors to install low voltage fire alarm systems. Because of the safety considerations involved in fire alarm installation, representatives from the State Fire Marshal's office, several fire departments, and the fire alarm industry expressed support for removing low voltage fire alarm systems from the scope of the C-7 classification.

At the January 17 hearing, contractors



testified both for and against the proposal; some low voltage contractors testified that the Board was classifying them out of jobs. Many of the hearing participants suggested that CSLB implement a program to allow C-7 contractors experienced in fire alarm system installation to be "grandparented in" to the C-10 classification, which allows such activity. Following the hearing, CSLB adopted the amendment as proposed but also agreed to delay the effective date until January 1993, in order for CSLB to determine which contractors have sufficient experience to be grandparented into the C-10 classification. At this writing, the Board's amendments to section 832.07 await review and approval by OAL.

Also on January 17, the Board conducted a public hearing on proposed new section 832.28, Title 16 of the CCR, which would create a new specialty license classification for Class C-28 Lock and Security Equipment Contractors. [12:1 CRLR 54] Currently, no such specialty exists; instead, contractors who work in lock and security equipment must obtain several separate C-61 class licenses, which require a general business and law exam but no specialty exam. The proposed regulation would define a lock and security equipment contractor as one who evaluates, sets up, installs, maintains, and repairs all doors and door assemblies, gates, locks and locking devices, panic and fire rated exit devices, manual and automatic operated gate and door closures and releases, jail and prison locking devices, and permanently installed or built-in safes and vaults. At the hearing, some members of the industry initially voiced strong opposition to the section. By the end of the hearing, however, there was nearly unanimous support for the proposal among the industry representatives. The Board unanimously adopted the proposed section, subject to one modification which specifies that fire alarm systems are specifically not included in the section. The Board released the modified text for a fifteen-day public comment period, which ended on May 7. At this writing, proposed section 832.28 awaits review and approval by OAL.

**Possible Budget Shortfall Predicted for Fiscal Year 1992-93.** At the Board's April 24 meeting in Berkeley, CSLB staff member Linda Brooks reported that if AB 513 (Chandler) is not enacted, CSLB will face a 24% budget shortfall in fiscal year 1992-93. If passed, AB 513 will raise the statutory maximum amounts which CSLB may charge for license application and renewal fees. (See *infra* LEGISLATION.) If the bill does not pass, CSLB will not be

able to raise its license application and renewal fees and may have to make budget cuts of \$5.6 million.

**Budget Change Proposal Concepts Approved for 1993-94.** At its April 24 meeting, CSLB discussed eight budget change proposal (BCP) concepts for the 1993-94 fiscal year. In order of priority, the BCP concepts are the following:

-The Board unanimously approved a plan to vigorously pursue \$1.6 million for additional long-term storage and a microfilm system to back up all vital CSLB records. Section 1682 of the State Administrative Manual requires that CSLB microfilm all vital records and store them offsite; vital records are those deemed necessary for the performance or reconstruction of basic agency functions following a natural disaster. Currently, CSLB lacks funding and equipment to microfilm vital records. In addition, CSLB estimates that its current fileroom capacity will run out in June 1993.

-The Board approved a plan to request \$344,000 to hire six additional staff in the phone unit to operate the Board's Automated Phone Response System (APRS). According to CSLB, the current demand for information exceeds the system's capacity, and hiring six additional staff will enable consumers to obtain the information they need in hiring a contractor and enable contractors to obtain the information they need to operate in a legal manner.

-The Board agreed to pursue \$108,000 for the implementation of amendments to section 832.07 and the adoption of section 832.28, Title 16 of the CCR. The amendment to section 832.07 will require a licensee to obtain a C-10 classification to install fire alarm systems; the adoption of section 832.28 will create a new, separate C-28 classification for Lock and Security Equipment Contractors (*see supra*). The majority of the requested budget augmentation is for the revision and development of relevant licensing examinations.

-The Board agreed to seek \$424,000 to supply cellular phones for all field investigative staff. Currently, field investigative staff use pay phones to reach the office; according to CSLB, this method is not responsive to various situations, such as changes in priorities of assignments by supervisors.

-The Board will request \$136,000 for an associate information systems analyst and an information systems technician for the APRS. The Board contends that this BCP will allow for the development and maintenance of enhancements to APRS' integrated voice response system.

-The Board agreed to request

\$114,000 to move its Inglewood and Sacramento offices; CSLB contends that both offices have insufficient space to house assigned staff. To meet program objectives, the Board will pursue funding on a one-time basis in fiscal year 1993-94 for the relocation of these offices and on an ongoing basis to allow management to meet rent increases.

