



## REGULATORY AGENCY ACTION

from 1991-92 levels, in addition to a 50% reduction in travel expenses. Despite these cuts, BCSR Executive Officer Richard Black announced at the Board's August 29 meeting that a previously-considered fee increase will not be necessary at this time. Black also reported that at a recent meeting of the California Court Reporters Association, he encouraged the group to file a lawsuit to challenge a provision in the 1991-92 Budget Act which required the transfer of all but three months' worth of operating expenses from the reserve funds of the state's special-funded agencies—such as BCSR—to the state's general fund. (See *supra* COMMENTARY.)

### ■ LEGISLATION

**SB 2044 (Boatwright)** declares legislative findings regarding unlicensed activity and authorizes all DCA boards, bureaus, and commissions, including BCSR, 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 BCSR 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).

**AB 2743 (Frazee)** revises the definition and the authorized activities of a shorthand reporting corporation, deletes certain filing requirements, and specifies the professional corporate status of a shorthand reporting corporation. This bill also makes technical and corrective changes in provisions relative to the suspension or license revocation of shorthand reporters. This bill was signed by the Governor on September 30 (Chapter 1289, Statutes of 1992).

### ■ RECENT MEETINGS

At its June 20 meeting, the Board elected Ron Clifton to serve as BCSR's chair and Mary Steiner to serve as vice-chair.

At its August 29 meeting, the Board discussed how the federal Americans with Disabilities Act (ADA), which went into effect in January, may influence the Board's licensing examination procedures. Presently, some special testing accommodations are available; however, the Board requires testing applicants to provide a written description of their special needs. At this time, the Board is unsure of its responsibilities with respect to the ADA. According to DCA, a disabled stu-

dent whose disability makes him/her unable to pass the licensing examination without special accommodations may sue BCSR under the ADA if the disability is not related to the essential job requirements of a shorthand reporter. The Board expressed concern over certain disabilities that may preclude someone from taking the exam without special accommodations, and reasoned that if disabled individuals need special accommodations to take the licensing exam, they may be unable to do their job in the courtroom. BCSR has asked DCA to keep it informed of any further developments, and will ask its legal counsel to inform the Board of its responsibilities under the ADA.

Also in August, the Board briefly discussed a letter from a representative of the Court Reporters Action Fund Committee (CRAF) regarding shorthand reporter firms which allegedly contract with insurance carriers or their attorneys. CRAF urged BCSR to seek legislation or adopt regulations prohibiting direct contractual relationships between CSRs and attorneys for insurance carriers, as these relationships may compromise the objectivity of CSRs and lead to the wholesale replacement of the CSR profession with audiovisual equipment. Because this matter was not properly agendaed, the Board postponed discussion of it to its November meeting.

In a related matter, a member of the audience at the Board's August meeting expressed alarm at Rick Black's report of a recent meeting with DCA Director Jim Conran, at which Conran apparently suggested that BCSR look into the necessity and viability of licensing, certifying, or registering tape operators, video operators, and/or rapid text entry operators. The audience member urged the Board to reject such a proposal, as it may lead to the end of the CSR profession as it currently exists. Black responded that the Board's fundamental mandate is to protect consumers, not the CSR profession. Acknowledging that the issue would not be popular with CSRs, Black stated that it is one which the Board should address during the upcoming year.

### ■ FUTURE MEETINGS

December 28 (location undecided).  
February 27 (location undecided).

## STRUCTURAL PEST CONTROL BOARD

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**T**he Structural Pest Control Board (SPCB) is a seven-member board functioning within the Department of Consumer Affairs. SPCB's enabling statute is Business and Professions Code section 8500 *et seq.*; its regulations are codified in Division 19, Title 16 of the California Code of Regulations (CCR).

SPCB licenses structural pest control operators and their field representatives. Field representatives are allowed to work only for licensed operators and are limited to soliciting business for that operator. Each structural pest control firm is required to have at least one licensed operator, regardless of the number of branches the firm operates. A licensed field representative may also hold an operator's license.

Licensees are classified as: (1) Branch 1, Fumigation, the control of household and wood-destroying pests by fumigants (tenting); (2) Branch 2, General Pest, the control of general pests without fumigants; (3) Branch 3, Termite, the control of wood-destroying organisms with insecticides, but not with the use of fumigants, and including authority to perform structural repairs and corrections; and (4) Branch 4, Roof Restoration, the application of wood preservatives to roofs by roof restorers. Effective January 1, 1993, AB 3327 (Sher) (Chapter 274, Statutes of 1992) will convert Branch 4 licenses into "wood roof cleaning and treatment" registered company licenses; effective July 1, 1993, all Branch 4 licensees must be licensed contractors (*see infra* LEGISLATION). An operator may be licensed in all four branches, but will usually specialize in one branch and sub-contract out to other firms.

