



The bill's provisions would become effective on July 1, 1992. [S. B & P]

RECENT MEETINGS:

At its January 5 meeting, BOC unanimously agreed to support legislation that would grant BBC the authority to order an unlicensed person who is advertising cosmetology services in the telephone directory to request that the phone company disconnect telephone service at the unlicensed business (see *supra* LEGISLATION).

On May 3 in Redding, BOC conducted its final meeting. The Board took that opportunity to review various accomplishments made by BOC during its 65-year existence, such as being the first cosmetology board in the nation to develop and require a specific course on health and safety and hazardous substances in the cosmetology workplace to be taught in schools; adopting regulatory changes to ensure the highest practical level of disinfection and sterilization possible to specifically deal with the prevention of bloodborne diseases; promoting consumer and licensee awareness on a variety of subjects; developing a job-related, health and safety-oriented licensing examination; supporting the merger of BOC and BBE; and automating various Board functions to increase service and productivity.

BOARD OF DENTAL EXAMINERS

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The Board of Dental Examiners (BDE) is charged with enforcing the Dental Practice Act, Business and Professions Code section 1600 *et seq.* This includes establishing guidelines for the dental schools' curricula, approving dental training facilities, licensing dental applicants who successfully pass the examination administered by the Board, and establishing guidelines for continuing education requirements of dentists and dental auxiliaries. The Board is also responsible for ensuring that dentists and dental auxiliaries maintain a level of competency adequate to protect the consumer from negligent, unethical, and incompetent practice. The Board's regulations are located in Division 10, Title 16 of the California Code of Regulations (CCR).

The Committee on Dental Auxiliaries (COMDA) is required by law to be a part of the Board. The Committee assists in efforts to regulate dental auxiliaries. A "dental auxiliary" is a person who may perform dental supportive procedures,

such as a dental hygienist or a dental assistant. One of the Committee's primary tasks is to create a career ladder, permitting continual advancement of dental auxiliaries to higher levels of licensure.

The Board is composed of fourteen members: eight practicing dentists (DDS/DMD), one registered dental hygienist (RDH), one registered dental assistant (RDA), and four public members. At its January 24 meeting, BDE welcomed new members Joel Strom, DDS, and Stephen Yuen, DDS. On February 20, Governor Wilson announced his appointment of John Berry, DDS, and Peter Hartman, DDS, to the Board. The remaining 1992 members are James Dawson, DDS, president; Gloria Valde, DMD, vice-president; Joe Frisch, DDS, secretary; Pamela Benjamin, public member; Victoria Camilli, public member; Martha Hickey, public member; Carl Lindstrom, public member; Evelyn Pangborn, RDH; Jean Savage, DDS, and Hazel Torres, RDA.

MAJOR PROJECTS:

Board Discusses Citation and Fine Mechanism. At its May 8 meeting in Sacramento, the Board held an informational hearing to discuss proposed regulatory language to implement SB 650 (Alquist) (Chapter 521, Statutes of 1991). SB 650 authorizes BDE to establish by regulation a system for issuing a citation, which may contain an order of abatement or an order to pay an administrative fine, for violation of the Dental Practice Act or any regulation adopted by BDE pursuant to that law. In order to implement SB 650, BDE developed a draft proposal of regulatory language and requested that interested parties submit comments on the proposal at the May 8 informational meeting. Among other things, the proposed language addresses the citation format; civil penalties for citations; the factors to be considered in assessing a citation; and the process of contesting a citation. BDE anticipates holding a formal regulatory hearing on the proposal in September; at this writing, the Board has not yet published notice of its intent to pursue this regulatory action in the *California Regulatory Notice Register*.

