



REGULATORY AGENCY ACTION

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.



AB 3746 (Speier) requires the Cemetery Board to promulgate regulations by July 1994 on standards for the burial depth of graves.

Existing law requires that an endowment care cemetery have specified monetary amounts deposited in its endowment care fund for each kind of plot sold. This bill increases these amounts.

AB 3746 also requires a cemetery authority to present to the survivor of the deceased who is handling the cremation arrangements or the responsible party a copy of the deceased's preneed agreement, if applicable; a 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 also requires every crematory licensee who prohibits relatives or the responsible party from viewing the cremation process to disclose that fact in writing to the person(s) entitled to the custody of the remains prior to the signing of any contract. This bill was signed by the Governor on September 20 (Chapter 797, Statutes of 1992).

AB 1981 (Elder) preempts any conflicting local or private rules or regulations on burial requirements and imposes a requirement on all cemeteries that a minimum amount of dirt cover the top of all vaults and caskets, with certain exceptions where specified alternative standards must be met. Any person who violates these requirements is subject to discipline by the Cemetery Board. This bill also provides that no person shall knowingly or willfully inter the remains of more than one body in a single plot, or place a casket or other human remains in an already occupied grave, except with certain express authorization; violation of this requirement would be a crime punishable as either a misdemeanor or felony. This bill was signed by the Governor on September 21 (Chapter 828, Statutes of 1992).

SB 2044 (Boatwright) declares legislative findings regarding unlicensed activity and authorizes all DCA boards, bureaus, and commissions, including the Cemetery Board, 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 Cemetery Board license is required may be classified as an infraction punishable by a fine not less than \$250 and not more than \$1,000. This bill was signed by the

Governor on September 28 (Chapter 1135, Statutes of 1992).

SB 1482 (Johnston) requires the Cemetery Board to maintain, regulate, operate, and control a certain property in Amador County for purposes of protecting the human remains resting on the property and preserving the property in its natural state. The bill requires the Board to so administer and supervise endowment care funds established by a prescribed court order for the property. This bill also makes a legislative finding and declaration of unique circumstances. This bill was signed by the Governor on September 12 (Chapter 683, Statutes of 1992).

■ LITIGATION

On June 26, the former owners of the Lamb Funeral Home were acquitted of criminal charges that they had conducted mass cremations and commingled human remains; however, the jury deadlocked on counts of forging signatures on organ donor consent forms and unlawfully removing body parts. The verdicts came after nearly three weeks of deliberations by the Pasadena Superior Court jury in the case of husband and wife Jerry Sconce and Laurieanne Lamb Sconce, one part of the family-owned Lamb Funeral Home.

The case began five years ago when investigators determined that a Hesperia ceramics factory was actually being used as a cremation center run by the couple's son, David Sconce; in 1989, David Sconce pled guilty to 21 counts of mishandling remains, and served about half of a five-year prison term. Although some jurors felt to a degree that the parents may have had some knowledge of their son's activities, they agreed that there was not enough evidence to prove that knowledge beyond a reasonable doubt.

The case was so shocking that it led to a state law that allows inspections of crematoriums on demand, as well as a class action by relatives of those who were cremated by Sconce businesses; the civil suit was recently settled for \$15.4 million. [12:2&3 CRLR 73]

■ RECENT MEETINGS

At the Board's June 25 meeting, Chair Frank Haswell introduced Brian Armour, a newly-appointed member of the Board; Armour was appointed by Governor Wilson.

Also at its June 25 meeting, the Board discussed its receipt of a request for an opinion on cremation authorization as it relates to a domestic partner, as opposed to a legal spouse. The Board noted that Health and Safety Code section 7100 specifies that, unless other directions have

been given by the decedent, the right to control the disposition of the remains of a deceased person vests in, and the duty of interment and the liability for the reasonable cost of interment of such remains devolves upon, the following in the order named: the surviving spouse, the surviving child or children of the decedent; the surviving parent(s) of the decedent; and the public administrator when the deceased has sufficient funds. The Board instructed Executive Officer John Gill to respond to the inquiry given the provisions of section 7100 and the ability to grant a durable power of attorney to provide otherwise.

Linda Trujillo, representing The Relatives Urging Sacred Treatment (T.R.U.S.T.), appeared before the Board at its June 25 meeting to discuss her concerns that consumers are not being protected by the Board; the organization has been campaigning for strengthened state laws regarding cremations.

■ FUTURE MEETINGS

January 8 in San Diego (tentative).

BUREAU OF COLLECTION AND INVESTIGATIVE SERVICES

Chief: James C. Diaz
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The Bureau of Collection and Investigative Services (BCIS) is one of 38 separate regulatory agencies within the Department of Consumer Affairs (DCA). The Chief of the Bureau is directly responsible to the DCA Director.

The Collection Agency Act, formerly codified at Business and Professions Code section 6850 *et seq.*, expired at midnight on June 30, 1992, by operation of a sunset provision in the law. Thus, BCIS is no longer authorized to regulate collection agencies (*see infra* MAJOR PROJECTS).

The Bureau still regulates eight other industries, including private security services (security guards and private patrol operators), repossessors, private investigators, alarm company operators, protection dog operators, medical provider consultants, security guard training facilities, and locksmiths.

Private Security Services. Regulated by the Bureau pursuant to Business and Professions Code section 7544 *et seq.*, private security services encompass those who provide protection for persons and/or