SPCB also issues applicator certificates. These otherwise unlicensed individuals, employed by licensees, are required to take a written exam on pesticide equipment, formulation, application, and label directions if they apply pesticides. Such certificates are not transferable from one company to another.

SPCB is comprised of four public and three industry members. Industry members are required to be licensed pest control operators and to have practiced in the field at least five years preceding their appointment. Public members may not be licensed operators. All Board members are appointed for four-year terms. The Gover-



nor appoints the three industry representatives and two of the public members. The Senate Rules Committee and the Speaker of the Assembly each appoint one of the remaining two public members.

## MAJOR PROJECTS

### Board Adopts Regulatory Changes.

Following a public hearing on August 7, SPCB adopted amendments to sections 1948, 1970.3, and 1992, Division 19, Title 16 of the CCR.

According to SPCB, a large percentage of its education and enforcement reserve fund was transferred to the state's general fund on June 30 in an effort to decrease California's budget deficit (*see supra* COMMENTARY); this appropriation leaves the Board with approximately three months' worth of operating expenses in its reserve fund. SPCB's proposed amendment to section 1948 would increase the pesticide use report filing fee from \$6 to \$7 in order to rebuild the Board's reserve fund. [12:2&3 CRLR 146]

SPCB's proposed amendments to section 1992 would provide that when secondary recommendations are made, they shall be labeled as such and included as part of the inspection report with a full explanation of why they are made, including a notation that they are sub-standard measures. According to the Board, it is not absolutely clear to structural pest control companies that secondary recommendations must be made on inspection reports; similarly, the Board contends that consumers are not absolutely clear that the recommendations being made are secondary, as opposed to primary, recommendations.

In February, SPCB conducted a public hearing on proposed amendments to section 1970.3, to clarify through regulation the requirements for barricading doorways without doors. According to the Board, structures without doors are occasionally fumigated without proper barricading of the doorways; this can pose a danger if the structure is not properly secured during a fumigation. Procedures for securing these doorways are currently described in SPCB's Specific Notice I-3-89. Because the proposed amendments to section 1970.3 failed to encompass the entirety of Specific Notice I-3-89, the Board agreed to postpone action until the proposed language is modified as appropriate. [12:2&3 CRLR 146] Accordingly, the Board's modified amendments to section 1970.3 would provide that a secondary lock, which must be placed on all outside doors prior to fumigation, means a padlock, keyway lock, or any other device including inside deadbolts

that will prevent a door from being opened by anyone other than the licensee in charge of the fumigation. The amendments would also provide the following:

-A clamshell or keyway locking device shall be used as the secondary lock when the door mechanism will accept it.

-Pins may be used only when no other type of secondary locking device will secure the structure. Pins shall be of a thickness to prevent the insertion of the door key. Pins shall only be susceptible to removal by the use of a magnet or similar device and shall not be removable by hand.

-Staples may not be used in keyways as a secondary lock under any circumstances.

-An exterior doorway on a garage or an uninhabited structure which does not have a door shall have impassable barricades erected thereon prior to fumigation if it provides a path of access for persons to enter into a building which is inhabited by human beings or shows evidence of human habitation. This provision would apply to side doorways on otherwise enclosed garages if the garage is being used for storage of personal property, or is part of inhabited property.

-A garage without a car door or where the car door is missing shall be considered a carport and need not be barricaded unless there is evidence that the garage area is being used for habitation.

-A barricade is considered to be plywood with a thickness of one-fourth inch or cellulose material with a thickness of at least one-half inch.

At this writing, these regulatory changes still await review and approval by the Office of Administrative Law (OAL).

