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be in existence and would not be able to lobby in support of the proposal; Conran opined that this issue should be left to BBC to resolve. However, Board members noted that because they are familiar with the issues involved, they should voice their opinion; BBE subsequently agreed to support the proposal, even if such support is only symbolic.

At BBC's first meeting on September 14, DCA Director Conran discussed the goals of the Board, commenting that the most important function of BBC is to ensure that the public is protected against health hazards and inefficient licensees; Conran opined that the newly-implemented annual inspection requirement for cosmetology salons and barber shops will improve health standards. Conran also noted that BBC's most pressing task is to select a new executive officer who will ensure that BBC is efficient and effective in serving both the public's and the industry's needs. Conran also asked BBC to examine the content and methods of teaching in barbering and cosmetology schools; Conran noted that some schools focus too much on business skills, instead of training competent professionals. Finally, Conran requested that the Board look into inactive licensing procedures.

Although BBC will not elect its officers until its November meeting, Dr. Stein was selected to serve as interim chair. Stein proposed that the Board postpone election of officers until Governor Wilson appoints the final three Board members; however, DCA legal counsel Dan Buntjer stated that Business and Professions Code section 7307 requires BBC to select a President and Vice-President at its second meeting, regardless of how many Board members have been appointed.

Interim Executive Officer Rualette White informed the Board that 400,000 BBE and BOC licensing files had been integrated into one filing system; an automated telephone system had been developed and implemented; a new organizational structure is being reviewed to ensure the efficient handling of all regulatory tasks for the large number of BBC licensees; and BBC is working with the labor occupational health program at UC Berkeley to develop a new health and safety curriculum for BBC licensees. White also announced that the number of BBC inspectors will increase from ten to seventeen by the end of 1992; therefore, more cosmetology and barber shops will be inspected each year. Finally, White discussed the development of a task force to improve communication among BBC, examiners, and schools; White opined that

examiners should have more input regarding the required curriculum, and students should be provided with examination performance criteria in order to better prepare them for their exams.

■ FUTURE MEETINGS

To be announced.

BOARD OF BEHAVIORAL SCIENCE EXAMINERS

Executive Officer:
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Authorized by Business and Professions Code section 4980 *et seq.*, the eleven-member Board of Behavioral Science Examiners (BBSE) licenses marriage, family and child counselors (MFCCs), licensed clinical social workers (LCSWs), and educational psychologists (LEPs). The Board administers tests to license applicants, adopts regulations regarding education and experience requirements for each group of licensees, and appropriately channels complaints against its licensees. The Board also has the power to suspend or revoke licenses. The Board consists of six public members, two LCSWs, one LEP, and two MFCCs. The Board's regulations appear in Division 18, Title 16 of the California Code of Regulations (CCR).

■ MAJOR PROJECTS

Board Reviews Legislative Proposal Regarding Petitions for Reinstatement.

At its September 24 meeting, BBSE reviewed a draft legislative proposal regarding petitions for reinstatement; specifically, the proposal would revise Business and Professions Code sections 4982.1 and 4982.2. Existing section 4982.2, regarding circumstances under which BBSE may place a license or registration on probation, would be renumbered as section 4982.1. Existing section 4982.2(d) would be deleted. That section currently provides that one year after the date of revocation of a BBSE license or registration, the disciplined licensee may apply to the Board for reinstatement; the Board may accept or reject an application for reinstatement and may require an examination for reinstatement; and the Board shall not consider any application for reinstatement if the applicant is under criminal probation or parole at that time.

New section 4982.2 would provide that an MFCC, LCSW, or LEP whose license has been revoked or suspended or who has been placed on probation may petition the Board for reinstatement or modification of penalty, including modification or termination of probation, after not less than the following minimum periods have elapsed from the effective date of the decision ordering that disciplinary action, or (if the order of the Board, or any portion of it, is stayed by the Board itself, or by the superior court) from the date the disciplinary action is actually implemented in its entirety:

-at least three years for reinstatement of a license which was revoked for unprofessional conduct, except that the Board may, in its sole discretion at the time of adoption, specify in its order that a petition for reinstatement may be filed after two years;

-at least two years for early termination of any probation period of three years or more; or

-at least one year for modification of a condition, or reinstatement of a license revoked for mental or physical illness, or termination of probation of less than three years.

