



District Court of Appeal's June 1990 decision which substantially expanded the plaintiff class in this multimillion-dollar tort action against several Board licensees. (See CRLR Vol. 10, No. 4 (Fall 1990) pp. 61 and 75 for background information on this case, which is reported at 271 Cal. Rptr. 360.) On October 11, the Supreme Court granted review (No. S016890). Briefing has begun, with final reply briefs due on March 1.

#### RECENT MEETINGS:

At its December 4 meeting, the Board discussed the upcoming release of its new consumer pamphlet, which will be an updated guide to cemetery purchases. The Board expects to release the pamphlet by April.

#### FUTURE MEETINGS:

To be announced.

### BUREAU OF COLLECTION AND INVESTIGATIVE SERVICES

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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.

Pursuant to the Collection Agency Act, Business and Professions Code section 6850 *et seq.*, the Bureau regulates the practices of collection agencies in California. Collection agencies are businesses that collect debts owed to others. The responsibility of the Bureau in regulating collection agencies is twofold: (1) to protect the consumer/debtor from false, deceptive, and abusive practices and (2) to protect businesses which refer accounts for collection from financial loss. The Bureau also plays an important role in protecting collection agencies from unlawful competition by the detection and prohibition of unlicensed activity within the industry.

In addition, eight other industries are regulated by the Bureau, including private security services (security guards and private patrol operators), repossessioners, 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 property in accordance with a contractual agreement. The types of services provided include private street patrols, security guards, watchpeople, body guards, store detectives, and escort services. Any individual employed to provide these services is required to register with the Bureau as a security guard. Any security guard who carries a firearm and/or baton on the job must possess a firearm permit issued by the Bureau. The Bureau operates to protect consumers from guards who unlawfully detain, conduct illegal searches, exert undue force, and use their authority to intimidate and harass.

*Repossessioners.* Repossession agencies repossess personal property on behalf of a credit grantor when a consumer defaults on a conditional sales contract which contains a repossession clause. Any individual employed by these services is required to be registered with the Bureau. Pursuant to the Repossessors Act, Business and Professions Code section 7500 *et seq.*, the Bureau functions to protect consumers from unethical methods of repossessing personal property, such as physical abuse resulting in bodily harm, threats of violence, illegal entry onto private property, and misrepresentation in order to obtain property or information about property.

*Private Investigators.* Private investigators conduct investigations for private individuals, businesses, attorneys, insurance companies, and public agencies. The scope of their job generally falls within the areas of civil, criminal, and domestic investigations. Any private investigator who carries a firearm on the job must possess a firearm permit issued by the Bureau. Pursuant to Business and Professions Code section 7512 *et seq.*, the Bureau oversees private investigators to protect consumers and clients against investigators who misrepresent, impersonate, or make threats in order to obtain desired information; perform inadequate or incompetent investigations; fail to substantiate charges or charge more than the amount agreed upon; and alter, falsify, or create evidence.

*Alarm Company Operators.* Alarm company operators install, service, maintain, monitor, and respond to burglar alarms. These services are provided to private individuals, businesses, and public entities. Any employee responding to alarms who carries a firearm on the job must be registered by the Bureau and possess a Bureau-issued firearm permit. Pursuant to the Alarm Company Act, Business and Professions Code section 7590 *et seq.*, the Bureau regulates this industry in order to protect clients

from potential theft or burglary, invasion of privacy or misrepresentation by alarm companies, and failure on their part to render service as agreed.

*Protection Dog Operators.* Protection dog operators train, lease, and sell dogs for personal and/or property protection. They also provide patrol services using trained dogs. Individuals employed by any of these services must be registered by the Bureau. These services are employed by private individuals, business entities, and law enforcement agencies. Pursuant to Business and Professions Code section 7550 *et seq.*, the Bureau serves to protect against possible violations in this industry, such as inadequately trained or physically abused dogs, overcharges for services, invasions of privacy, or potential theft or burglary of property.

