



plaints against licensed contractors are not disclosed to the public until the complaints are fully investigated and a determination is made that the complaint is valid and warrants legal action. [12:2&3 CRLR 76]

The Registrar also discussed the status of CSLB's new computerized testing system for contractor licensure. The new system will allow applicants to learn the results of their test immediately, and would permit unsuccessful applicants to retake the test sooner than is currently possible. In addition, Phillips mentioned that beginning in September, the redesigned exam will have 500 new test questions.

Also at the July meeting, CSLB's Licensing Committee reported some problems with its new workers' compensation unit. Since January 1, Business and Professions Code section 7125.1 requires a contractor to have workers' compensation insurance in order to be licensed by CSLB, unless the contractor certifies under penalty of perjury that he/she has no employees. The Committee reported an overwhelming workload in meeting the requirement that CSLB maintain an original copy of the required certificate of insurance on file for all contractors; approximately 40,000 of the certificates received were flawed in some way and had to be sent back for correction.

The Board elected its officers for 1992-93: General Engineering-A contractor Joe Valverde was elected Chair, and Mrs. Phil Moore, public member, was elected Vice-Chair.

Finally, CSLB reported that Marla Marshall is resigning from the Board and that Jack Fenton, John Lazzara, and Skip Michael are leaving the Board because their terms expired on June 1.

■ FUTURE MEETINGS

January 21-22 in Ontario.

April 22-23 in Oakland.

July 22-23 in Los Angeles.

BOARD OF DENTAL EXAMINERS

Executive Officer:
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The Board of Dental Examiners (BDE) is charged with enforcing the Dental Practice Act, Business and Professions Code section 1600 *et seq.* This includes establishing guidelines for the dental schools' curricula, approving dental train-

ing facilities, licensing dental applicants who successfully pass the examination administered by the Board, and establishing guidelines for continuing education requirements of dentists and dental auxiliaries. The Board is also responsible for ensuring that dentists and dental auxiliaries maintain a level of competency adequate to protect the consumer from negligent, unethical, and incompetent practice. The Board's regulations are located in Division 10, Title 16 of the California Code of Regulations (CCR).

The Committee on Dental Auxiliaries (COMDA) is required by law to be a part of the Board. The Committee assists in efforts to regulate dental auxiliaries. A "dental auxiliary" is a person who may perform dental supportive procedures, such as a dental hygienist or a dental assistant. One of the Committee's primary tasks is to create a career ladder, permitting continual advancement of dental auxiliaries to higher levels of licensure.

The Board is composed of fourteen members: eight practicing dentists (DDS/DMD), one registered dental hygienist (RDH), one registered dental assistant (RDA), and four public members. BDE's 1992 members are Gloria Valde, DMD, acting president; Joe Frisch, DDS, secretary; Pamela Benjamin, public member; John Berry, DDS; Victoria Camilli, public member; Peter Hartmann, DDS; Martha Hickey, public member; Evelyn Pangborn, RDH; Jean Savage, DDS; Joel Strom, DDS; Hazel Torres, RDA; and Stephen Yuen, DDS. On September 14, Assembly Speaker Willie Brown appointed public member Virtual Murrell to the Board; Mr. Murrell is with V.M. & Associates in Oakland, and replaces public member Carl Lindstrom on the Board. The Board currently has one vacancy due to the July 19 death of BDE President James Dawson, DDS. New officers for 1993 will be selected in January.

■ MAJOR PROJECTS

Board Proposes Citation and Fine Regulations. On July 24, BDE published notice in the *California Regulatory Notice Register* of its intent to pursue regulations establishing an administrative citation and fine program. [12:2&3 CRLR 81] The proposed regulations would implement SB 650 (Alquist) (Chapter 521, Statutes of 1991), which authorizes BDE to establish by regulation a system for issuing a citation, which may contain an order of abatement or an order to pay an administrative fine, for violation of the Dental Practice Act or any regulation adopted by BDE pursuant to that law. The proposed language would add Article 7, consisting of

new sections 1023—1023.8, to Chapter 1, Division 10, Title 16 of the CCR.

The cite and fine program would allow the Board to take action against a licensee and persons acting as licensees without the cost and punitive implications of taking formal disciplinary action against violators. Any such BDE action would be in response to a confirmed violation of any enforceable statute or regulation which does not warrant more severe disciplinary action. Among other things, BDE's proposed regulations address the citation format; civil penalties for citations; the factors to be considered in assessing the amount of a citation; the procedure for contesting a citation; and consequences of failure to comply with an order.

