



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
 (916) 366-5153

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,



REGULATORY AGENCY ACTION

noting that from October 1989 through September 1990, the unit issued 61 notice to appear citations, 457 nonlicensee citations, 185 warning letters, 125 license citations, and conducted 10 stings and 18 sweeps. Efforts to obtain a similar unit for northern California are currently pending review by the Department of Finance. According to CSLB, in spite of support by the industry and the Assembly Committee on Construction Issues, feedback from the State and Consumer Services Agency is not encouraging. The Board agreed to submit a letter to Shirley Chilton, Secretary of the State and Consumer Services Agency, requesting support for a UAU in northern California.

CSLB Northern Regional Deputy Sondra Vaughan explained that CSLB has been performing stings in northern California utilizing current staff. Ms. Vaughan expressed concern that use of staff for sting operations takes away from complaint handling, noting that all expenses incurred by a sting come from the existing Northern Region budget.

LEGISLATION:

SB 56 (Ayala). Existing law authorizes the Registrar of Contractors to deny, suspend, or revoke the license of any contractor for a willful departure in any material respect from accepted trade standards for good and workmanlike construction, unless the departure is in accordance with plans and specifications prepared by or under the direct supervision of an architect. This bill would define "willful," as applied to the intent with which an act is done or omitted, as a purpose or willingness to commit an act or make an omission, and would provide that it does not require any intent to violate the law, injure another, or acquire any advantage. This bill is pending in the Senate Business and Professions Committee.

Anticipated Legislation. At its December 12 meeting, the Enforcement Committee decided to recommend to the Board that it seek legislation to increase civil penalties to \$15,000 for licensed contractors who hire unlicensed contractors. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 68 for background information.) The recommendation was scheduled for presentation to the full Board at its January 18 meeting.

LITIGATION:

In *Elliott v. Contractors State License Board*, No. H006381 (Sept. 26, 1990), the Sixth District Court of Appeal upheld the revocation of a contractor's

license, finding that the contractor's petition for writ of mandate was not filed within the statute of limitations and that the contractor had "unclean hands."

During 1986, a complaint was filed with CSLB against Daniel Elliott. Following hearings held in November 1988, the administrative law judge (ALJ) filed a proposed decision revoking Elliott's license on grounds that he had violated Business and Professions Code sections 7115, 7028, 7161, and 7026.7 (by false advertising and contracting without a valid license), 7154 and 7159 (by employing a non-registered salesperson and failing to provide a homeowner with a proper home improvement contract), and 7111 (by failing to keep and produce proper records). On January 6, 1989, CSLB's Registrar adopted the order of the ALJ; the Registrar's decision became effective on February 5, 1989.

On May 18, 1989, Elliott filed a petition for writ of mandate to set aside the revocation of his license. CSLB filed its answer on June 28, 1989, alleging, among other things, that Elliott obtained his license on the basis of fraudulent representations concerning earlier unpaid debts as a contractor and prior disciplinary action. Elliott did not file a responsive pleading.

On August 25, 1989, the trial court denied the writ, and Elliott appealed. In affirming the trial court's decision, the Sixth District noted that the time within which appellant was required to file his petition for a writ of mandate to challenge the revocation of his license is 30 days from the effective date of the decision, under Government Code sections 11521 and 11523. Thus, the last day on which he could seek judicial review was March 7, 1989. Elliott filed his petition on May 18, 1989, more than two months later.

A defendant is estopped to assert the statute of limitations if its conduct caused the plaintiff to delay filing the action. Elliott argued that the trial court erred in not finding that CSLB was estopped to assert the statute of limitations. In support of his contention, Elliott pointed out that he is not an attorney; that almost immediately after he received the Registrar's decision, he wrote to the Board, stating that he wished to appeal the decision and needed information about procedures and forms in order to do so; that he wrote to the ALJ to seek clarification of her order; and that he received no reply either from the ALJ or from CSLB. However, the court noted that some affirmative misleading conduct on the part of the agency is necessary to support a finding of estoppel. Because CSLB

neither owed nor assumed a duty to advise Elliott of his rights, its inaction could not reasonably have lulled appellant into a sense of security that prevented him from filing his petition before the running of the statute of limitations. The appellate court held that it cannot be said that by ignoring Elliott's request for information, CSLB took unfair advantage of Elliott so as to estop it from raising the statute of limitations as a defense.

As an alternative basis for its denial of the writ, the trial court found that Elliott had "unclean hands" warranting revocation of his license. As alleged in CSLB's answer to Elliott's petition, the trial court found that Elliott had obtained his license by fraud and that he was, at the time of trial, contracting with an expired license in violation of Business and Professions Code section 7028. The appellate court affirmed, on the basis that Elliott failed either to file a replication or submit proof countervailing the Board's affirmative defense that he had obtained his license fraudulently. Factual allegations in an answer to a petition for a writ of mandate must be countervailed by proof at trial or by replication, or they are taken as true under Code of Civil Procedure section 1091.

RECENT MEETINGS:

At the Board's October 19 meeting, the Public Information Committee announced its goals for the current fiscal year, including the following: (1) to increase consumer and contractor awareness of CSLB and its functions by means of increased statewide public education; (2) to sponsor at least ten consumer/contractor-oriented outreach programs; (3) to participate in at least ten industry/consumer trade shows; (4) to produce a new home improvement guide to construction trades that would replace CSLB's outdated pamphlet; (5) to produce a new publication giving information on what is needed in order to qualify for obtaining a contractor's license; (6) to produce and distribute for airing at least two television and radio public service announcements which would describe CSLB and provide information on what consumers need to know before hiring a contractor; and (7) to produce, print, and make available to retailer and permitting office outlets a new pamphlet that describes CSLB and offers the opportunity to order copies of the publication.