-The Board postponed until next year a plan to request \$59,000 to hire additional staff to aid in CSLB's judgment bond program.

-After extensive discussion, the Board agreed to request \$130,000 to work with the Department of Industrial Relations, the Franchise Tax Board, and the Employment Development Department in putting together a pamphlet directed at contractors which contains all of the information necessary to comply with the multiple codes and regulations applicable to contractors. According to CSLB, the failure to disseminate such information results in an underground economy which deprives the state of tax dollars, the consumer and workers of certain protections, and the legitimate contractor of fair competition.

#### LEGISLATION:

**AB 3667 (Connolly)**, as amended April 21, would require the CSLB Registrar to disqualify a licensee from bidding on public works projects upon specified findings, and would require the Registrar, upon making any of those findings, to notify the licensee of his/her ineligibility to bid for public works projects. [A. Floor]

**AB 3155 (Cannella)**, as amended May 13, would provide that CSLB has jurisdiction to investigate complaints against contractors if a complaint is filed within three years of the date of the alleged violation, and would require notice of this provision to be set forth in every contract between an owner and a contractor for the construction of a single-family dwelling. [A. Floor]

**AB 2491 (Mountjoy)**, as amended May 4, would provide that the failure of a CSLB licensee to notify the Registrar in writing of any entered and unsatisfied judgments within 90 days from the date of judgment shall result in automatic suspension of the licensee's license on the date that the Registrar is informed or is made aware of the unsatisfied judgment. A licensee's failure to comply with these requirements would also automatically prohibit that person from serving as the responsible managing officer, responsible managing partner, or responsible managing employee for any other licensee. [S. Rules]



## REGULATORY AGENCY ACTION

**AB 2413 (Lancaster).** With certain exceptions, existing law provides that a person who engages in the business or acts in a capacity for which a contractor's license is required may not bring an action for compensation for performance of any act or contract for which a license is required without alleging and proving that he/she was licensed during the time of the performance of the act or contract. As amended May 13, this bill would eliminate the requirement of proving licensure and would instead provide that if licensure or proper licensure is controverted, then proof of licensure shall be made. [A. Floor]

**AB 2424 (Mountjoy).** Existing law allows a contractor's license number to be reissued after cancellation, revocation, suspension, or expiration beyond the specified renewal period only under enumerated circumstances, including to a corporation when the parent corporation has merged or created a subsidiary to act as the licensed contractor and the new entity is being formed to continue the business. As amended April 9, this bill would instead allow a license number to be reissued after cancellation, revocation, suspension, or expiration to a corporation if there is no change in the status of the corporation as registered with the California Secretary of State. This bill would also specify conditions under which a license number may be reissued or reassigned to a different entity. [S. Rules]

**AB 2710 (T. Friedman),** as amended May 11, would provide that nothing in the Business and Professions Code shall be interpreted to prohibit cities, counties, and cities and counties from requiring contractors to show proof that they are in compliance with local business tax requirements of the entity prior to issuing any city, county, or city and county permit. This bill would also provide that any business tax required or collected as part of this process shall not exceed a specified amount. [A. Floor]

**AB 2347 (Frazee).** Existing law requires an applicant for a contractor's license, restoration of a license, or continued use of a license after discipline to file a bond in addition to other required bonds; this requirement is applicable to discipline for violation of the CSL. Among other things, the requirement applies to any person who was a qualifying individual for a licensee at the time of the violation and who had knowledge of or participated in the violation. As introduced January 16, this bill would delete the reference to violations of the CSL, and would make the requirement applicable to a qualifying individual regardless of knowledge of the violation. [S.

### Rules]

**AB 513 (Chandler),** as amended March 23, would delete existing law which provides for a separate enforcement unit in CSLB to operate as a demonstration project only in southern California. Also, this urgency bill would increase various fees in connection with the licensure of contractors. [S. Appr]

**AB 1352 (Eastin).** Under existing law, with respect to all contracts relating to the construction of any private work of improvement entered into on or after July 1, 1991, any retention withheld by the owner is required to be released within 45 days after the date on which a certificate of occupancy is issued for the work of improvement. As amended April 9, this bill would instead require that the retention withheld by the owner be released within 45 days after the date of substantial completion, as defined, with regard to those contracts entered into on or after January 1, 1993. [S. Jud]

**AB 2966 (Horcher),** as amended April 21, would provide that any person who knowingly makes a false report or causes a false complaint to be filed with CSLB against a licensed contractor shall be guilty of a misdemeanor, and require CSLB to notify the appropriate district attorney or city attorney of that false report or complaint. [A. Floor]

**AB 3240 (Eastin).** Existing law authorizes the CSLB Registrar to issue a citation to unlicensed contractors and others under specified circumstances; the citation is required to contain an order of abatement and an assessment of a civil penalty in an amount not less than \$200 nor more than \$4,500. As introduced February 20, this bill would increase the maximum amount of the civil penalty to \$15,000.

