



## REGULATORY AGENCY ACTION

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

Chief: K. Martin Keller  
(916) 445-4751

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



up by a specific insurance policy naming the obligor and the beneficiary. A corollary proposal would create a statewide reserve funded by a minor surcharge on each service contract sold which would be administered either by a state agency such as BEAR or by an agency in the private sector subject to direct government oversight. Another proposal would give the Bureau jurisdiction over enforcing specific provisions of the Commercial Code and the Song-Beverly Consumer Warranty Act, thus enabling BEAR to receive, investigate, and mediate complaints regarding service contracts.

At its February 21 meeting, the Advisory Board agreed to pursue legislation which would create, effective January 1, 1993, a service contract registration program, requiring anyone selling service contracts to California consumers to register with BEAR; currently, only locations which sell service contracts for the repair of equipment and accept requests for the repair of such equipment under the service contract are required to register with BEAR. The legislation would provide BEAR with authority to investigate and mediate consumer complaints about service contracts and to enforce the disclosure provisions of the Song-Beverly Act.

However, at the May 1 Advisory Board meeting, Chief Keller reported that the Department of Consumer Affairs (DCA) had refused to include the proposal in its omnibus bill pending in the legislature; Keller opined that, at this time, DCA is hesitant to approve any programs which would increase industry fees. Keller assured the Board that BEAR staff will continue to work on the proposal, and will prepare a more detailed proposal for introduction in the 1993-94 legislative session. Keller also noted that an informational meeting is scheduled for August 13 in San Diego, at which BEAR will receive more industry and public comment regarding service contract issues.

-Technician Certification. Hearing participants in support of the California State Electronic Association's (CSEA) technician certification proposal testified that the explosion of technology has generally rendered whatever training electronics technicians may have received at the start of their careers inadequate for the current market. Supporters further argued that the state has an overriding interest in seeing that servicers meet minimum competency standards to ensure that consumers get what they are paying for. CSEA's proposal would create a licensing program with a state examination and continuing education requirements for con-

sumer electronic technicians.

At its May 1 meeting, BEAR's Advisory Board unanimously voted to support the concept of technician certification. CSEA anticipates finalizing a proposal to be introduced in the 1993-94 legislative session; once CSEA's specific proposal is finalized, the Association will present it to BEAR for formal endorsement.

-Enforcement Issues and Extension of BEAR's Mandate. BEAR noted that very few comments were received on these topics; however, proposals to extend BEAR's jurisdiction and increase enforcement authority have been incorporated into SB 2044 (Boatwright) (*see infra* LEGISLATION).

**BEAR Enforcement Activities.** BEAR reported the following enforcement activities during recent months:

-On May 5, BEAR announced that it permanently revoked the registration of Paul's TV & Stereo in Clearlake; BEAR found that the electronics repair company violated numerous provisions of the Business and Professions Code, including five counts of fraud, four counts of incompetence, and five counts of making untrue or misleading statements. Owners John and Paul Fortino were previously sentenced to ninety days in jail and ordered to pay restitution to four consumers after being convicted of grand theft. [12:1 CRLR 60]

-Also on May 5, BEAR announced that it had permanently revoked the registration of AC Refrigeration, owned by Cesar Valderrama; the revocation was based on seven counts each of fraud, incompetence, making untrue or misleading statements, disregard of accepted trade standards, and failure to comply with regulations. For example, BEAR's investigation revealed that the business charged a consumer \$623 for repairs to a refrigerator which only needed to have a blown fuse replaced. In early 1991, BEAR was successful in obtaining a telephone disconnect order against Valderrama and AC Refrigeration, based on charges such as operating a business without a registration, fraud and dishonest dealings, and incompetent or negligent repairs. [11:2 CRLR 73]

-At the February 21 Advisory Board meeting, BEAR's Program Manager George Busman reported on the Bureau's overall enforcement activities. Since last August, the Bureau filed eight formal accusations for revocation and revoked six dealers' registrations. The Bureau issued 21 citations to unregistered dealers or dealers who failed to renew their registrations. BEAR handed out 314 violation

notices, and achieved an 80% compliance rate. Busman attributed much of the increase in enforcement activity to cooperation from DCA.

## LEGISLATION:

**SB 2044 (Boatwright)**, as amended April 2, would declare legislative findings regarding unlicensed activity and authorize all DCA boards, bureaus, and commissions, including BEAR, 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. This bill would also provide that the unlicensed performance of activities for which a BEAR license is required may be classified as an infraction punishable by a fine not less than \$250 and not more than \$1,000. SB 2044 would also provide that if, upon investigation, BEAR has probably cause to believe that a person is advertising in a telephone directory with respect to the offering or performance of services, without being properly licensed by the Bureau to offer or perform those services, the Bureau may issue a citation containing an order of correction which requires the violator to cease the unlawful advertising and notify the telephone company furnishing services to the violator to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising.

This bill would also expand BEAR's jurisdiction to include photocopiers, facsimile machines, and cellular telephones, and to cover equipment used or sold for home office use. This bill would also increase the statutory ceiling on specified fees for service dealers. [A. CPGE&ED]

## RECENT MEETINGS:

At the Advisory Board's February 21 meeting, the Board heard a presentation from Center for Public Interest Law intern Christine Harbs, who spoke about consumer perspectives regarding regulation, dangers of over- and underregulation, and specific BEAR issues. The Board also heard a presentation from CSEA President Stanley Auerbach, who emphasized the need for a good working relationship between CSEA and BEAR.