BDE Proposes Amendment to Conscious Sedation Evaluator Regulation. The passage of AB 1417 (Speier) (Chapter 526, Statutes of 1989) added sections 1647.2-1647.9 to the Business and Professions Code, requiring BDE to establish a permit procedure for the use of conscious sedation by dentists by January 1, 1992. [10:4 CRLR 71] Conscious sedation (CS) differs from general anesthesia

(GA) in that, under CS, patients are able to maintain an airway independently and continuously, and respond appropriately to physical stimulation and verbal command. Under GA, patients are in a controlled state of depressed consciousness or unconsciousness, accompanied by partial or complete loss of protective reflexes.

Under Business and Professions Code section 1647.3, in order to become eligible for a CS permit, a dentist must submit evidence showing that his/her office has the appropriate equipment and drugs required by the Board; and that he/she has satisfactorily completed a 60-hour course of instruction in CS which includes at least 20 cases of administration of CS for a variety of dental procedures and complies in all respects with the requirements of the 1985 Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry of the American Dental Association (ADA). In determining whether a dentist is eligible for a CS permit, BDE may, at its discretion, require an onsite inspection and evaluation of the licensee and the facility, equipment, personnel, and procedures utilized by the licensee.

Under Business and Professions Code section 1647.4, dentists who had been using CS prior to 1990 were permitted to apply for a temporary permit on or before June 30, 1991, to enable them to continue administering CS; that temporary permit, good for one year, was available to dentists who could document 20 cases of CS performed subsequent to January 1, 1989, and successful completion of a course of study equivalent to the ADA's 1982 guidelines.

At BDE's May meeting, its Conscious Sedation Committee proposed that the Board amend section 1043.2, Division 10, Title 16 of the CCR, which addresses the composition of an onsite inspection and evaluation team. Specifically, section 1043.2(b) states, in part, that in order to become an evaluator for conscious sedation, an applicant must meet the CS permit requirements as stated in Business and Professions Code section 1647.3, which requires completion of a course of training equivalent to the 1985 ADA guidelines. As such, BDE contends that the pool of potential experienced evaluators is limited. According to BDE, the permittees who qualified for a temporary permit under Business and Professions Code section 1647.4(b) should also be eligible to become an evaluator, since these applicants were also required to complete an ADA-approved course of instruction. The major difference between the two ADA-approved guidelines for the courses is the number of cases performed during the



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course of instruction. BDE agreed to pursue an amendment to section 1043.2(b) which would allow evaluators to meet Business and Professions Code section 1647.4(b)'s requirements in lieu of section 1647.3's criteria. At this writing, BDE has not yet published notice of its intent to seek this revision in the *California Regulatory Notice Register*.

Rulemaking Update. The following is a status update on BDE rulemaking proceedings reported in detail in previous issues of the *Reporter*:

—On February 4, the Office of Administrative Law (OAL) approved BDE's amendment to section 1081.1, Title 16 of the CCR, which deletes the requirement that an RDA candidate successfully complete the written examination before that person is eligible to sit for the practical examination. [12:1 CRLR 58] The amendment to section 1081.1 thus permits RDA candidates to take the practical portion of the examination without first passing the written examination.

—Following a January 23 public hearing on proposed revisions to section 1041(b), Title 16 of the CCR, regarding examination requirements for applicants who are graduates of foreign dental schools, BDE modified the proposed amendments and released the revised language for a fifteen-day comment period. [12:1 CRLR 58] As introduced, the proposed amendments would modify the requirements of the restorative technique examination to delete the gold foil; modify the amalgam procedure; require two cast restoration procedures; add a wax-up; modify the typodont requirements and require the typodont to be equilibrated in centric; delete the specific time periods for each procedure and specify instead the total length of the examination; and make other technical, nonsubstantive changes.

Among other things, the revised language would provide that an applicant who has received an exemption in the gold foil section of the examination shall be exempt from taking the wax-up and model portion of the examination for two years following the date of the examination at which the exemption was received. At this writing, the proposed amendments await review and approval by OAL.

