



REGULATORY AGENCY ACTION

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



requested in person. The bill would require similar information to be provided over the telephone, if requested. The bill would also require individual price tags on caskets to include the thickness of metal, type of wood, or other construction, as applicable, in addition to interior and color information. The bill would prohibit a funeral director from charging the survivor of the deceased who is handling the funeral or burial arrangements or the responsible party a handling fee for a casket supplied by the survivor or responsible party. The bill would also prohibit a funeral director or embalmer from charging any additional fee for handling or embalming a body when death was due to a contagious or infectious disease.

AB 3746 would also provide that if a preneed contract is cancelled within seven business days, all money paid shall be fully refunded and there shall be no revocation fee. The bill would also require a funeral director or cemetery authority to present to the survivor of the deceased who is handling the funeral, burial, or cremation arrangements or the responsible party a copy of the deceased's preneed agreement. The bill would provide that a funeral director or cemetery authority who knowingly fails to present the agreement as required shall be liable for a civil fine equal to three times the cost of the preneed agreement, or \$1,000, whichever is greater. This bill would require all preneed trust funds held by funeral directors to be subject to an annual, independent certified financial audit. [A. Floor]

SB 2044 (Boatwright), as amended April 2, would declare legislative findings regarding unlicensed activity and authorize all DCA boards, bureaus, and commissions 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 acting as a funeral director or embalmer without a license 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, the Board of Funeral Directors and Embalmers has probable 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 Board to offer or perform those services, the Board may issue a citation containing an order of correction which requires the violator to cease the unlawful advertising and notify the tele-

phone company furnishing services to the violator to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising. [A. CPGE&ED]

The following is a status update on bills reported in detail in CRLR Vol. 12, No. 1 (Winter 1992) at page 62:

SB 637 (Roberti), as amended February 26, 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 would also reduce the term of embalmer apprenticeship from two years to one year. [A. CPGE&ED]

AB 1540 (Speier) would have repealed the enabling statutes of the Board of Funeral Directors and Embalmers and the Cemetery Board, and enacted the Cemeteries, Funeral Directors and Embalmers Act. This bill died in committee.

AB 1981 (Elder), as amended March 30, is no longer relevant to the Board of Funeral Directors.

LITIGATION:

On February 19, Los Angeles Superior Court Judge Barnet M. Cooperman approved a \$15.44 million settlement involving more than one hundred mortuaries that allegedly mishandled human remains. Relatives of up to 20,000 people whose remains were allegedly mishandled by companies associated with the Lamb Funeral Home, a Pasadena mortuary, will share in the award. [12:1 CRLR 62] A total of eighteen cases, known as the *Sconce/Lamb Cremation Cases*, Judicial Council Coordination Proceeding 2085, were consolidated before Judge Cooperman. Criminal prosecutions are pending against members of the Sconce family.

In response to defense counsel liaison Louis M. Marlin's claim that the mortuaries are not admitting any wrongdoing, Richard E. Brown, one of the attorneys for the class of plaintiffs, contended that "you don't pay \$15 million if there was no wrongdoing." In any event, Judge Cooperman found "that the settlement that has been proposed...[is] fair, reasonable and adequate, and in the best interest of the plaintiffs' settlement class as a whole." As of February 18, 5,237 claims had been

filed; potential class members had until May to file claims. Those filing claims will be given \$50 per body in restitution for cremation fees.

In *Funeral Security Plans, Inc. v. Board of Funeral Directors and Embalmers*, No. 3CIV0011460, Funeral Security Plans, Inc. (FSP) filed its opening brief with the Third District Court of Appeal challenging 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.* [11:3 CRLR 77; 11:2 CRLR 74] FSP, a seller of preneed funeral contracts, contends that the Board, its regulator, has routinely ignored requirements of the Act by conducting parts of its fact-finding, deliberation, and actions on public business in closed session. Specifically, FSP makes the following five contentions:

-The trial court erred when it ruled that the scope of the communications allowed between a state body and its attorney in a closed meeting convened under the "pending litigation" exception to the Act is expanded by "traditional concepts" of the attorney-client privilege.

-The trial court erred when it ruled that the Board may hear new evidence from its lawyers and staff, deliberate, and take actions in a closed meeting.

-The trial court erred when it ruled that certain closed meetings purportedly convened under the Act were proper even through the necessary prerequisites of notice and a legal memorandum were not satisfied.

-The trial court erred when it ruled that the Board as a whole may receive new factual information and take actions on public business by mail, outside a public meeting or a proper closed meeting.

-The trial court erred when it ruled that the Board's committees may meet in closed sessions where staff salaries and the per diem and travel expenses of the staff and Board members are paid from public funds.

The Board's responding brief was due May 15.

RECENT MEETINGS:

At the Board's January 23 meeting, Richard Steffen, Chief Consultant to Assemblymember Jackie Speier, spoke to the Board concerning the proposed introduction of legislation to completely reorganize the licensing and regulation of the funeral and cemetery industries. (See *supra* LEGISLATION.) On behalf of the Department of Consumer Affairs (DCA), Anne Sheehan spoke in support of the proposed legislation. However, the California Mortuary Alliance and the



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Funeral Directors Association spoke in opposition to any proposal which would consolidate the Board with the Cemetery Board.