Section 4982.2 would also provide that the petition must be submitted on a form provided by BBSE and shall state such facts and information as may be required by the Board, including but not limited to proof of compliance with the terms and conditions of the underlying disciplinary order. Section 4982.2 would also provide that the petition may be heard by the Board itself, or the Board may assign the petition to an administrative law judge pursuant to Government Code section 11512.

At BBSE's September 24 meeting, Deputy Attorney General (DAG) Earl Plowman noted that this proposal might help reduce BBSE's administrative costs, since it would decrease the number of petitions for reinstatement eligible for review to those meeting the specified requirements. At this writing, BBSE is expected to pursue these amendments in the upcoming legislative session.

Board Continues Discussion on MFCC/LCSW Experience/Supervision Issues. At its September 24-25 meeting, BBSE continued its year-long discussion regarding several issues related to the prelicensure supervised experience requirements for MFCCs and LCSWs. For example, BBSE is attempting to determine the acceptability of out-of-state MFCC and LCSW experience gained by an individual who resides in California, has a qualifying degree from a California institution, and is under supervision by a



California licensee. Although Business and Professions Code section 4980.90 provides that BBSE "may allow any person to be examined who, in its opinion, has met the education and experience requirements for licensure while residing outside of California, or education outside California and experience within California, that are substantially the equivalent" of BBSE's requirements, the Code does not address the Board's authority to accept experience obtained outside California by California residents. [12:2&3 CRLR 70]

As a result, the Board is considering draft legislative amendments to section 4980.90, to provide that MFCC experience gained outside of California shall be accepted toward the licensure requirement if it is substantially the equivalent of BBSE's requirements, provided that the applicant has gained a minimum of 250 hours of supervised experience in direct counseling within California while registered as an intern with the Board. The draft amendments would also provide that education gained outside California shall be accepted toward the licensure requirement if it is deemed to be substantially equivalent to BBSE's educational requirements, provided that the applicant has (1) completed a two-semester or three-quarter unit course in California law and professional ethics for MFCCs which shall include specified areas of study; (2) completed a minimum of seven contact hours of training or coursework in child abuse assessment and reporting, as specified; (3) completed a minimum of ten contact hours of training and coursework in sexuality, as specified; and (4) completed a minimum of fifteen contact hours of training or coursework in alcoholism and other chemical substance dependency, as specified. With respect to human sexuality and alcoholism and other chemical substance dependency, BBSE would be authorized to accept training or coursework acquired out-of-state.

Regarding LCSWs, BBSE is also considering a repeal of Business and Professions Code section 4996.16, which currently provides that nothing in BBSE's enabling statute "shall restrict a person from another state, from offering clinical social work services, in this state, if the services are performed for no more than five days in any calendar month. If that person meets the qualifications and requirements stated in [Business and Professions Code] Section 4996.2 and resides in a state or territory of the United States, or foreign country, or province which does not grant a certification or license to clinical social workers, he or she may offer clinical social work services in this state

for a total of not more than 30 days in any calendar year without being licensed under this chapter." Proposed amendments discussed by BBSE at its September meeting would replace that language with the following: "Experience gained outside of California shall be accepted toward the licensure requirement if it is substantially the equivalent of this chapter, provided that the applicant has gained a minimum of 250 hours of supervised experience in direct clinical social work services while registered as an associate with the board."