—On February 28, OAL approved BDE's adoption of new regulatory sections 1089(c) and (d), amendments to sections 1082.2(a), 1082.2(c), and 1083(d), and the repeal of sections 1067(g), (r), and (s), regarding registered dental hygienists in extended functions. [11:3 CRLR 73-74; 10:2/3 CRLR 85]

BDE Reviews Cal-OSHA's Proposed

HIV/HBV Exposure Prevention Regulations. The California Occupational Safety and Health Administration (Cal-OSHA) recently scheduled a public hearing on proposed revisions to its general industry safety orders in Title 8 of the CCR. Cal-OSHA's Occupational Safety and Health Standards Board (OSB) is the only agency in the state authorized to adopt occupational safety and health standards, which are applicable to both public agencies and private employers and are intended to protect California's working population. OSB proposes to add section 5193 to Title 8, to provide procedures and controls to reduce the potential for exposure to occupational incidents involving bloodborne infectious disease in general, and both the human immunodeficiency virus (HIV) and hepatitis B virus (HBV) in particular. These proposed changes are intended to bring California into compliance with federal OSHA standards concerning occupational exposure to bloodborne pathogens (29 C.F.R. Part 1910.1030 (Dec. 6, 1991)).

At its May 8 meeting, BDE reviewed proposed section 5193, which would—among other things—require each employer having an employee or employees with occupational exposure potential (reasonably anticipated skin, eye, mucous membrane, or parenteral contact with blood or other potentially infectious materials that may result from the performance of an employee's duties) to establish a written Exposure Control Plan which incorporates specified procedures for handling blood, blood products, body fluids, or other potentially infectious material to reduce the potential for exposure. Among many other settings, the section would apply to offices of physicians and dentists, nursing homes, hospitals, medical and dental laboratories, home health and hospice care settings, hemodialysis centers, government clinics, drug rehabilitation centers, medical equipment repair facilities, and especially research laboratories and production facilities engaged in activities involving human pathogens. The Exposure Control Plan is the basic tool of the employer to ensure the protection of employees, and must address the potential for exposure, a schedule for the implementation of the Plan, a schedule for periodic review of the Plan, and each of the applicable subsections of the standard (e.g., methods of compliance, post-exposure evaluation and follow-up, communication of hazards to employees, and recordkeeping). The section also proposes the provision of hepatitis B vaccinations to exposed employees, medical evaluations and

counseling, and post-exposure follow-up for all employees after an occupational exposure incident.

OSB was scheduled to conduct a public hearing on the proposed adoption of section 5193 on May 28 in Los Angeles.

Non-Disciplinary Review Subcommittee Update. BDE's Non-Disciplinary Review (NDR) Subcommittee met on April 17 in Santa Ana; the purpose of the NDR program is to provide the Board with a means of addressing certain complaints which are serious but do not otherwise warrant disciplinary action under the existing administrative process. NDR offers an informal, voluntary setting focused on open discussion of the events which led up to the filing of a complaint. The goal of the NDR Subcommittee is to help licensees understand potential problems and develop solutions to avoid a future recurrence of the same or similar problem. For example, at its April 17 meeting, the NDR Subcommittee met with seven licensees regarding potential problems. Three of the participants came before the Subcommittee as a result of BDE's continuing education (CE) audit; those licensees were advised on ways to make up CE credits they failed to complete. Three other licensees agreed to make recommended changes in how they practice or bill; and the seventh licensee agreed to reimburse a patient for unsatisfactory work. Since the NDR Subcommittee is informal and voluntary, information regarding the specific complaints cannot be divulged.

Board Rejects CE Credit for Board Meeting Attendance. At its January 24 meeting in Los Angeles, the Board rejected by a vote of 8-6 a proposed California Dental Association (CDA) continuing education (CE) class that would offer credits to those who attend a BDE meeting. CDA contended that credit could be given for the didactic portion of the CE requirement, as knowledge of the Dental Practice Act enhances a dentist's knowledge of what is expected in the profession. While the Board agreed that meeting attendance is informative and helpful to all practicing in the dental profession, it found that the proposal did not fall within the Board's CE guidelines.