The format of the citation and fine mechanism includes class "A" and "B" violations. Class "A" violations involve persons who have violated a BDE statute and/or regulation and either the violation presents a substantial probability of death or serious physical harm to the patient, or the person has been issued three class "B" violations within a 24-month period immediately preceding the act constituting the violation. A class "A" violation is subject to a civil penalty in an amount not less than \$1,000 and not exceeding \$2,500 for each citation. At BDE's September 11 meeting, staff presented a table indicating activities constituting class "A" violations, such as failure to possess a valid general anesthesia (GA) permit when administering GA; failure to possess a valid conscious sedation (CS) permit when administering CS; aiding and abetting an unlicensed practitioner to practice dentistry; ordering the administration of GA or CS without being physically present; committing acts of unprofessional conduct, gross negligence, or incompetence; failure to report a patient death related to a dental procedure being performed; and failure to report to BDE the death or removal of a patient to a hospital or emergency center after administration of CS or GA.

Class "B" citations will be issued to persons who have violated a BDE statute and/or regulation relating to the practice of dentistry which does not present a substantial probability of resulting in death or serious physical harm to the patient. A Class "B" violation is subject to a civil penalty not less than \$50 and not exceeding \$2,500 for each citation. Class "B" violations include, among other things, cheating during a license examination; soliciting payment for laboratory services not rendered; making false or misleading statements in advertising; failure to provide copies of patient records; and dis-



criminating against a patient due to race, color, gender, religion, ancestry, physical handicap, marital status, or national origin.

In assessing the amount of a civil penalty, the proposed regulations allow for the consideration of certain factors, including the nature and severity of the violation; evidence that the violation was willful; attempts at mitigation; and a history of the same or similar violations. The proposed regulations also outline procedures for contesting citations, including the opportunity for hearings and informal conferences with BDE's executive officer regarding the acts charged.

BDE had originally scheduled a public hearing on this proposed regulatory action in conjunction with its September 11 meeting. However, due to the cancellation of BDE's July 31 meeting and the need to move those agenda items forward, BDE postponed the public hearing until its November 13 meeting in San Francisco. Accordingly, the public comment period was extended and interested parties could submit comments on the proposal until November 10.

Board Proposes, Tables Action to Reduce Fees. On July 24, BDE published notice of its intent to amend section 1021, Division 10, Title 16 of the CCR, to reduce the fees which support the dental license renewal program, eliminate the fee for the corporation annual report for a one-year period, and eliminate an obsolete provision regarding fictitious name permit renewal fees. The Board sought this action primarily because revenue in its reserve fund was accruing at a faster rate than initially projected.

During 1991, the Board increased most of its program fees to ensure that all programs were financially self-supporting and to rebuild its rapidly decreasing reserve fund. In May 1991, the Board publicly agreed to reevaluate the fund condition during 1992. Because the Board's reserves had been sufficiently rebuilt, the Board determined that a fee reduction would be appropriate. However, due to the state's budget crisis and the legislatively required transfer of a large portion of BDE's reserve fund to the state general fund, the Board tabled the proposed amendments until January; at that time, BDE will again consider the appropriateness of a fee reduction in light of the reserve level.

Board Clarifies Criteria for Disability Waiver of Continuing Education Requirement. On June 12, BDE published notice of its intent to amend section 1017(d), Division 10, Title 16 of the CCR, which provides that a licentiate who is

disabled need not comply with the Board's continuing education (CE) requirements during the renewal period within which the disability occurs. The proposed amendment would clarify that the licentiate must certify that he/she has not practiced for one year or more during his/her current renewal period; also, the licentiate must provide documentation from a licensed physician that he/she has a disability which would not permit him/her to comply with the CE requirements.

The Board received no public comment prior to the July 27 comment deadline. At its September 11 meeting, BDE adopted the proposed amendment; at this writing, BDE is preparing the rulemaking file for submission to the Office of Administrative Law (OAL).