Also at its January 23 meeting, the Board heard from its Legislative and Budget Committee concerning methods of generating additional revenue for Board operations. [12:1 CRLR 62] The Committee recommended that the Board increase the death certificate filing fee or burial permit fee; these options will be discussed at future Board meetings.

Also at its January meeting, the Board elected its 1992 officers: Virginia Anthony was elected President, Carol Weddle was elected Vice-President, and Wesley Sanders was elected Secretary. Also, new Board member Lottie Jackson was introduced; Jackson replaces Randall Stricklin on the Board.

At the Board's April 16 meeting, DCA Director Jim Conran addressed the Board, congratulating it on its efforts to create a consumer booklet and suggesting that it mandate that before any contract is entered into, the licensee give the booklet to the consumer. Conran also strongly suggested that the Board become more proactive in addressing public concerns within its jurisdiction, and suggested that the Board require licensees to post its telephone number to enable consumers to file complaints. In response to Executive Officer Jim Allen's comment that the industry would not favor such an idea, Conran reminded the Board that its responsibility is to protect the public, not the industry. Conran reprimanded the Board for failing to solicit comments from the public—in addition to comments from industry members—during its meetings. Finally, Conran stated that the Board needs to assure the legislature that it is serious about fulfilling its mandate of protecting consumers.

Also at its April 16 meeting, the Board voted to support SB 2044 (Boatwright) sponsored by DCA. (See *supra* LEGISLATION.) This bill would authorize the Board to order an unlicensed person advertising funeral services in the telephone directory to request that the phone company disconnect the phone number of the unlicensed business. However, Jim Allen expressed concern that citations might be issued on the spot during investigations, something with which the Board has never been comfortable, and that the required offense would have to be committed in the presence of the person issuing the citation, something that would probably never happen.

Also at its April meeting, the Board again addressed its funding problem.

Recent fund analyses indicate that the Board will soon experience a deficiency. The Board's recent fee increases will not be sufficient to enable it to sustain its budgeted level of activity and build a prudent reserve. The only possible source of additional revenue, under present authority, is another increase in annual embalmer license renewal fees. An increase in the embalmer license renewal fee, from the present \$100 to the authorized maximum of \$125, would potentially generate another \$65,000 or more per year. However, the Board noted that many non-practicing embalmers who now continue to renew their licenses might not do so if fees are increased. As a result, Mr. Allen mentioned five possible alternatives for generating additional revenues, which include increasing the statutory ceiling on fees in all but the embalmer-related categories; charging funeral director licensees a fee, in addition to the flat license renewal fee, of \$.50-\$1 for each case handled during a calendar or license year; increasing the death certificate filing fee or the disposition permit fee; changing the fee for filing the annual preneed trust fund report; and establishing a system for licensing funeral establishment managers. This subject is expected to be discussed at future meetings.

Also at its April 16 meeting, in order to enable the license application process to work more efficiently, the Board agreed to delegate to the Executive Officer the authority to approve all funeral director applications, with the provision that this delegation be revisited annually.

FUTURE MEETINGS:

To be announced.

BOARD OF REGISTRATION FOR GEOLOGISTS AND GEOPHYSICISTS

Executive Officer: Frank Dellechiaie (916) 445-1920

The Board of Registration for Geologists and Geophysicists (BRGG) is mandated by the Geologist and Geophysicist Act, Business and Professions Code section 7800 *et seq.* The Board was created by AB 600 (Ketchum) in 1969; its jurisdiction was extended to include geophysicists in 1972. The Board's regulations are found in Division 29, Title 16 of the California Code of Regulations (CCR).

The Board licenses geologists and geophysicists and certifies engineering geologists. In addition to successfully passing the Board's written examination,

an applicant must have fulfilled specified undergraduate educational requirements and have the equivalent of seven years of relevant professional experience. The experience requirement may be satisfied by a combination of academic work at a school with a Board-approved program in geology or geophysics, and qualifying professional experience. However, credit for undergraduate study, graduate study, and teaching, whether taken individually or in combination, cannot exceed a total of four years toward meeting the requirement of seven years of professional geological or geophysical work.

The Board may issue a certificate of registration as a geologist or geophysicist without a written examination to any person holding an equivalent registration issued by any state or country, provided that the applicant's qualifications meet all other requirements and rules established by the Board.

The Board has the power to investigate and discipline licensees who act in violation of the Board's licensing statutes. The Board may issue a citation to licensees or unlicensed persons for violations of Board rules. These citations may be accompanied by an administrative fine of up to \$2,500.

The eight-member Board is composed of five public members, two geologists, and one geophysicist. BRGG's staff consists of five full-time employees. The Board's committees include the Professional Practices, Legislative, and Examination Committees. BRGG is funded by the fees it generates. Currently, two public member positions on BRGG are vacant.

MAJOR PROJECTS:

Hydrogeology Specialty Update. At its March 9 meeting, BRGG decided to pursue regulations which would enable the Board to certify hydrogeologists as a specialty. The proposed regulations would require an applicant to first meet all of the requirements for geologist registration before being eligible to take the specialty examination. The specialty examination would require applicants to have a knowledge of, among other disciplines, geologic factors relating to the water resources of the state, principles of groundwater hydraulics and groundwater quality including the vadose zone, and interpretation of borehole logs as they relate to porosity, permeability, or fluid character. The regulations would also provide that civil engineers and soil scientists are exempt from hydrogeology certification requirements, insofar as they are regulated by the Board of Registration for