LEGISLATION:

SB 2044 (Boatwright), as amended April 2, would declare legislative findings regarding unlicensed activity and authorize all DCA boards, bureaus, and commissions, including BDE, 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 jurisdic-



tion of that board, bureau, or commission.
[A. CPGE&ED]

AB 2743 (Lancaster), as amended April 9, would expressly authorize Department of Consumer Affairs agencies, including BDE, to implement a "cost recovery program"—that is, in disciplinary proceedings, the Board would be authorized to request the administrative law judge to direct the licentiate, in certain circumstances, to pay to the Board a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

[A. Floor]

The following is a status update on bills reported in detail in CRLR Vol. 12, No. 1 (Winter 1992) at page 59:

AB 2353 (Areias, Isenberg). The Dental Practice Act defines dental auxiliaries as persons who may perform certain dental supportive services, under the general or direct supervision of a dentist; the Act prohibits persons from performing certain of these supportive services without a license. As amended April 20, this bill would delete the reference to "dental auxiliaries" and replace it with the term "allied dental health professionals." This bill would also create a new category of allied dental health professional called a registered dental hygienist in alternative practice (RDHAP), and authorize such a person to independently provide specified dental hygiene services without any supervision by a dentist in certain work settings.

This bill would also increase from nine to ten the number of COMDA members, by adding an RDHAP member; allow dental assistants to perform specified dental hygiene functions under the supervision of a RDHAP; delete the requirement that BDE approve the educational program required to be completed by RDH applicants; prescribe that the required RDH educational program consists of a minimum of two academic years of dental hygiene curriculum in a college or institution of higher education; and repeal existing law requiring BDE to adopt regulations prescribing the functions that may be performed by a RDH and instead specify all the duties that may be performed by RDHs. This bill was rejected on April 7, but was granted reconsideration. [A. Health]

AB 2563 (Polanco) would have provided for the registration of dental laboratories and established requirements for the certification of dental technicians employed in dental laboratories by the state Department of Health Services. This bill was referred to interim study by the Assembly Health Committee.

AB 2847 (Felando), as introduced

February 18, would permit BDE to reduce the license renewal fee for a licensee who has practiced dentistry for twenty years or more in this state, has reached the age of retirement under the Social Security Act, and customarily provides his/her services free of charge or for a nominal charge, as specified, to any person, organization, or agency. [S. B&P]

SB 1813 (Russell), as amended April 2, is a follow-up bill to SB 1070 (Thompson) (Chapter 1180, Statutes of 1991). SB 1070 requires the Department of Health Services (DHS) to promulgate guidelines and regulations to minimize the risk of transmission of bloodborne infectious diseases in the health care setting by January 1993. It requires BDE and other health profession regulatory agencies to ensure that their licentiates are informed of their responsibility to minimize the risk of transmission of bloodborne infectious diseases in the health care setting, and makes it unprofessional conduct for a licentiate to knowingly fail to protect patients by failing to follow DHS' infection control guidelines.

SB 1813 would provide that, in investigating and disciplining dentists and auxiliaries for knowing failure to protect patients from transmission of bloodborne infectious diseases in the health care setting, BDE shall consider referencing DHS' guidelines; it would also require BDE to consult with the Medical Board, the Board of Podiatric Medicine, the Board of Registered Nursing, the Board of Vocational Nurse and Psychiatric Technician Examiners, and other agencies to encourage consistency in the implementation of this provision. [A. Health]

SB 664 (Calderon). Existing law prohibits dentists, among others, from charging, billing, or otherwise soliciting payment from any patient, client, or customer 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, unless the patient, client, or customer is apprised at the first solicitation for payment of the name, address, and charges of the clinical laboratory performing the service. As amended March 12, this bill would also make this prohibition applicable to any subsequent charge, bill, or solicitation. This bill would also make it unlawful for any dentist to assess additional charges for any clinical laboratory service that is not actually rendered by the dentist to the patient and itemized in the charge, bill, or other solicitation of payment. This bill has passed both the Senate and Assembly and is currently pending Senate concurrence in Assembly amendments.