At its September meeting, many audience members objected to the proposed requirement of 250 hours of supervised experience within California, noting that many persons seeking licensure in this state already have years of experience in other states; some audience members queried whether the proposed 250-hour experience requirement is simply a device to limit the number of practitioners in California. In response to the Board's comment that its main concern is to ensure that applicants are familiar with California law, various meeting participants offered possible alternatives to the 250-hour experience requirement, such as satisfaction of a course on California law and ethics. California Association of Marriage and Family Therapists (CAMFT) attorney Richard Leslie noted that Business and Professions Code section 4980.80 already authorizes BBSE to issue a MFCC license to any person who, at the time of application, holds a valid license issued by a board of marriage counselor examiners or corresponding authority of any state, provided, in BBSE's opinion, the requirements for that licensure are substantially equivalent to BBSE's requirements; issuance of such a license is conditioned upon the applicant's completion of specified coursework or training. Leslie urged the Board to apply section 4980.80—and not the proposed language with the 250-hour experience requirement—to any applicants who are already licensed by another state. Leslie voiced CAMFT's support of the 250-hour requirement for those applicants not already licensed by another state.

BBSE's Legislative Committee was expected to consider the comments received and prepare revised legislative language for the Board to review at its December meeting.

In a related matter, BBSE's Legislative Committee announced its intent to hold a workshop on October 23 in order to solicit comments and proposals regarding a number of other issues regarding prelicensure clinical experience and supervision. At

that workshop, the Committee will seek testimony on the following topics:

• **Exempt Settings.** Business and Professions Code section 4980.43 requires an intern in private practice to be under the direct supervision of a licensee who shall be employed by and practice at the same site as the intern's employer; an intern employed in a private practice setting may not pay for this supervision. However, in any other type of setting (including non-profit and charitable corporations, health facilities, schools, or governmental settings), there are no requirements for onsite supervision, and the intern can essentially employ his/her own offsite supervisor. At the workshop, the Committee will solicit comments regarding whether the requirements should be the same for all persons gaining supervised experience toward the licensure requirement, and whether employers should be allowed to operate training sites without taking responsibility for providing supervision.

• **Onsite Supervision.** If BBSE proposes to make the supervision requirements the same for all settings, workshop participants will be asked whether the supervisor should be physically present at the worksite for a specified portion of the time services are being rendered by interns, trainees, or associates, or whether supervisees should be permitted to have any offsite supervision.

• **Clinical Supervision.** In this area, the Committee noted an inconsistency between Business and Professions Code section 4980.40(f)(1) ("[a]ll experience shall be at all times under the supervision of the supervisor who shall, with the person being supervised, be responsible for ensuring that the extent, kind, and quality of counseling performed is consistent with the training and experience of the person being supervised...") and section 4980.40(f)(2) ("[s]upervision shall include at least one hour of direct supervision for each week of experience claimed"). Among other things, workshop participants will be asked to comment on how a supervisor can be responsible for ensuring that the extent, kind, and quality of counseling performed is consistent with the training and experience of the person being supervised if the supervisor is not onsite; has no access to client records; is dependent on the registrant for information; and cannot direct assessment and treatment decisions. Also, BBSE will solicit comments regarding whether one hour per week of direct supervision is sufficient.

• **Competency of Supervisors.** BBSE will ask workshop participants to comment regarding how the Board should



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handle the problem of supervisors who abdicate their responsibilities as supervisors or fail to keep their licenses current and cause supervisees to lose their hours gained under their supervision, and whether supervisors should be required to be registered with the Board and required to take some training in supervision.

• **Competency of Supervisees.** BBSE will solicit comments regarding whether there should be a way to capture qualitative evaluations of supervisees from supervisors, and what supervisors should do when they develop serious concerns about the competency or mental stability of a supervisee.

• **MFCC Training Registration.** The LCSW license does not permit credit for experience earned prior to completion of the academic degree, and the LEP license permits credit for 1,500 hours of pre-doctoral degree experience but only after the completion of 48 semester or 72 quarter units of graduate coursework in psychology. However, MFCC trainees may currently perform services before completing any coursework and may gain 1,500 hours of experience prior to the completion of the degree. BBSE will solicit comments regarding whether MFCC trainees should be allowed to practice on the public from the day they enroll in a master's degree program, or whether MFCC trainees should be allowed to perform services only under the auspices of the academic program and only after the trainee has completed at least one year of study.