*Medical Provider Consultants.* Medical provider consultants are contract collectors who provide in-house collection services to medical facilities. They contact insurance companies and/or patients to try to collect on medical debts on behalf of the medical provider. Nevertheless, consultants cannot themselves collect on delinquent debts. Instead, they must turn the debt over to an independent, licensed collection agency in order to avoid any conflict of interest. Medical provider consultants may be licensed by the Bureau pursuant to Health and Safety Code section 1249.5 *et seq.*

*Training Facilities and Instructors.* These facilities provide required firearm training to licensed private investigators; power to arrest and firearm training to alarm agents who respond to alarm systems; and power to arrest, firearm, and baton training to security guards. Upon completion of training, individuals must pass examinations before they may be issued the appropriate permits. Pursuant to Business and Professions Code section 7552 *et seq.*, the Bureau regulates these facilities in order to ensure that required training is provided to licensed individuals, and that only those qualified possess the proper permits to provide service to the consumer.

*Locksmiths.* Locksmiths install, repair, open, modify, and make keys for locks. These services are provided to private individuals, businesses, and public entities. Pursuant to Business and Professions Code section 6980 *et seq.*, the Bureau regulates this industry in order to protect clients from potential theft or burglary, invasion of privacy, and misuse of a locksmith's skills, tools, or facilities for the commission of a crime.

The purpose of the Bureau is to protect the health, welfare and safety of those affected by these industries. To



## REGULATORY AGENCY ACTION

accomplish this, the Bureau regulates and reviews these industries by its licensing procedures and by the adoption and enforcement of regulations. For example, the Bureau reviews all complaints for possible violations and takes disciplinary action when violations are found. The Bureau's primary method of regulating, however, is through the granting or denial of initial/renewal license or registration applications. Education is also utilized to assist in achieving Bureau goals.

Consumers and clients may pursue civil remedies to resolve complaints and disputes currently within the regulatory authority of the Bureau. In addition, class action suits may be filed on behalf of consumers by the Attorney General's office and local district attorneys against businesses which engage in repetitive unethical business practices.

Two advisory boards function within the Bureau to advise the Chief and the DCA Director on policy matters relating to their respective industries. The Collection Agency Board (CAB) acts pursuant to Business and Professions Code section 6863.5 *et seq.*, and the Private Security Advisory Board (PSAB) is created under Business and Professions Code section 7516 *et seq.*

### MAJOR PROJECTS:

*Security Guard Training Proposals.* At PSAB's October 18 meeting, the Board again discussed the controversy regarding the proper amount of security guard training necessary for licensure; the guard training industry believes more training should be required, and the guard industry is satisfied with the status quo. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 61 and Vol. 9, No. 4 (Fall 1989) p. 50 for background information.) Public member Craig Sasser opined that an industry-wide training standard should be established, since guards are moving away from the traditional watchperson role, where they simply observe and report. Mr. Sasser stated that it might be wise to recognize two different levels of guards, and to establish training requirements based on the different job duties of each type of security guard.

Tom Sutak, Senior Vice President of American Protective Services, President of the California Contract Security Guard Association, and Chair of the Bureau's Northern Disciplinary Review Committee, delivered a presentation on the training his company gives to guards. The basic security guard training consists of two days of fundamental training. The guard may then take additional training in firearms, batons, or

armed street patrol, depending on what his/her particular job specifications call for.

V. Paul Louissaint of Shannon Security presented an outline for a proposal which represents the views of the training industry; Mr. Louissaint's proposal called for formal education for security officers to provide them with a career instead of just a job.

Lou Moore of Shasta/Trinity ROP presented an outline for training for private security careers, which was coordinated through the Department of Education. Mr. Moore's proposal sets forth a one-year/360-hour program for pre-screened participants 18 years of age or older. The program areas of instruction consist of 30 hours of job-seeking skills, 30 hours of professionalism, 45 hours of law, 45 hours of evidence, 45 hours of investigation, 60 hours of firearms, 30 hours of community relations, 30 hours of communications, and 45 hours of arrest and control.

In conclusion, PSAB Chair Bruce Westphal asked that the industry take the initiative and put together a legislative proposal on the training issue for BCIS consideration.

