



measures which surpass those enacted by Congress. (See CRLR Vol. 10, No. 4 (Fall 1990) pp. 140-41 and Vol. 9, No. 3 (Summer 1989) p. 99 for background information.) Thus, one of the most heated debates in Washington focused on the possible preemption of California's stringent measures by the more lenient, federal measures. Despite strong arguments by Representative John Dingell (D-Michigan), whose constituency includes auto industry concerns, southern California's enormous new car market will not be subject to federal standards. The new legislation allows ARB to maintain control over most emissions standards in California.

One portion of the Clean Air Act has resulted in a dispute between the oil industry and ARB. ARB insists that the new federal law requires oil companies to sell specific amounts of clean-burning fuels; staff believes that California's program must therefore be amended to include a fuel sales quota, to conform with federal law. The oil industry, however, maintains that the recent amendments merely require that alternative fuels be "made available." (See *infra* agency report on ARB for related information.)

#### RECENT MEETINGS:

At the Advisory Board's November 9 meeting, BAR Program Evaluation and Planning Branch Manager Linda Whitney presented a preliminary report on the performance of mechanics who took the Smog Check Program examination. At the request of the EPA, BAR began a statistical analysis which attempts to measure performance by subgroups. For example, one portion of the evaluation will compare the performance of mechanics who attended a training course against the performance of those who qualified by having a previous license or related experience. The EPA request will generate data collection and a series of analyses expected to culminate in a final report on improving mechanic performance.

The Board then received a presentation by Jack Heyler of the Automotive Service Council (ASC), who emphasized the need for continuing education of technicians. Stating that vehicle repair standards have become increasingly complex, Mr. Heyler urged BAR to join other regulatory agencies in a coalition to address technician training. BAR expressed its support for an EPA-sponsored coalition to develop and unify industry efforts to improve technician education.

BAR Chief John Waraas reported on the continuing implementation of

SB 1997, which—among other things—requires Smog Check stations to purchase new equipment to perform emissions testing. (See CRLR Vol. 10, No. 4 (Fall 1990) pp. 56-57; Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 70; and Vol. 9, No. 4 (Fall 1989) p. 44 for background information.) Waraas expressed satisfaction in this area, noting that approximately 7,500 stations are currently equipped, and that the total should reach 9,800 by the end of the fiscal year. Waraas also reported that several new areas are coming into the Smog Check Program, including south Santa Cruz, Monterey, San Benito, Butte County, and San Bernardino (with the exception of the Needles area).

#### FUTURE MEETINGS:

May 17 in Sacramento.  
August 9 in Los Angeles.  
November 8 in Napa.

#### BOARD OF BARBER EXAMINERS

*Executive Officer: Lorna P. Hill*  
(916) 445-7008

In 1927, the California legislature created the Board of Barber Examiners (BBE) to control the spread of disease in hair salons for men. The Board, which consists of three public and two industry representatives, regulates and licenses barber schools, instructors, barbers, and shops. It sets training requirements and examines applicants, inspects barber shops, and disciplines violators with licensing sanctions. The Board licenses approximately 22,000 barbers, 5,000 shops, and 20 schools.

BBE's enabling act is currently found at Business and Professions Code section 6500 *et seq.*; the Board's regulations are located in Division 3, Title 16 of the California Code of Regulations (CCR).

On July 1, 1992, BBE and Board of Cosmetology (BOC) will merge, pursuant to AB 3008 (Eastin) (Chapter 1672, Statutes of 1990). The Business and Professions Code sections which establish BBE and BOC will be repealed and replaced with an enabling act creating the Board of Barbering and Cosmetology (BBC), which will provide for the licensure and regulation of persons engaged in the practice of performing specified acts relating to barbering, cosmetology, and electrolysis.

The Department of Consumer Affairs will play an active role in planning BBC and will hire a staff person to oversee the transition.

#### MAJOR PROJECTS:

*Merger with Board of Cosmetology.*  
On July 1, 1992, BBE and BOC will be

merged to form the Board of Barbering and Cosmetology (BBC), pursuant to AB 3008 (Eastin). (See CRLR Vol. 10, No. 4 (Fall 1990) p. 58; Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 73; and Vol. 7, No. 1 (Winter 1987) p. 1 for extensive background information on the merger.)

BBE had planned to hold regulatory hearings in February and March regarding draft regulations to implement the merger; in November, however, BBE was informed that AB 3008 (Eastin) requires that all regulatory hearings be held jointly with BOC. As a result, BBE cancelled all scheduled hearings.

#### LEGISLATION:

*Future Legislation.* Assemblymember Delaine Eastin plans to introduce a narrow clean-up bill to clarify minor inconsistencies and vagueness in the merger bill. The bill may also include directions for BBC in adopting new regulations. Although BBE and BOC are scheduling joint hearings to adopt regulations for BBC, their recommendations are merely advisory and have no binding effect on BBC.

The bill may also clarify the effect of AB 1402 (Waters) (Chapter 1239, Statutes of 1989), the Maxine Waters School Reform and Student Protection Act, and SB 190 (Morgan) (Chapter 1307, Statutes of 1989), the Private Post-secondary and Vocational Education Reform Act, on BBC. These acts collectively restructured the state licensure procedure for vocational schools and enhanced minimum standards for degree-granting institutions. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 69 and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 82-83 for background information on this issue.)