According to DAG Earl Plowman, it is the Board's goal to gather all relevant comments on these issues and formulate appropriate legislative proposals by the end of 1992.

Board Conducts Hearing on SB 1394 Issues. On June 19, BBSE conducted a hearing regarding SB 1394 (Torres)—sponsored by CAMFT—which addresses a number of issues regarding BBSE licensees (*see infra* LEGISLATION). Specifically, the Board discussed possible amendments to SB 1394, including the following:

• **Remuneration for Volunteer Interns.** The Board agreed to support CAMFT's proposed amendments to SB 1394 which would provide that "[a]ll employment of interns and trainees shall be as employees and not as independent contractors, except for volunteered services or where the intern or trainee receives no more than a total, in all work settings, of \$500 per month as reimbursement for expenses actually incurred by the intern or trainee. The Board reserves the right to audit applicants who receive such reimbursements for expenses, and the applicant shall have

the burden of demonstrating that the payments received were for reimbursement of expenses actually incurred." Similar language was included in the final version of SB 1394.

• **Number of Interns in MFCC Corporations.** The Board considered CAMFT's proposal to include language in SB 1394 which would allow an MFCC corporation to employ two registered interns for each employed shareholder psychotherapist of the corporation. Specifically, CAMFT sought to add language providing that "[a] marriage, family and child counseling corporation, as defined in [Business and Professions Code] Section 4987.5, may employ, at any one time, no more than two registered interns for each employed psychotherapist or shareholder psychotherapist who is qualified pursuant to this chapter to provide supervision. In no event shall any corporation employ, at any one time, more than ten registered interns. In no event shall any supervisor supervise, at any one time, more than two registered interns. Persons who supervise such interns shall be employed full-time by the professional corporation and shall be actively engaged in performing professional services at and for the professional corporation. Employment and supervision within a marriage, family and child counseling professional corporation is deemed a private practice setting." At the advice of Department of Consumer Affairs (DCA) legal counsel Anita Scuri, the Board agreed that the language in the last sentence should be modified to clearly state that all experience requirements which apply to experience gained in private practice settings shall apply to experience gained in MFCC corporations. The Board agreed to support this proposal; this language, along with the Board's modification, was included in the final version of SB 1394.

• **Trainee Applications.** BBSE considered CAMFT's proposal to include language which would allow trainees to be credited for experience from the date the Board receives the application for trainee registration. Specifically, CAMFT proposed to include language which provided that BBSE "shall credit hours of experience that are gained by the applicant toward licensure, commencing with the date the Board receives the application for trainee registration providing the Board approves the applicant, and provided that the applicant has commenced the coursework required by this chapter. No hours of experience shall be credited if the application is denied or if the applicant has gained the hours of experience prior to commencing the coursework required by

this chapter." BBSE and hearing participants engaged in a lengthy discussion regarding this proposal, with DAG Plowman expressing concern about permitting credit for hours of experience gained prior to the issuance of the registration; he suggested that, at a minimum, the Board should receive fingerprint clearance before allowing trainees to practice. After much discussion, BBSE agreed to oppose this proposed amendment, and instead proposed legislative amendments to Business and Professions Code section 4980.47(a) which would provide that the form for trainee registration shall be submitted prior to the commencement of gaining trainee hours of experience, and no hours of experience gained prior to registration shall be counted. However, neither CAMFT's proposal nor the Board's alternative was included in the final version of SB 1394.