Also at the October 19 meeting, public member Phil Moore reported that as a result of an article in a weekly newsletter printed by the State Department of Banking, CSLB was asked to send 35,000 copies of *What You Should*



Know Before You Hire a Contractor to 200 different banks, savings and loan institutions, and credit unions which provide home improvement loans. Also, the San Francisco Bay Area Earthquake Preparedness Project has published a 38-page survival guide for seniors which includes information from CSLB's brochures.

At its October 19 meeting, CSLB reported that the Computer Assisted Testing (CAT) program in Sacramento continues to run smoothly. Registrar David Phillips announced that during November and December, CAT sites in Ventura, San Bernardino, San Diego, and Inglewood would be established. Copies of the new computer disk program, which demonstrates how the exam is administered to examinees, are now available.

FUTURE MEETINGS:

April 19 in San Francisco.
July 19 in Whittier.

BOARD OF COSMETOLOGY

Executive Officer: Denise Ostton
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In 1927, the California legislature enacted the Cosmetology Act, establishing the Board of Cosmetology (BOC). The Board was empowered to require reasonably necessary precautions designed to protect public health and safety in establishments related to any branch of cosmetology. BOC's enabling legislation is found in Business and Professions Code section 7300 *et seq.*; the Board's regulations are codified in Division 9, Title 16 of the California Code of Regulations (CCR).

Pursuant to this legislative mandate, the Board regulates and issues separate licenses to salons, schools, electrologists, manicurists, cosmetologists, and cosmeticians. It sets training requirements, examines applicants, issues certificates of registration and licenses, hires investigators from the Department of Consumer Affairs to investigate complaints, and disciplines violators with licensing sanctions.

The Board is comprised of seven members—four public members and three from the industry. It is required to hold meetings at least four times per year.

On July 1, 1992, BOC and the Board of Barber Examiners (BBE) 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.

MAJOR PROJECTS:

BOC Proposes License Fee Increase. In November, BOC announced its intent to amend section 990, Division 9, Title 16 of the CCR. Pursuant to SB 1992 (Maddy) (Chapter 1675, Statutes of 1990), which increased the maximum license fees for all BOC licenses, BOC proposes to increase the renewal fees for cosmetology establishment and individual licenses expiring on or after July 31 from \$20 to \$36; the renewal delinquency fee from \$10 to \$18; and the registration fee for cosmetology establishments from \$20 to \$36. A public hearing on these proposed changes was scheduled for January 20 in San Diego.

Status Update on Regulatory Changes. On October 31, the Office of Administrative Law (OAL) approved BOC's amendments to sections 919.7 and 919.8, Title 16 of the CCR. Section 919.7 concerns requirements relating to records of completion, and section 919.8 concerns requirements relating to records of withdrawal from schools. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 69 and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 83 for background information.)

On October 25, OAL approved BOC's changes to section 979, Title 16 of the CCR, which exempt haircutting shears from the disinfection requirements for non-electrical instruments and equipment with sharp points or edges, and require haircutting shears to be disinfected in accordance with the requirements for non-electrical instruments and equipment without sharp points or edges. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 69 for background information.)

LEGISLATION:

Anticipated Legislation. BOC is currently considering possible clean-up legislation for AB 3008 (Eastin), which—effective July 1, 1992—merges BOC with the Board of Examiners (BBE) and creates the Board of Barbering and Cosmetology (BBC). (See CRLR Vol. 10, No. 4 (Fall 1990) p. 69; Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 82; and Vol. 7, No. 1 (Winter 1987) p. 1 for extensive background information.) Among other things, BOC may seek to:

- change the name of BBC's enabling act to the "Barbering, Cosmetology, and Electrolysis Act," and add the word "Electrolysis" to the name of the new Board;

- clarify section 7310 to provide that the Department of Consumer Affairs (DCA) Director's rejection of an appointment or recommendation for dismissal of BBC's executive officer must be for good cause;

- amend section 7316(b) to remove electrolysis from the cosmetology scope of practice, to prevent cosmetologists from practicing electrolysis without proper licensing;

- delete section 7319 (f) and add a new section exempting cosmetology/barbering students engaged in performing services on the public from the requirement to be licensed;

- add a new section allowing students trained under old curriculum course hours and apprentices trained under old program requirements to remain eligible to apply for examination when these requirements are increased;

- amend language in all sections regarding out-of-state practice so it will accommodate changing regulations for training course length;

- include language to allow cosmetologists, estheticians, manicurists, and electrologists to qualify for examination by completing an apprenticeship program, and without attending vocational school;

- delete current provisions in sections 7386.8 and 7444.1 which sunset the licensing of mobile units in January 1992, to allow licensing to continue until AB 3008 takes effect in July 1992;

- delete section 7358 regarding school advertising (as schools are not within BBC's jurisdiction);

- delete language in section 7396 requiring that the license contain a photograph of the licensee, and add barber instructor, cosmetology instructor, and establishment licenses to the list of licenses contained in that section;

- amend section 7417 to require payment of all accrued renewal fees to date, rather than only current renewal fees, for expired licenses;

- increase the manicurist license fee to \$35 in section 7423(c);

- in section 7423.5, add language that provides for a renewal fee of not more than \$50 and a license renewal delinquency rate of 50%;

- amend section 7425 to set the delinquency fee for mobile units at 50% of the mobile unit renewal fee; and

- add language to give BBC the authority to enforce disciplinary decisions of BOC and BBE, to eliminate any