AB 194 (Tucker) would provide that, on and after January 1, 1993, an applicant for a license to practice dentistry in this state who fails to pass the skills examination after three attempts shall not be eligible for further reexamination until the applicant has successfully completed a minimum of 50 hours of additional education at an approved dental school. A foreign-trained dental applicant who fails to pass the required restorative technique examination after three attempts would not be eligible for further reexamination until the applicant has successfully completed a minimum of two academic years of education at an approved dental school. [S. B&P]

AB 2120 (Cortese), as amended May 11, would, among other things, require BDE to adopt and review regulations relating to the functions that may be performed by dental assistants and RDAs, and the level of supervision and settings within which dental assistants and RDAs may work. This bill would also include as conduct constituting unprofessional conduct by persons licensed under the Dental Practice Act the utilization of any person to perform the functions of an RDA, RDA in extended functions, RDH, or RDH in extended functions who, at the time of initial employment, does not possess a current, valid license to perform those functions. [S. B&P]

AB 91 (Moore), as amended August 28, would require a dentist, dental health professional, or other licensed health professional to sign his/her name or enter his/her identification number and initials in the patient's record next to the service performed, and to date those treatment entries. [S. Conference Committee]

SB 934 (Watson), as amended January 30, would require BDE to develop, distribute, and update as necessary a fact sheet describing and comparing the risks and efficacy of the various types of dental restorative materials that may be used to repair a dental patient's oral condition or defect, and specify the contents of the fact sheet. This bill would also require that BDE distribute the fact sheet to all licensed dentists for prominent display in a public area in each dental office. This bill would not apply to any dental tool or instrument used during the dental procedure, but would apply only to any structure or device placed into a patient's mouth with the intent that it remain there beyond the completion of the dental procedure, including, but not limited to, material used for filling cavities or bracing teeth. [A. Health]

The following bills died in committee:
SB 1004 (McCorquodale), which would



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have prohibited health facilities from denying, restricting, or terminating a dentist's staff privileges on the basis of economic criteria unrelated to his/her clinical qualifications or professional responsibilities; and *SB 777 (Robbins)*, which would have provided for the certification and licensure of dental technicians and dental laboratories under the Board's jurisdiction.

RECENT MEETINGS:

At the Board's January 24 meeting in Los Angeles, Board President James Dawson presented former BDE member Henry Garabedian, DDS, with a plaque from the Board in recognition of his long and outstanding service to dentistry and the consumers of California.

Also at its January 24 meeting, BDE staff estimated that, pursuant to AB 222 (Vasconcellos), the Budget Act of 1991, approximately \$444,000 will be transferred from the Board's reserve fund to the state's general fund. In addition, COMDA Executive Officer Mary Jane Barclay announced that approximately \$339,000 will be transferred from COMDA's reserve fund to the general fund. The transfers are compelled by a Budget Act provision which strips most occupational licensing agencies in California of reserve funds in excess of three months' worth of operating expenses. The Board directed staff to draft a letter to Governor Wilson, the legislature, and the Department of Consumer Affairs stating BDE's opposition to the transfer of special funds to the general fund.

On February 26, the Board's Laser Ad Hoc Subcommittee met in San Francisco to discuss the use of lasers in dentistry and to formulate recommendations for BDE's formal position on the matter. [12:1 CRLR 59] At the meeting, the Subcommittee heard from representatives of laser manufacturers, the Food and Drug Administration (FDA), and the dental community. The FDA representative testified that FDA's position on laser use in dentistry states that lasers are to be limited to the cutting and coagulation of soft tissue; they are not approved for subgingival curettage or any procedure which would involve hard tissue. Other participants noted that safety standards for lasers have been adopted by the American National Standards Institute (ANSI) and the Federal Occupational Safety and Health Administration. It was generally agreed that because the laser is a surgical tool, proper training is of utmost importance.