BDE Amends Conscious Sedation Evaluator Regulation. On June 12, the Board published notice in the *California Regulatory Notice Register* of its intent to amend section 1043.2(b), Division 10, Title 16 of the CCR, to allow dentists who have completed a course which meets the 1982 Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry of the American Dental Association to be conscious sedation evaluators. [12:2&3 CRLR 81] Evaluators would be allowed to meet the requirements of Business and Professions Code section 1647.4(b) (training equivalent to the 1982 guidelines) in lieu of the criteria required in Business and Professions Code section 1647.3 (training equivalent to the 1985 guidelines). According to BDE, the 1982 and 1985 guidelines are so similar with respect to the number of CS administrations performed during instruction that there is no reason to keep those dentists from entering the pool of experienced evaluators. The Board received no public comment and, at its September 11 meeting, adopted the amendment. At this writing, BDE is preparing the rulemaking file for submission to OAL for review and approval.

Other BDE Rulemaking. On July 7, OAL approved BDE's proposed revisions to section 1041(b), modifying the requirements of the restorative technique examination for applicants who are graduates of foreign dental schools. [12:2&3 CRLR 82]

Board Approves Language of Proposed Laser Legislation. At its May 8 meeting, the Board accepted the recommendations of its Laser Ad Hoc Subcommittee and agreed to seek legislation related to the use of lasers in dentistry. [12:2&3 CRLR 84] BDE's proposal would add section 1683 to the Business and Professions Code, to provide that a licentiate who performs or holds himself

or herself out as able to perform professional services beyond his/her field(s) of competence as established by his/her education, training, and/or experience is engaging in unprofessional conduct. This includes, but is not limited to, the use of any instrument or device in a manner not in accordance with the customary standards and practice of the dental profession. For an instrument or device which has been reviewed and cleared for use by the U.S. Food and Drug Administration, the use of that instrument or device shall be deemed to be in accordance with the customary standards and practice of the dental profession only if it is used within the scope of marketing clearance and its use falls within the scope of practice of the licentiate. Section 1683 would also provide that it is also unprofessional conduct for a licentiate to permit a dental auxiliary under his/her supervision to engage in such conduct. According to BDE, this general, non laser-specific language is appropriate and permits section 1683 to apply to changing technology in the profession.

At its September 11 meeting, the Board approved the proposed language of the legislation and is currently looking for a sponsor to carry the bill in the upcoming legislative session.

LEGISLATION

The following is a status update on bills reported in detail in CRLR Vol. 12, Nos. 2 & 3 (Spring/Summer 1992) at pages 82-83:

SB 2044 (Boatwright) declares legislative findings regarding unlicensed activity and authorizes all Department of Consumer Affairs (DCA) boards, bureaus, and commissions, including BDE, to establish by regulation a system for the issuance of an administrative citation to an unlicensed person who is acting in the capacity of a licensee or registrant under the jurisdiction of that board, bureau, or commission. This bill was signed by the Governor on September 28 (Chapter 1135, Statutes of 1992).

AB 2743 (Frazee) expressly authorizes DCA agencies, including BDE, to implement a "cost recovery program"—that is, in disciplinary proceedings, the Board is authorized to request the administrative law judge to direct the licentiate, in certain circumstances, to pay to the Board a sum not to exceed the reasonable costs of the investigation and enforcement of the case. This bill was signed by the Governor on September 30 (Chapter 1289, Statutes of 1992).

AB 2847 (Felando) permits BDE to reduce the license renewal fee for a licen-



REGULATORY AGENCY ACTION

see who has practiced dentistry for twenty years or more in this state, has reached the age of retirement under the Social Security Act, and customarily provides his/her services free of charge or for a nominal charge, as specified, to any person, organization, or agency. This bill was signed by the Governor on August 1 (Chapter 419, Statutes of 1992).

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

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

Under existing law, it is unprofessional conduct for a dentist or dental auxiliary to knowingly fail to protect patients by failing to follow certain infection control guidelines. This bill provides that the guidelines that must be followed in order not to commit unprofessional conduct are those of BDE. This bill was signed by the Governor on September 30 (Chapter 1350, Statutes of 1992).

SB 664 (Calderon). Existing law prohibits dentists, among others, from charging, billing, or otherwise soliciting payment from any patient, client, or customer for any clinical laboratory test or service if the test or service was not actually rendered by that person or under his/her direct supervision, unless the patient, client, or customer is apprised at the first solicitation for payment of the name, address, and charges of the clinical laboratory performing the service. This bill also makes this prohibition applicable to any subsequent charge, bill, or solicitation. This bill also makes it unlawful for

any dentist to assess additional charges for any clinical laboratory service that is not actually rendered by the dentist to the patient and itemized in the charge, bill, or other solicitation of payment. This bill was signed by the Governor on June 4 (Chapter 85, Statutes of 1992).