*Private Security Disciplinary Review Committees.* At PSAB's October 19 meeting, the Board discussed its Disciplinary Review Committees (DRC), stating that a DRC's function is to hear appeals of decisions made by BCIS regarding denial or revocation of licenses and assessment of administrative fines. BCIS sets forth the qualifications, functions, and duties of a security guard and then denies or revokes a license based on whether an act committed by the licensee or applicant is substantially related to those duties. If BCIS' decision is appealed to a DRC, the DRC hears testimony, asks questions, and—out of the presence of the petitioner—votes to uphold or overturn BCIS' decision. The petitioner is notified of the DRC's decision within 30 days. If the DRC upholds the Bureau's decision, the applicant or licensee may appeal to an administrative law judge. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 77-78 and Vol. 7, No. 2 (Spring 1987) p. 45 for background information.) BCIS' DRCs are regional in structure, and consist of industry and public members appointed by PSAB.

PSAB members expressed satisfaction with the performance of the DRCs, noting that the committees appear to be fair to all parties concerned.

### RECENT MEETINGS:

At PSAB's October 18 meeting, only four of the nine members were present,

leaving the Board without a quorum and unable to take any action. However, the Board discussed the progress made toward its 1990 goals. Public member Francis Stoffels reported that he felt everything possible was being done to realize the Board's goal of more industry input and meeting participation. PSAB members noted that the goal of encouraging more interaction between the private security industry and law enforcement is an ongoing effort by the Chief, Deputy Chief, and the Board. The Board also reported on its continuing goals regarding training and standardizing training, and stated that the new Powers to Arrest Manual was being printed, the Baton Manual was being sent to the printer, and nothing had been done on the Firearm Manual due to lack of response.

Also at BCIS' October 19 meeting, the Board discussed the issue of BCIS' denial of a guard registration because of a false statement made by an applicant concerning previous criminal convictions. BCIS Program Manager Gretchen Werry stated that state law provides that it is illegal to make a false statement on an application for licensure or registration. Ms. Werry stated that BCIS looks at a false statement regarding a criminal conviction on three levels: (1) the length of time since the conviction; (2) the type of crime committed; and (3) any evidence of rehabilitation. She further noted that BCIS receives approximately 5,000 applications per month, of which about 500 are denied; 70% of those denied contain a false statement.

Regarding which convictions must be disclosed and the effect of disclosure/nondisclosure on licensure, BCIS legal counsel Steven Martini stated that if a conviction is more than seven years old and is disclosed, then the conviction itself is not grounds for denial of the license. If a conviction is more than seven years old and is not disclosed, the license will not be denied on the basis of the nondisclosure, since the conviction, if disclosed, would not be grounds for denial. As to failure to disclose a conviction that is less than seven years old, and the subsequent denial of licensure, Mr. Martini opined that the DRC is the proper place for consideration of all the relevant issues to determine whether the BCIS action was justified. Mr. Martini suggested that the industry take steps to resolve any problems it has in this area before the legislature implements a resolution which may be difficult for the industry to implement.

### FUTURE MEETINGS:

PSAB: April 12 in Sacramento.



July 12 in Los Angeles.  
 October 11 in San Francisco.  
 CAB: April 5 in Oakland.  
 June 21 in Costa Mesa.  
 September 13 in Pasadena.

## CONTRACTORS STATE LICENSE BOARD

Registrar: David Phillips  
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The Contractors State License Board (CSLB) licenses contractors to work in California, handles consumer complaints, and enforces existing laws pertaining to contractors. The Board is authorized pursuant to the Contractors State License Law (CSLL), Business and Professions Code section 7000 *et seq.*; CSLB's regulations are codified in Division 8, Title 16 of the California Code of Regulations (CCR).

The thirteen-member Board, consisting of seven public members, five contractors and one labor member, generally meets every other month. The Board maintains six committees: legislative, enforcement, licensing, public information, strategic planning, and budget/administration. In addition, the Board maintains a Fire Protections Systems Ad Hoc Committee. Committees meet every one to three months, and present recommendations for requested action at the full Board meetings.

At CSLB's October 19 meeting, Registrar David Phillips congratulated Joe Valverde, Marla Marshall, and Benny Yee on their reappointments to the Board. CSLB also announced that Licensing Deputy Bob Berrigan and Southern Regional Deputy Gus Paul have retired; Robert Christensen will be the new Licensing Deputy and Paula Watkins will fill the office of Southern Regional Deputy.