Existing law requires CSLB to promulgate regulations covering the assessment of civil penalties with respect to disciplinary proceedings against licensees; in no event may a civil penalty be assessed in an amount greater than \$2,000. This bill would increase the maximum amount of that civil penalty to \$15,000. [S. B&P]

**AB 3300 (Eastin),** as amended May 12, would provide that, with respect to all contracts between owners and original contractors for the construction of any private work of improvement, excluding residential construction, entered into on or after July 1, 1993, the retention proceeds withheld by the owner from the original contractor or by the original contractor from any subcontractor from any payment shall not exceed 5% of the payment and in no event shall the total retention withheld exceed 5% of the contract price. This pro-

vision would not apply if the original contractor or the subcontractor fails to provide a performance bond issued by a surety acceptable to the owner or original contractor, if requested by the owner or original contractor. [A. Floor]

**AB 2736 (Becerra).** Under existing law, a licensed contractor is required, prior to entering into a contract with an owner for home improvement or swimming pool construction work, to give a notice regarding the state's mechanics' lien laws, as prescribed by CSLB regulation, to the owner, the owner's agent, or the payer. As amended May 5, this bill would substantially codify the regulation setting forth the contents of that notice and would require additional information in the notice concerning the recording of mechanics' liens, payment and performance bonds, funding services for payments, and the release of mechanics' liens. The bill would also provide that failure to provide the notice as required shall constitute grounds for disciplinary action. [A. Floor]

**SB 2044 (Boatwright),** as amended April 2, would declare legislative findings regarding unlicensed activity and authorize all DCA boards, bureaus, and commissions, including CSLB, to establish by regulation a system for the issuance of an administrative citation to an unlicensed person who is acting in the capacity of a licensee or registrant under the jurisdiction of that board, bureau, or commission. [A. CPGE&ED]

**AB 3412 (Eastin).** Under existing law, an attorney filing an action for professional negligence against a licensed architect, professional engineer, or land surveyor is required to file a certificate with the complaint or cross-complaint declaring either (1) that, on the basis of a consultation with a prescribed expert, the attorney believes there is a reasonable and meritorious cause of action, or (2) one of the reasons permitted by law for not obtaining the consultation. As amended May 4, this bill would make similar provisions applicable to certain actions against contractors for negligence. [A. Floor]

The following is a status update on bills reported in detail in CRLR Vol. 12, No. 1 (Winter 1992) at pages 54-55:

**AB 1439 (Archie-Hudson),** as amended January 29, is no longer specifically relevant to CSLB.

**AB 497 (Bentley),** as amended February 24, would permit the Registrar to refer specified complaints to arbitration if there is evidence that the complainant has suffered or is likely to suffer damages in an amount greater than \$5,000 and less than \$25,000, and would provide for mandatory referral to arbitration when the con-



tract price or the demand for damages is equal to or less than \$5,000. [S. B&P]

**AB 2192 (Frazee)**, as amended April 20, would require CSLB to provide for and collect \$3 from applicants for new or renewal licenses issued under the CSLL, to be deposited by the Controller into a Trust Account in the Special Deposit Fund for the exclusive support of the California Uniform Construction Cost Accounting Commission. [S. B&P]

**AB 1969 (Areias)**, as amended January 6, is a CSLB-sponsored bill which would appropriate \$100,000 from the Contractors License Fund to CSLB, without regard to fiscal year, to be made available for expenditure in the event of a state of emergency declared by the Governor, to fund the programs and activities of CSLB related to the emergency. [S. Appr]

**SB 56 (Ayala)**. Existing law authorizes the Registrar to deny, suspend, or revoke the license of any contractor for a willful departure in any material respect from accepted trade standards for good and workmanlike construction, unless the departure is in accordance with plans and specifications prepared by or under the direct supervision of an architect. As amended April 20, this bill would define "willful," as applied to the intent with which an act is done or omitted, as a purpose or willingness to knowingly commit an act or make an omission.