AB 194 (Tucker) provides that, on and after January 1, 1993, an applicant for a license to practice dentistry in this state who fails to pass the skills examination after three attempts shall not be eligible for further reexamination until the applicant has successfully completed a minimum of 50 hours of additional education at an approved dental school. A foreign-trained dental applicant who fails to pass the required restorative technique examination after three attempts will not be eligible for further reexamination until the applicant has successfully completed a minimum of two academic years of education at an approved dental school. This bill was signed by the Governor on September 30 (Chapter 1299, Statutes of 1992).

AB 2120 (Cortese), among other things, requires BDE to adopt and review regulations relating to the functions that may be performed by dental assistants and RDAs, and the level of supervision and settings within which dental assistants and RDAs may work. This bill also includes as conduct constituting unprofessional conduct by persons licensed under the Dental Practice Act the utilization of any person to perform the functions of an RDA, RDA in extended functions, RDH, or RDH in extended functions who, at the time of initial employment, does not possess a current, valid license to perform those functions. This bill was signed by the Governor on July 13 (Chapter 196, Statutes of 1992).

SB 934 (Watson) requires BDE to develop, distribute, and update as necessary a fact sheet describing and comparing the risks and efficacy of the various types of dental restorative materials that may be used to repair a dental patient's oral condition or defect, and specifies the contents of the fact sheet. This bill also requires BDE to distribute the fact sheet to all licensed dentists. This bill does not apply to any dental tool or instrument used during the dental procedure, but applies only to any structure or device placed into a patient's mouth with the intent that it remain there beyond the completion of the dental procedure, including, but not limited to, material used for filling cavities or bracing teeth. This bill was signed by the Governor on September 21 (Chapter 801, Statutes of 1992).

The following bills died in committee: **AB 2353 (Areias, Isenberg)**, which

would have, among other things, created a new category of allied dental health professional called a registered dental hygienist in alternative practice (RDHAP), and authorized such a person to independently provide specified dental hygiene services without any supervision by a dentist in certain work settings, and **AB 91 (Moore)**, which would have required a dentist, dental health professional, or other licensed health professional to sign his/her name or enter his/her identification number and initials in the patient's record next to the service performed, and to date those treatment entries.

RECENT MEETINGS

Due to the budget crisis and the untimely death of former BDE President James Dawson, the Board cancelled its July 31. BDE began its September 11 meeting with a moment of silence in memory of Dr. Dawson, who died suddenly on July 19 from Legionnaire's disease. Dr. Dawson was appointed to BDE in 1985 and had served as the Board's president since 1991. Vice-President Gloria Valde, DMD, will serve as acting president until January when the Board selects its 1993 officers.

Acting President Gloria Valde presented a plaque to Dr. Alfred Otero, DDS, for his past years of dedication to the profession and his past service to BDE as a Board member.

BDE also discussed ramifications of the Budget Bill—AB 979 (Bates) (Chapter 587, Statutes of 1992)—which requires state agencies to implement administrative and programmatic efficiencies which will result in a 10% budget reduction, and transfer that 10% in savings to the state general fund on June 30, 1993. BDE will be allowed to take the 10% cut out of its reserves without any effect on its current operating budget or enforcement activities. The Board had anticipated cuts closer to 18% and therefore much of the planned budget discussion was no longer necessary. There was, however, a great deal of concern about state budget practices and how BDE may be affected in the future. California Dental Association members in attendance objected to what they termed as double taxation of BDE licensees. The Board agreed to review the actions taken by the state as it pertains to BDE licensees.

The September 11 Board meeting also included an informational presentation by James McGlothlin, Ph.D., from the National Institute for Occupational Safety and Health (NIOSH). Dr. McGlothlin discussed the importance of using scavenger systems to protect the health of those ad-



ministering nitrous oxide in dental operatories. Research has shown that high levels of escaping nitrous oxide can affect the primary reactions of the central nervous system, causing confusion and delayed response by those administering the gas. The concentration of nitrous oxide required to pose these risks is the subject of debate; however, NIOSH has issued a Recommended Exposure Level (REL) of 25 parts per million (ppm) during the time of administration. Dr. McGlothlin ended his presentation by suggesting that those interested in purchasing scavenger systems consider the NIOSH REL of 25 ppm while researching the systems currently available on the market. A member of the audience commented that NIOSH may be encouraging hysteria without any general consensus in the research community as to the actual concentration at which nitrous oxide is dangerous. In addition, the audience member suggested that the manufacturers of the scavenging systems, and not practitioners, should be responsible for ensuring that the equipment meets recommended concentration levels.