### MAJOR PROJECTS:

*CSLB Complaint Disclosure Process.* At recent meetings, CSLB's Enforcement Committee has discussed the Board's complaint disclosure process. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 65 for background information.) Current regulations require CSLB staff to disclose complaint information to an inquiring consumer if a consumer complaint survives initial screening, passes through preliminary investigation, and is assigned to a CSLB deputy for investigation; such information may be disclosed upon request until the complaint is found to be without merit. If the complaint is later found to be without merit, it is removed from the disclosure sys-

tem. If the complaint is found to have merit, it is forwarded for legal action and is disclosed upon request.

At its December 12 meeting, the Enforcement Committee recommended that the investigation stage is too premature for disclosure to an inquiring consumer. At the Board's January 18 meeting, the Committee was scheduled to recommend a proposal to seek legislative or regulatory amendments to reduce the availability of complaint disclosure information.

*CSLB Citation and Disciplinary Action Disclosure Practices.* Since its June 1990 meeting, the Enforcement Committee has also been discussing whether CSLB should continue to disclose information regarding citations and disciplinary actions taken against a contractor by CSLB, even after the contractor has accepted and complied with the requirements of the citation or disciplinary order. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 65 for background information.) Currently, citations and disciplinary orders become part of the contractor's permanent record and are disclosed even if all conditions are satisfied.

At its October 19 meeting, the Board accepted the recommendation of the Enforcement Committee that CSLB seek legislation permitting the Registrar to withhold citation information from the public, if the licensee (1) complies with the citation; and (2) remains free of any further legal actions for a period of five years from the date the citation is complied with.

The Board also accepted the Committee's recommendation that it seek legislation permitting the Registrar to withhold accusation/disciplinary information from the public if the licensee has (1) complied with the order's terms and conditions; (2) been free of any legal actions for five years from the date the terms and conditions of the order have been met; and (3) successfully petitioned the Registrar to have accusation/disciplinary information withheld from public disclosure.

CSLB also accepted the Enforcement Committee's recommendation to seek urgency legislation which would permit the Board to divert a complaint to mandatory arbitration if the contract price of the project is less than \$5,000, or if the demand of the complainant is less than \$5,000, regardless of the contract price. The Board's Mandatory Arbitration Program is currently limited to resolving disputes over contracts under \$2,500.

*Administration/Budget.* At the Board's October meeting, CSLB Admin-

istrative Officer Linda Brooks announced that budget change proposals (BCPs) have been prepared totalling about \$1.6 million and 23 positions, in order to meet the requirements of SB 2004 (Keene), SB 2476 (Seymour), and AB 2282 (Eastin), which were chaptered in 1990. (See CRLR Vol. 10, No. 4 (Fall 1990) pp. 66 and 164 for background information.) SB 2004 requires a hazardous substance certification for installing and removing underground storage tanks effective January 1992; SB 2476 allows the Registrar, under stringent conditions, to waive the trade exam for an additional classification; and AB 2282 makes workers' compensation insurance a condition of licensure as of January 1992, and requires a study to determine the feasibility of a communications network with other state regulatory agencies for joint enforcement of the CSLL.

*Complaint Backlog.* At CSLB's October 19 meeting, Registrar David Phillips reported that the complaint backlog had increased from 973 in July to 1,255 in August; however, the median age of complaints dropped to 46 days. According to Mr. Phillips, although the Board is receiving more complaints, the complaints are being processed in a more timely manner.

*Section 7026.4 Controversy.* Business and Professions Code section 7026.4 states that the term contractor "includes any person, except a nurseryman or gardener, who is employed as an independent contractor, by any person licensed under this chapter, to remove trees, prune trees, remove tree limbs or stumps, or to engage in tree or limb guying." The section also provides that the term contractor "does not include any person, including but not limited to, a nurseryman or gardener, who is employed by an owner or occupier of any property to perform the activities described by this section, either as an independent contractor or as an employee. Nor does it include an owner or occupier of property, or an employee of an owner or occupier of property, who engages in the activities described by this section."

At its October 19 meeting, the Board accepted the Licensing Committee's recommendation that CSLB seek an amendment to section 7026.4, to clarify that tree pruning, tree removal, stump removal, and tree or limb guying require a license, and that nurserymen and gardeners are *not* exempt to perform such work.

*Unlicensed Activity Unit (UAU).* At the Board's October 19 meeting, Mr. Phillips announced that the UAU in southern California has been very active,