Following discussion, the Subcommittee decided to recommend that the Board adopt a motion defining as unprofessional

conduct the use of a laser by a dentist or dental hygienist, other than in an academic institution or hospital setting, who (1) has not successfully completed a course which meets certain criteria, to be specified in regulations; (2) is operating lasers in a manner which is not in accordance with FDA marketing clearance or within the scope of practice of his/her license; and (3) is not operating lasers in accordance with specified standards. However, at BDE's March meeting, the issue was tabled on the motion of the Board President.

At its May 8 meeting, the Board again discussed whether to accept the Subcommittee's recommendation or take some other course of action regarding the use of lasers in dentistry. Following its discussion, the Board agreed to seek legislation addressing this issue, defining as unprofessional conduct the use of a laser by a dentist or dental hygienist if such use exceeds his/her scope of practice; the legislation would also define those respective scopes of practice. Also, the legislation may require that any equipment used in such instances be FDA-reviewed and approved and that such equipment be used in accordance with the customary practice and standards of the dental profession.

At BDE's May 8 meeting, staff reported that of the 296 candidates who took the March 24-30 dental licensure examination, 112 applicants (38%) passed and 184 (62%) failed.

FUTURE MEETINGS:

September 11 in San Diego.

November 13 in San Francisco.

BUREAU OF ELECTRONIC AND APPLIANCE REPAIR

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The Bureau of Electronic and Appliance Repair (BEAR) was created by legislative act in 1963. It registers service dealers who repair major home appliances and electronic equipment. BEAR is authorized under Business and Professions Code section 9800 *et seq.*; BEAR's regulations are located in Division 27, Title 16 of the California Code of Regulations (CCR).

The Electronic and Appliance Repair Dealer Registration Law requires service dealers to provide an accurate written estimate for parts and labor, provide a claim receipt when accepting equipment for repair, return replaced parts, and furnish an itemized invoice describing all labor performed and parts installed.

The Bureau continually inspects service dealer locations to ensure compliance with BEAR's enabling act and regulations. It also receives, investigates, and resolves consumer complaints. Grounds for revocation or denial of registration include false or misleading advertising, false promises likely to induce a customer to authorize repair, fraudulent or dishonest dealings, any willful departure from or disregard of accepted trade standards for good and workmanlike repair, and negligent or incompetent repair.

The Bureau is assisted by an Advisory Board comprised of two representatives of the appliance industry, two representatives of the electronic industry, and five public representatives, all appointed for four-year terms. Of the five public members, three are appointed by the Governor, one by the Speaker of the Assembly, and one by the Senate President pro Tempore.

On March 19, the Senate unanimously approved Governor Wilson's appointment of K. Martin Keller as BEAR Chief. BEAR Deputy Chief Curt Augustine is currently serving as Interim Executive Officer of the Acupuncture Committee, one of the allied health licensing programs of the Medical Board of California; Augustine is expected to return to BEAR by July or August.

At its February 21 meeting, the Advisory Board welcomed Rebecca Geneck, a new public member.

MAJOR PROJECTS:

BEAR Reviews Results of Public Hearings. From October through December, BEAR conducted four public hearings throughout the state to receive comments on issues related to service contracts, increased BEAR enforcement authority, technician certification, and expansion of BEAR's mandate. [12:1 CRLR 60] At the February 21 Advisory Board meeting, BEAR Chief Marty Keller released a summary of the hearing results.

-Service Contracts. BEAR noted that the most common complaint concerns the number of service contract administrators—whether third-party or original sellers—who go out of business, leaving consumers and servicers holding the bill. According to BEAR, "the profits that can be made seem to tempt some to create contract administration programs that are Ponzi schemes, designed for ultimate bankruptcy after bilking consumers and servicers out of as much cash as possible."

In response to this problem, many hearing participants suggested that the state require that each contract be backed