Finally, BDE discussed its obligations under the federal Americans with Disabilities Act (ADA), which was enacted on July 26, 1990. According to DCA legal counsel Don Chang, the Board must comply with ADA's self-evaluation requirements before January 23, 1993. The ADA prohibits discrimination in employment and in access to public services based on disability, and primarily requires BDE to make reasonable modifications in its policies and procedures, such as allowing for alternative examination sites, to allow access to individuals with disabilities.

■ FUTURE MEETINGS

To be announced.

BUREAU OF ELECTRONIC AND APPLIANCE REPAIR

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

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

The Bureau 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 currently assisted by an Advisory Board comprised of two representatives of the appliance industry, two representatives of the electronic industry, and five public members. However, ABX 66 (Vasconcellos), which was signed by the Governor on September 28 (Chapter 21X, Statutes of 1992), eliminates BEAR's Advisory Board as of January 1, 1993 (*see infra* MAJOR PROJECTS and LEGISLATION).

■ MAJOR PROJECTS

BEAR Holds Summit Meeting On Service Contracts. On September 24, BEAR held an informational meeting in San Diego for the purpose of receiving industry and public comment on potential service contract legislation. The invitees included representatives of businesses involved in the administration, sale, or servicing of service contracts, representatives of professional associations, and public interest groups such as the Center for Public Interest Law and Consumer Action. BEAR decided to hold the meeting after reviewing the results of its prior public hearings concerning service contract issues. [12:2&3 CRLR 84; 12:1 CRLR 60]

According to BEAR, "[t]he overriding consumer interest [regarding service contracts] is two-fold: (1) to *know exactly* what one is buying and (2) to *get exactly* what one is buying." In response to those needs, BEAR has decided to pursue legislation which would require all service contract administrators and sellers, as well as service dealers, to register with BEAR, and is considering the development of legislation to ensure the financial viability of those administrators and sellers. Regarding the registration requirement, BEAR previously drafted and approved legislative language; however, the Depart-

ment of Consumer Affairs (DCA) declined to include the proposal in its 1992 omnibus bill due to the state's budget crisis [12:2&3 CRLR 85]; that proposal will likely be introduced in 1993. Therefore, the focus of the September 24 meeting was to generate feedback on a proposal previously submitted by the Service Contract Industry Council (SCIC) regarding financial viability issues, and to solicit any alternative suggestions. BEAR Chief Keller stressed that SCIC's draft is not a Bureau-endorsed proposal, but is useful as a starting point for discussion regarding financial viability issues.

Specifically, SCIC's proposal would require service contract administrators to either be insured under a service contract reimbursement insurance policy, or demonstrate financial viability by certification on their financial statements of adequate reserves for claims. Such reserves would be held in trust by an independent trustee if they exceed 50% of the administrator's previous year's net worth.

Proponents of SCIC's proposal contended that interests of both consumers and the industry would be served by requiring that protected funds be available for policy reimbursement in the event the selling administrator goes bankrupt during the contract term. Because administrators are commonly seen as third parties who contract solely with retailers, who in turn enter into another independent contract with consumers, retailers usually remain obligated when an administrator fails; some retailers follow through on that contract, while others refuse or are financially unable to do so. Therefore, those in favor of the proposal argued that risk to both consumers and retailers would be directly reduced by requiring administrators to maintain some sort of reimbursement fund, and credibility to the service contract administrator industry would result because those entrepreneurs who fail to meet the financial requirements would not be able to offer service contracts.

Those in opposition to SCIC's proposal generally disfavored the certified reserve claim fund alternative more than the reimbursement insurance policy option. Participants noted that the concept of "adequate reserves" in the proposal is vague and subjective, and that the use of independent certified public accountants to verify such reserve adequacy could result in inconsistencies. Thus, the insurance option was generally considered more reasonable to the industry participants.

Regarding the appropriate scope of the term "administrator," representatives of