Existing law exempts from licensure under the CSLL any work or operation on one undertaking or project by one or more contracts, if the aggregate contract price is less than \$300. This bill would require any person providing or performing any contracting work or operation pursuant to that exemption who advertises for the performance of that work or operation to prominently disclose that he/she is not a licensed contractor. [A. CPGE&ED]

**AB 1746 (Eaves)**. Existing law requires every employer, at the time of each payment of wages, to furnish each employee with an itemized written statement showing specified information, and to keep those records for at least three years. As amended April 30, this bill would provide that any holder of a state contractor's license who violates the statement or records requirement twice within a five-year period shall, upon notice by the Labor Commissioner to CSLB, be ineligible for license renewal by CSLB. [S. B&P]

## RECENT MEETINGS:

At CSLB's January 17 meeting, staff reported that field offices are continuing to make progress in reducing the number of aged complaints. For example, staff

stated that a number of district offices had eliminated all complaints over one year old and that other offices were beginning to eliminate all complaints over six months old. [12:1 CRLR 55; 11:4 CRLR 73]

At CSLB's April 24 meeting in Berkeley, numerous licensees expressed their outrage at the number of unlicensed contractors doing business in the state. Phil Meyer of Phil Meyer Floors in Lafayette complained that he had carefully documented and sent to CSLB evidence of unlicensed activity by 34 contractors; Meyer alleged that the Board's only response was to send the unlicensed contractors application forms. A general contractor also complained that when cities are willing to grant permits to unlicensed contractors, it creates a disadvantage for licensed contractors. Although acknowledging the unfair competition posed by unlicensed contractors, Registrar David Phillips reminded the audience that the Board's first priority is to respond to the 31,000 annual consumer complaints against licensed contractors.

## FUTURE MEETINGS:

To be announced.

## BOARD OF COSMETOLOGY

*Executive Officer: Denise Brown (916) 445-7061*

In 1927, the California legislature enacted the Cosmetology Act, establishing the Board of Cosmetology (BOC). The Board is empowered to require reasonably necessary precautions designed to protect public health and safety in establishments related to any branch of cosmetology. BOC's enabling legislation is found in Business and Professions Code section 7300 *et seq.*; the Board's regulations are codified in Division 9, Title 16 of the California Code of Regulations (CCR).

Pursuant to this legislative mandate, the Board regulates and issues separate licenses to salons, electrologists, manicurists, cosmetologists, and cosmeticians. It sets training requirements, examines applicants, issues certificates of registration and licenses, hires investigators from the Department of Consumer Affairs (DCA) to investigate complaints, and disciplines violators with licensing sanctions.

The Board is comprised of seven members—four public members and three from the industry. It is required to hold meetings at least four times per year.

On July 1, 1992, BOC and the Board

of Barber Examiners (BBE) 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 creating 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:

**Consumer Awareness Plan.** At BOC's direction, its Consumer Services Committee has drafted one-page fact sheets containing consumer information on nail services, esthetics, pedicuring, chemical services, electrolysis, and in-home services for the physically incapacitated; BOC is also preparing a fact sheet on chemical skin peeling (*see infra*). [12:1 CRLR 56] These sheets define and describe the various services, specify who may perform them, and convey miscellaneous information concerning the services. The sheets also describe the boundaries of BOC's jurisdiction and provide the Board's address and phone number for persons wanting further information or guidance. At its March 15 meeting, the Committee presented to BOC the brochure it had created from these fact sheets. The Board plans to make these informational brochures available to all interested consumer groups and distribute them at all cosmetology and electrology establishments.

**Task Force on Chemical Skin Peeling.** On January 4, BOC convened a meeting of its Task Force on Chemical Skin Peeling; the purpose of the meeting was to develop, if appropriate, guidelines on the safe and proper use (or non-use) of chemical substances by licensed estheticians and cosmetologists for the purpose of skin peeling and/or deep exfoliation. [12:1 CRLR 56]

At BOC's March 15 meeting, the Task Force presented its recommendations and proposed guidelines to the Board. The Board agreed that the proposed guidelines were generally acceptable, but that they needed to be amended to clarify that licensees are authorized to safely remove layers of dead skin only, as opposed to living tissue. The Board also directed the Task Force to delete definitions of the terms "peeling" and "exfoliation."

At BOC's May 3 meeting, the Task Force presented the following revised guidelines to the Board:

—Licensees of the Board should be prohibited from using any chemical sub-