• **Sex With Former Patient.** The Board also considered CAMFT's proposal which would impose a two-year statute of limitations after termination of therapy during which it is grounds for disciplinary action to have sex with a former client. BBSE agreed that it would be better to delay legislative changes in this area so that the Board could request the DCA Director to hold a hearing in order to determine if this subject should be addressed for all of the healing arts boards; however, the final version of SB 1394 provides that engaging in sexual relations with a former client within two years following termination of therapy constitutes unprofessional conduct subject to discipline by BBSE.

• **Offsite Experience.** Finally, BBSE devoted a substantial portion of its June 19 meeting to discussing CAMFT's proposed changes to Business and Professions Code section 4980.43(g), which currently provides that MFCC "[t]rainees and interns shall only perform services at the place where their employer regularly conducts business, and shall have no proprietary interest in that business." CAMFT's amendments would have provided that this restriction is not to be interpreted to prevent interns or trainees from performing services at locations other than the employer's office, provided the services are performed under the direction and control of the employer, and in the ordinary course of business. BBSE recognized that there are strong reasons for allowing offsite experience for MFCC interns and agreed that it would support changes to the law to permit interns to engage in counseling at locations other than the principal place where their employer regularly conducts business if the other location is a part of the employer's business and it is done



pursuant to a written protocol which meets specific requirements and which is available to the Board. However, the Board is strongly opposed to allowing MFCC trainees—who are simply enrollees in a master's degree program—to engage in offsite counseling, finding that trainees lack the minimum education which would qualify them to practice on the public without close supervision. CAMFT's proposed amendment to section 4980.43(g) was not included in the final version of SB 1394.

■ LEGISLATION

The following is a status update on bills reported in detail in CRLR Vol. 12, Nos. 2 & 3 (Spring/Summer 1992) at pages 71-72:

SB 2044 (Boatwright) declares legislative findings regarding unlicensed activity and authorizes all DCA boards, bureaus, and commissions, including BBSE, 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 also provides that the unlicensed performance of activities for which a BBSE license is required may be classified as an infraction punishable by a fine of not less than \$250 and not more than \$1,000. SB 2044 also provides that if, upon investigation, BBSE 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 BBSE 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 telephone company furnishing services to the violator to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising. This bill was signed by the Governor on September 28 (Chapter 1135, Statutes of 1992).

AB 3718 (Eaves). Existing law requires, among other things, that a clinical social worker obtain a master's degree from an accredited school of social work and two years of post-master's degree supervised experience, and pass an examination, prior to the issuance of a clinical social worker license. Existing law requires any person who wishes to be credited with post-master's degree experience to apply to BBSE for registration as an associate clinical social worker; an applicant must possess a master's degree from an accredited school of social work and must not have committed certain

crimes. This bill changes the definition of an approved school of social work to mean a school that is accredited by the Commission on Accreditation of the Council on Social Work Education. This bill additionally permits any person who possesses a master's degree from a school or department of social work whose accreditation is in candidacy status and who meets other prescribed requirements to be eligible to register as an associate clinical social worker and gain post-master's degree supervised experience. However, this bill provides that such a person is not eligible to sit for the licensure examination until the school or department is accredited.

Existing law provides that registration as an associate clinical social worker may be annually renewed in a prescribed manner for a maximum of five years so that a person may be registered as an associate clinical social worker for a total of six years. This bill provides that an associate clinical social worker registration may be extended for three additional one-year periods if prescribed requirements are met. This bill was signed by the Governor on September 30 (Chapter 1309, Statutes of 1992).

SB 1773 (Boatwright) is a BBSE-sponsored bill which authorizes BBSE to refuse to issue a license or registration to any applicant for licensure, registration, or certification as an LEP, MFCC, or LCSW whenever it appears that the applicant may be unable to practice safely due to mental illness or chemical dependency, and makes specified procedures regarding the examination of licentiates by a Board-designated physician or psychologist also applicable to applicants for licensure. This bill was signed by the Governor on July 29 (Chapter 384, Statutes of 1992).