#### RECENT MEETINGS:

At its October 15 meeting, BBE discussed the increased effectiveness of its inspection process since 1988, when barbers were subjected to a new requirement to update their identification photographs every eight years and post the photograph adjacent to their licenses. BBE noted that the regular update and display of the photographs is being regulated through its administrative fine process.

BBE also reviewed the complaint trend for fiscal years 1986-87 through 1989-90. Although the number of complaints increased from 53 in 1986-87 to 147 in 1988-89, it decreased to 79 in 1989-90. BBE also reviewed the enrollment trend in barber colleges since fiscal year 1984-85. Enrollment peaked at 933 in fiscal year 1986-87, and has decreased



## REGULATORY AGENCY ACTION

since that time. Enrollment for fiscal year 1989-90 was 614.

BBE's Sunday, October 14 meeting in Monterey was scheduled to begin at 4:00 p.m. at the Hyatt Regency Hotel, and continue the following day at 9:00 a.m. at the Department of Parks and Recreation. However, the Sunday meeting was cancelled without notice, and the Monday meeting, which included all of Sunday's agenda, lasted only one hour.

### FUTURE MEETINGS:

To be announced.

### BOARD OF BEHAVIORAL SCIENCE EXAMINERS

*Executive Officer: Kathleen Callanan (916) 445-4933*

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:

*Enforcement Program.* After BBSE distributed its consumer brochure on psychotherapist sexual misconduct entitled *Professional Therapy Never Includes Sex!*, the number of complaints made against psychotherapists rose substantially. In response to the increase in complaints, BBSE recognized the need for a more comprehensive enforcement program. (See CRLR Vol. 10, No. 4 (Fall 1990) pp. 58-59; Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 74; and Vol. 9, No. 4 (Fall 1989) p. 47 for background information.)

The Department of Finance recently approved the Board's budget change proposal requesting an additional \$113,000 for fiscal year 1990-91 and \$232,000 for fiscal year 1991-92 to augment its enforcement program. The Board is also developing draft legislation to create a cost recovery program,

which would allow the Board to collect its investigation costs from disciplined licensees in specific cases.

*Dual Relationships.* The enforcement programs of both the Board of Psychology (BOP) and BBSE are faced with many consumer complaints and disciplinary cases wherein various types of "dual relationships" between psychotherapists and patients have resulted in patient harm. The boards share the belief that public protection requires further clarification of the nature and consequences of dual relationships.

In response to the problems arising from dual relationships, BOP, with assistance from the Office of the Attorney General, professional associations, licensees, and members of the public, drafted a proposed regulation addressing dual relationships. Among other things, the draft language defines the term "dual relationship," and provides that licensee involvement in a dual relationship with a patient is prohibited and constitutes unprofessional conduct and grounds for disciplinary action.

On December 7, BOP and BBSE held a joint informal public hearing to discuss and receive input on the proposed regulation. As a result of the public hearing, the boards will continue to discuss the issues concerning dual relationships before formally pursuing regulatory amendments.

### FUTURE MEETINGS:

April 12 (location to be announced).

July 19 (location to be announced).

### 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 185 cemeteries. It also licenses approximately 45 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 ele-

mentary arithmetic, and demonstrates a fair understanding of the cemetery business.

### MAJOR PROJECTS:

*Proposed Rulemaking.* On December 4, the Board held a public hearing regarding three proposed amendments to its regulations. First, the Board proposes to repeal section 2317, which implements Business and Professions Code section 9757.5. Section 9757.5, which authorizes the Board to set the temporary cemetery salesperson's license fee, was repealed by AB 3427 (Assembly Committee on Governmental Efficiency and Consumer Protection) (Chapter 1393, Statutes of 1990), which took effect on January 1. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 61 for background information on AB 3427.)

Second, Business and Professions Code section 9756, which authorizes the Board to set the fees for the cemetery salesperson's license, was amended by AB 3427 to increase the maximum cemetery license fee to \$30. Regulatory section 2318 currently sets the fee for a cemetery salesperson's original license at \$20. The Board proposes to amend this section to increase this fee and delete the word "original."

Finally, Health and Safety Code section 8738 requires that funds received by a cemetery licensee for endowment care must be placed in the licensee's endowment care fund no later than completion of the initial sale; however, the statute does not define when the initial sale is complete. The Board has proposed the adoption of section 2376 to define the point at which an initial sale will be deemed complete and to specify the time within which money collected must be deposited in the endowment care fund.

Following the December 4 public hearing, the Board adopted these proposed changes. At this writing, the Board is awaiting approval from the Office of Administrative Law regarding the proposed adoption of section 2376, and is preparing the rulemaking file for the proposed repeal of section 2317 and amendment to section 2318.

*Rulemaking Update.* According to Executive Officer John Gill, OAL approved the Board's proposed repeal of section 2370(e), pertaining to the handling of trusts. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 76 for background information.)

### LITIGATION:

*In Christensen, et al. v. Superior Court*, real party in interest Pasadena Crematorium asked the California Supreme Court to review the Second