**DPR Readopts Emergency Regulations Regarding Fumigants.** Last April, the California Environmental Protection Agency's Department of Pesticide Regulation (DPR) adopted new section 6455 and amendments to section 6454, Titles 3 and 26 of the CCR, regarding the use of methyl bromide and sulfuryl fluoride in the fumigation of structures. The revisions which were adopted on an emergency basis generally increase the length of time occupants must wait before re-entering the fumigated structure. Among other things, the regulations also require that SPCB licensees have in their possession at the fumigation site a four-page Structural Fumigation Fact Sheet, which must be signed by specified individuals. [12:2&3 CRLR 146]

On August 14, DPR readopted these emergency regulations for another 120-day period; according to DPR, the exten-

sion was necessary to maintain the current aeration and re-entry requirements to ensure public health protection. DPR is waiting for the U.S. Environmental Protection Agency (EPA) to complete its labeling changes regarding the use of methyl bromide and sulfuryl fluoride in fumigation; DPR expects these labeling changes to accomplish the same purpose as its emergency regulations. While EPA's labeling changes regarding methyl bromide are near completion, its labeling changes regarding sulfuryl fluoride are still undergoing revision on certain issues. Once EPA completes all labeling changes, DPR will reevaluate its emergency regulations to ascertain whether it is necessary to proceed with formal rulemaking procedures.

**Update on Other Proposed Regulatory Changes.** The following is a status update on other SPCB rulemaking proposals reported in detail in previous issues of the *Reporter*:

• **Limited Reports Required for Structures that Touch or Connect.** The Board has decided to postpone action on new section 1990(c), Division 19, Title 16 of the CCR. As originally proposed, section 1990(c) would have provided that "[a]ny wood structure that touches or connects to the structure being inspected must be inspected or stated as not inspected in a 'limited report.' This includes, but is not limited to, decks, steps, patio covers, trellises, sheds and workshops. If these structures do not touch or connect to the structure being inspected, they may be excluded from the scope of inspection. If fences and trellises are separated from the main structure by stucco, metal flashing, or other non-wood barriers, they may be excluded from the scope of the inspection." [12:2&3 CRLR 147] Due to the amount of criticism received regarding the proposed language, SPCB expects to draft new language and conduct a public hearing on the new version in February.

• **Notice of Re-Entry.** Following a February 21 public hearing, SPCB unanimously adopted proposed section 1973, Title 16 of the CCR, which would require that, following a fumigation, the licensee must personally release the property for occupancy by posting a Notice of Re-Entry. The contents of that notice would state in English and Spanish the date when the building will be safe for re-entry; the chemical names of the fumigants that were used; the warning agent used (chloropicrin); and the Branch 1 licensee's name, license number, and company name, address, and telephone number. [12:2&3 CRLR 148] SPCB recently approved the Spanish translation of the



## REGULATORY AGENCY ACTION

notice and is currently in the process of preparing its rulemaking file for submission to OAL.

• **Standard Notice of Work Completed and Not Completed.** The Department of Consumer Affairs has determined that SPCB's proposed new section 1996.2, which would revise the Board's "Standard Notice of Work Completed and Not Completed" form and require the form's use, will not accomplish its intended purpose. Accordingly, the Board has indefinitely postponed action on this section. [12:2&3 CRLR 148]

• **Filing Fee Increases.** On July 21, OAL approved the Board's proposed amendments to section 1997, Title 16 of the CCR, which increase the fee for Inspection Report filings and Notice of Work completed filings from \$1 to \$2. [12:2&3 CRLR 148] On July 30, the Board sent notice of OAL's approval to all Branch 3 and 4 registered companies and all interested parties.

• **Registered Companies.** On June 22, OAL approved the Board's proposed amendment to section 1936, which adds SPCB's license application forms to the regulation. SPCB staff is still preparing the rulemaking file on its proposed amendment to section 1937.16, which would subject Branch 4 registered companies to the provision which requires Branch 1 and Branch 3 registered companies to use a "Notice of Owner" form, as specified by the Board. [12:2&3 CRLR 148]

• **Use of the Term "Fungicide."** SPCB's proposed amendments to sections 1970.4 and 1983 would add the term "fungicide" to numerous provisions which currently relate to the use of pesticides. [12:2&3 CRLR 148] During a 15-day public comment period, the Board received comments which indicated that some modifications made to the sections were improper. Accordingly, the Board is re-evaluating its proposed amendments and if necessary will schedule a public hearing regarding any revisions in early 1993.

• **Inspection of Condominiums.** SPCB recently decided to drop its proposal to add new section 1990.1, which would have established inspection report format and content requirements under Business and Professions Code sections 8516.1(b) and 8516.1(c)(1)-(8); that version of section 1990.1 was adopted by SPCB at its September 1991 meeting. [11:4 CRLR 112] Instead, at its August 7 meeting, the Board decided to notice for public hearing a different version of new section 1990.1, relating to a SPCB licensee's inspection of a common interest development such as a

condominium or townhouse unit. Among other things, the draft rule states that the inspection should be as thorough as possible, and specifies that the inspection should be documented as a limited inspection as the definition of a condominium is a limited portion of the structure. At this writing, notice of this proposed regulatory change has not yet been published in the *California Regulatory Notice Register*, but the Board tentatively plans to hold a public hearing on the matter in conjunction with its February 26 meeting.