Also at its February 21 meeting, the Advisory Board reviewed BEAR's 1992 goals, which include increasing enforcement; increasing cohesiveness between the Bureau's Sacramento and Los Angeles offices; improving the handling of consumer complaints; developing and implementing tracking systems for a cost recovery program; and pursuing service



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contract legislation.

At the Advisory Board's May 1 meeting, CSEA requested that BEAR take a position on a pending class action filed by CSEA against 28 of the world's largest manufacturers of electronic goods and appliances; CSEA alleges that independent "authorized service centers" are not being paid market rates by the manufacturers whose products the service dealers repair under warranty. The suit, which is seeking \$200 million in damages, contends that manufacturers refuse to negotiate repair contracts with servicers in violation of the Song-Beverly Act of 1977 and that the manufacturers' tactics violate the state's Unfair Labor Practices Act. According to some servicers, because manufacturers dictate prices that are 20-50% below fair market rates for warranty work, the servicers are forced to inflate charges to consumers for non-warranty work in order to compensate for the losses. However, the Advisory Board declined to take a position on the litigation, noting that it would remain neutral until such time as a threat to consumers becomes apparent.

Also at the Board's May 1 meeting, Bureau Chief Marty Keller announced that, commencing in 1993, BEAR will be combining certain parts of its operation with the Bureau of Home Furnishings and Thermal Insulation. Although the two bureaus will remain separate entities, certain aspects of the bureaus' activities will merge, such as clerical duties, complaint procedures, and unregistered activity investigations.

Also at its May 1 meeting, the Board agreed to postpone the due date for registration fees for those repair dealers affected by the Los Angeles riots, which occurred following the verdict in the criminal trial involving alleged excessive force by members of the Los Angeles Police Department against Los Angeles resident Rodney King.

### FUTURE MEETINGS:

August 14 in San Diego.  
November 6 in Los Angeles.

### BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Executive Officer: James B. Allen  
(916) 445-2413

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:

**Proposed Regulations.** On April 16, the Board held a public hearing on its proposed adoption of Article 5.5, commencing with section 1240, Title 16 of the CCR, which would establish a system for the issuance of citations to licensees who violate the provisions of the Funeral Directors and Embalmers Law and the regulations adopted by the Board, and to nonlicensees who illegally engage in activity for which a license is required. Specifically, the proposed regulations would authorize the Board to issue citations alone and citations including orders of abatement and/or assessments of administrative fines to licensees for specified violations of law and to unlicensed persons or entities engaging in business or performing services for which a license is required. The proposed regulations would specify the form and content of a citation; establish three classifications of violations (Class A, Class B, and Class C) and set forth a range of fines for each classification; and specify factors to be considered in assessing fines and issuing orders of abatement.

As proposed by the Board, Class A violations—which are subject to fines ranging from \$1,001 to \$2,500—include misrepresentation or fraud; false and misleading statements regarding the law; gross negligence, gross incompetence, or unprofessional conduct; failure to deposit funds into the proper trust; making prohibited loans of trust funds; and improper commingling of trust funds. Class B violations—which are subject to fines ranging from \$501 to \$1,000—include the unlicensed practice of the business of a funeral director; unlicensed practice of embalming; failure to provide proper

price itemization and disclosure information; failure to display prices on caskets; aiding or abetting unlicensed practice; reuse of caskets; refusing to promptly surrender a body; failure to maintain sanitary conditions; improper investment of trust funds; and failure to maintain proper books and records. Class C violations—which are subject to fines ranging from \$100 to \$500—include advertising under a misleading name; charging excessive fees for filing and obtaining copies of death certificates; failure to properly display a license; false or misleading advertising; using profane, indecent, or obscene language; solicitation or acceptance of a commission, rebate, or bonus for recommending a crematory, mausoleum, cemetery, or florist; failure to notify the Board of an address change; failure to maintain sanitary conditions in vehicles; and failure to wear proper attire while engaged in embalming.

The Board received no written comments on the proposed action during the 45-day comment period. However, several people provided oral comments at the April 16 hearing; most of them suggested that various offenses be classified differently than as proposed by the Board. The Board adopted the rulemaking package subject to the modifications suggested at the meeting and released it for an additional 15-day comment period. At this writing, the Board is preparing the rulemaking file for submission to the Office of Administrative Law.

### LEGISLATION:

**AB 3745 (Speier).** As amended March 31, this bill would, effective January 1, 1994, create within the Department of Consumer Affairs a Division of Compliance having regulatory jurisdiction over the Board of Funeral Directors and Embalmers and the Cemetery Board. [A. Floor]

**AB 3746 (Speier).** Existing law requires funeral directors to provide persons with a written or printed list of specified prices and fees before entering into an agreement or contract for funeral services. Funeral directors are also required to conspicuously mark the price on each casket. As amended April 9, this bill would require those price lists to be provided upon beginning discussion of prices or of the funeral goods and services offered, and require a funeral director to provide a written statement or list which, at a minimum, specifically identifies particular caskets by thickness of metal, type of wood, or other construction, interior and color, in addition to other information required under a specified federal regulation, when