SB 1394 (Torres). Existing law requires an MFCC applicant to obtain 3,000 hours of supervised experience as a trainee enrolled in a master's or doctor's degree program and as an intern who has earned the qualifying degree; trainees and interns may only perform services at the place where their employer regularly conducts business. This bill provides that employment of interns and trainees, under prescribed circumstances, is to be as employees and not as independent contractors, and authorizes BBSE to audit applicants to enforce these provisions.

Existing law provides that a licensee in private practice as a therapist may employ no more than two registered interns at one time. This bill provides that MFCC corporations may employ no more than two registered interns for each employee or shareholder who is qualified to provide supervision at one time.

Among other things, this bill also provides that BBSE licensees who engage in sexual relations with a former client within two years following the termination of therapy have committed unprofessional conduct. (See *supra* MAJOR PROJECTS for further information on SB 1394.) This bill was signed by the Governor on September 22 (Chapter 890, Statutes of 1992).

SB 664 (Calderon). Existing law prohibits MFCCs and LCSWs, among others, from charging, billing, or otherwise soliciting payment from any patient, client, customer, or third-party payor 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 is apprised at the first solicitation for payment of the name, address, and charges of the clinical laboratory performing the service. This bill also makes this prohibition applicable to any subsequent charge, bill, or solicitation. This bill also makes it unlawful for any MFCC or LCSW to assess additional charges for any clinical laboratory service that is not actually rendered by the MFCC or LCSW to the patient and itemized in the charge, bill, or other solicitation of payment. This bill was signed by the Governor on June 4 (Chapter 85, Statutes of 1992).

SB 1565 (Watson) was substantially amended and is no longer relevant to BBSE.

The following bills died in committee: **AB 3535 (Speier)**, which would have, among other things, provided for the approval of an equivalent accrediting agency by the Council for Private Postsecondary and Vocational Education; and **AB 3654 (Statham)**, which would have included MFCC peer review bodies within existing law which requires that certain peer review bodies which review the quality of professional care provided by various healing arts professionals submit a report to the appropriate licensing agency whenever action is taken with regard to the discipline of a licensee as a result of a determination of that peer review body.

■ RECENT MEETINGS

At its June 19 meeting, the Board decided to initiate an LCSW examination development project. Although BBSE currently uses the examination of the American Association of State Social Work Boards (AASSWB), two of AASSWB's officers have resigned recently because of serious concerns about the direction of AASSWB's Executive Committee. According to BBSE member Joyce Deshler, AASSWB's secretary and public



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member at large indicated that they were unable to receive enough information about the conduct of the Association's business to effectively participate in its management. As a result, BBSE unanimously voted to commence an examination development project to ensure that it is able to fulfill its responsibility to California's exam candidates in the event AASSWB does not produce a viable exam.

At its September 25 meeting, the Board discussed the implications of accepting experience gained under a supervisor whose license is not current. The Board acknowledged that it is often unfair to punish a supervisee for the supervisor's error, and that often a license lapses due simply to carelessness, and not for a substantive reason. However, the Board determined that it would not accept such hours as valid experience because it would set a bad precedent. DAG Earl Plowman suggested that the Board could take preventive measures in the future by changing its supervising registration form so the supervisor would have to indicate when his/her registration expires.

■ FUTURE MEETINGS

December 10-11 in Sacramento.

CEMETERY BOARD

*Executive Officer: John Gill
(916) 920-6078*

The Cemetery Board's enabling statute is the Cemetery Act, Business and Professions Code section 9600 *et seq.* The Board's regulations appear in Division 23, Title 16 of the California Code of Regulations (CCR).

In addition to cemeteries, the Cemetery Board licenses cemetery brokers, salespersons, and crematories. Religious cemeteries, public cemeteries, and private cemeteries established before 1939 which are less than ten acres in size are all exempt from Board regulation.

Because of these broad exemptions, the Cemetery Board licenses only about 188 cemeteries. It also licenses approximately 142 crematories, 200 brokers, and 1,200 salespersons. A license as a broker or salesperson is issued if the candidate passes an examination testing knowledge of the English language and elementary arithmetic, and demonstrates a fair understanding of the cemetery business.