• **Technical Advisory Committee's Recommendations.** At SPCB's August 7 meeting, its Technical Advisory Committee presented various recommendations for Board action, regarding the placement of fumigation warning signs, Specific Notice III-1-92, and an amendment to regulatory section 1991(a)(8)(C)(3).

Specifically, the Committee recommended that the Board commence the rulemaking process to adopt as a regulation the following language regarding fumigation warning sign placement:

-Fumigation warning signs should be clearly visible on all sides of the space under fumigation and from any direction from which the site may be approached.

-Where applicable, the distance between signs should be approximately thirty feet. Small structures will still require a minimum of four signs, one on each side.

-Signs should be posted in the vicinity of walkways or paths leading to the space under fumigation and at or near joint seams at ground level.

-Prior to wrapping the structure, fumigation warning signs should be posted on or near all entrance doors and kept at those locations until the structure is declared safe for re-occupancy.

SPCB President Caryl Iseman requested that Board members James Steffenson and John Van Hooser draft proposed regulatory language for review at the next Board meeting.

Also upon recommendation from the Technical Advisory Committee, the Board amended Specific Notice III-1-92 to state that SPCB recognizes that the presence of insulation on the exterior perimeter of the foundation or on the subfloor structure (to comply with the Energy Conservation Standards mandated by Title 24 of the CCR) may create additional inaccessible areas for Branch 3 licensees, and that these licensees shall include in their reports the approximate location of those areas concealed by such insulation. If evidence of infection, infestation, or excessive moisture condition exists in the accessible area and there is reason to believe that damage may exist in the areas concealed by insula-

tion, the licensee should recommend that the insulation be removed for a further inspection.

The Technical Advisory Committee also recommended that SPCB consider amending section 1991(a)(8)(C)(3), Title 16 of the CCR, to provide that when a complete inspection is performed, a recommendation shall be made to remove or cover all accessible pellets and frass or wood-destroying pests. Although the Board rejected a motion to notice the proposed rule change for public hearing, Board President Iseman requested that the recommendation be placed on the Board's next meeting agenda for reconsideration.

• **Continuing Education Proposals.** At SPCB's August 7 meeting, the Board adopted a number of recommendations made by its Continuing Education Committee regarding expired licenses, reducing required continuing education (CE) hours, eliminating the activity requirement, and requiring an examination at the completion of a course.

First, the Board agreed to sponsor legislative amendments which would allow a dual licensee the option of requesting an earlier expiration date of one license so that both licenses expire concurrently, and provide for the proration of fees accordingly.

SPCB also agreed to seek regulatory revisions to reduce the number of CE hours required of licensees; allow the rules and regulations course to count toward CE hours; delete section 1950.5(l), Title 16 of the CCR, which provides that in-house training in technical subjects may qualify as CE up to a maximum in each renewal period of twelve hours for licensees holding licenses in one branch, 24 hours for licensees holding licenses in two branches, and 36 hours for licensees holding licenses in three branches; eliminate the activity requirements for licensees; and require CE providers to submit a class roster to SPCB within five working days after every course instructed.

Finally, the Board agreed to notice for public hearing a regulatory amendment to require that each course on rules and regulations and each approved technical course include an examination to be administered at the end of the course; licensees would be required to obtain a passing score of 70% or better in order to obtain a certificate of completion. The amendment would provide that if a licensee fails the exam, he/she may request a second test, and a licensee may request an oral exam in cases where he/she has a documented reading disability.

• **Research Fund Awards.** At its June meeting, the Board awarded interagency



agreements to researchers at the University of California at Berkeley and the University of California at Riverside to conduct studies on the termite species. At UC Berkeley, Michael I. Haverty, Ph.D., and Vernard R. Lewis, Ph.D., received \$79,283 to conduct research on the size and dispersion of colonies of reticulitermes in wildlife and residential locations in northern California; David L. Wood, Ph.D., received \$67,069 to study the effects of cellulose-degrading fungi on feeding and foraging behaviors of the western subterranean termite, *Reticulitermes hesperus*; and W. Wayne Wilcox, Ph.D., received \$60,000 to conduct an evaluation of chemical treatments designed to improve the durability of wood-shingle roofs.

At UC Riverside, Thomas H. Atkinson, Ph.D., and Michael K. Rust, Ph.D., were awarded \$56,100 to conduct a study to determine which drywood and subterranean termite species are actually causing structural damage in urban areas of southern California located within distinct climatic zones, and to prepare an identification manual incorporating illustrated keys for accurate identifications. Dr. Rust was separately awarded \$30,929 to determine if there is any predictable behavior that can be observed in groups of western drywood termites, *Incisitermes minor*, when exposed to certain temperature gradients at constant relative humidities, and \$23,499 to evaluate the effectiveness of various insecticides and formulations as perimeter barrier treatments against Argentine ants, comparing the residual efficacy of sprays applied with backpack sprayers and conventional power sprayers.

Board President Caryl Iseman requested that staff prepare a written report on the condition of SPCB's Research Fund for the next Board meeting.

## LEGISLATION

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**AB 3327 (Sher)** makes a number of amendments to the Structural Pest Control Act regarding inspection report requirements. For example, existing law provides that the inspection report regarding wood-destroying pests by a registered structural pest control company or licensee, other than a Branch 4 licensee, shall contain certain information; roof leaks are to be reported as conditions usually deemed likely to lead to infestation or infection. This bill, in addition, requires that report to contain either a statement indicating that the exterior surface of the roof was not inspected, and that if a determination of water-tightness is desired, the consumer should contact a licensed roofing contractor for that determination; or a statement that the exterior surface of the roof was inspected to determine whether or not wood-destroying pests or organisms are present.

Existing law requires all Branch 4 registered pest control companies to retain for three years all field reports from which a verbal or written estimate of or recommendations for work are made. A written inspection report must be prepared and delivered to the person requesting an inspection. Existing law requires a copy of the inspection report to be filed with SPCB at the time the report is delivered or not later than five working days after the date the inspection is made. This bill deletes the references to Branch 4 licenses and provides instead for the licensure and regulation of wood roof cleaning and treatment registered companies, as specified. After July 1, 1993, the bill requires those companies to be licensed contractors. This bill also requires that written inspection report to be prepared and delivered to the person requesting the report within five working days of the inspection if a contract is executed to perform the work. The bill requires that a copy of the report be filed with the Board at the time the report is delivered or not later than five working days after the contract is executed to perform corrective work. Finally, this bill requires the written inspection report to contain a statement providing that corrective measures will not improve the water-tightness of the roof and that the consumer may contact a licensed roofing contractor, as specified. The bill also requires at the time the report is ordered that the person or entity be informed by the licensee that a separated report is available, as specified. This bill was signed by the Governor on July 18 (Chapter 274, Statutes of 1992).

**AB 3255 (Frazee)**. Existing law provides that a company registered with SPCB shall, upon request when inspection

of a structure is made, prepare a certification containing specified statements relating to the absence or presence of wood-destroying pests or organisms. This bill provides that when an inspection has disclosed no infestation or infection, the statement contained in the certification shall state that no evidence of active infestation or infection was found in the visible and accessible areas. This bill also allows the partner or officer of a registered company to be licensed either as an operator or as a field representative. This bill was signed by the Governor on July 18 (Chapter 270, Statutes of 1992).

## RECENT MEETINGS

At SPCB's August 7 meeting, staff reported that the Board's inspectors have been "modernized" with new computers, modems, and photocopy machines; the equipment will enable the inspectors to conduct more investigations since they will not have to travel back to their office in order to draft their reports.

## FUTURE MEETINGS

February 26 in Monterey.

## TAX PREPARER PROGRAM

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Enacted in 1973, abolished in 1982, and reenacted by SB 1453 (Presley) effective January 31, 1983, the Tax Preparer Program registers approximately 19,000 commercial tax preparers and 6,000 tax interviewers in California, pursuant to Business and Professions Code section 9891 *et seq.* The Program's regulations are codified in Division 32, Title 16 of the California Code of Regulations (CCR).

Registrants must be at least eighteen years old, have a high school diploma or pass an equivalency exam, have completed sixty hours of instruction in basic personal income tax law, theory, and practice within the previous eighteen months, or have at least two years' experience equivalent to that instruction. Twenty hours of continuing education are required each year.

Prior to registration, tax preparers must deposit a bond or cash in the amount of \$2,000 with the Department of Consumer Affairs. Registration must be renewed annually, and a tax preparer who does not renew his/her registration within three years after expiration must obtain a new