■ MAJOR PROJECTS

Public Hearing Scheduled on Citations and Fines. On August 7, the Cemetery Board published notice of its intent to adopt Article 7.5 in Division 23, Title 16 of the CCR, relating to citations and fines. [12:2&3 CRLR 72] Proposed section 2382 would authorize the Executive Officer (EO) of the Board to determine when and against whom a citation will be issued and to issue citations containing orders of abatement and fines for violations by a licensee or registrant of the provisions of law referred to in section 2383 of Article 7.5. Section 2382 would also provide that a citation shall be issued whenever any fine is levied or any order of abatement is issued. Each citation must be in writing and must describe with particularity the nature and facts of the violation, including reference to the statute or regulation alleged to have been violated. The citation must inform the cited person that if he/she desires a hearing to contest the finding of a violation, that hearing must be requested by written notice to the Board within thirty days of the issuance of the citation; the citation must be served upon the licensee personally or by certified mail. The amount of any fine to be levied by the EO must take into consideration specified factors and must be within a specified range; in no case shall the total exceed \$2,500 for each investigation.

Proposed section 2383 would identify the possible violations and specify the range of fines applicable to each such violation. For example, compensation of an unlicensed broker, failure to prominently display one's license, and failure to file a notice of change in location would be subject to a fine of \$50-\$500. Among other things, failure to file a cremated remains disposer annual report, failure to pay regulatory charges, and violation of specified restrictions on cremations would be subject to a fine of \$100-\$1000. Among other things, employment of an unlicensed salesperson, scattering remains without specific written instructions, removal of remains without authorization, and comingling cremated remains would be subject to a fine of \$150-\$1,500. In his/her discretion, the EO may issue an order of abatement without levying a fine for the first violation of any provision specified in section 2383.

Proposed section 2384 would provide that, in assessing an administrative fine or issuing an order of abatement, the EO shall give due consideration to the nature and severity of the violation; the good or bad faith of the cited person or entity; the

history of violations of the same or similar nature; evidence that the violation was willful; the extent to which the cited person or entity has cooperated with the Board's investigation; the extent to which the cited person or entity has mitigated or attempted to mitigate any damage or injury caused by the violation; and such other matters as justice may require.

Among other things, proposed section 2385 would provide that when an order of abatement is not contested or if the order is appealed and the person cited does not prevail, failure to abate the violation charged within the time allowed shall constitute a violation and failure to comply with the order of abatement.

Section 2386 would specify the procedure for contesting a citation, including a licensee's right to an informal conference with the EO and one member of the Board, after which the Executive Officer may affirm, modify, or dismiss the citation, including any fine levied or order of abatement issued. Section 2386 would also provide that the person cited does not waive his/her request for a hearing to contest a citation by requesting an informal conference after which the citation is affirmed by the EO.

Finally, proposed section 2387 would provide that the EO may issue citations, in accordance with Business and Professions Code section 125.9, against any unlicensed person who is acting in the capacity of a licensee under the jurisdiction of the Board and who is not otherwise exempt from licensure. Each citation may contain an assessment of an administrative fine, an order of abatement fixing a reasonable period of time for abatement of the violation, or both. Administrative fines shall range from \$250-2,500 for each investigation; any sanction authorized for activity under this section would be separate from and in addition to any other civil or criminal remedies.

The Board was scheduled to conduct a public hearing on these regulatory proposals on September 30 in Ontario.

■ LEGISLATION

The following is a status update on bills reported in detail in CRLR Vol. 12, Nos. 2 & 3 (Spring/Summer 1992) at page 73:

AB 2599 (Elder) would have required the Board to provide an annual report of complaints to specified legislative oversight committees. This bill was vetoed by the Governor on August 18.

AB 3745 (Speier) was substantially amended and is no longer specifically relevant to the Board.