



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 The Business and Professions Code sections which establish BBE and BOC will be repealed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



REGULATORY AGENCY ACTION

confusion or uncertainty regarding probations, revocations, and suspensions in force on July 1, 1992.

RECENT MEETINGS:

At BOC's November 18 meeting, the Board discussed holding the first joint public hearing with BBE sometime in May or June to develop and recommend regulations to implement the provisions of AB 3008, which would be adopted by the merged board.

BOC also discussed five budget change proposals submitted to DCA for the 1991-92 fiscal year. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 70 for background information.) Following budget hearings with the DCA Director in August, all of the proposals were approved and sent to the Department of Finance (DOF), which subsequently approved the following four requests: (1) five limited-term clerical positions, each to last two years; (2) \$21,000 for fiscal year 1991-92 and \$14,000 each year thereafter for ongoing review and validation of the written licensing examinations; (3) \$70,000 in fiscal year 1990-91 and \$70,000 in fiscal year 1991-92 to develop a course on hazardous substances in the cosmetology workplace (mandated by AB 2925 (Mojonnier) (Chapter 1674, Statutes of 1990)); and (4) one permanent clerical position at the Los Angeles examination facility with funding of \$22,000 in fiscal year 1990-91 and \$33,000 in the fiscal year 1991-92. DOF disapproved BOC's request for additional in-state travel funds.

FUTURE MEETINGS:

March 10 in the San Francisco/Oakland area.

May 5 in Sacramento.

BOARD OF DENTAL EXAMINERS

Executive Officer: Georgetta Coleman (916) 920-7197

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

sumer 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. The 1991 members are James Dawson, DDS, president; Gloria Valde, DMD, vice-president; Hazel Torres, RDA, secretary; Pamela Benjamin, public member; Victoria Camilli, public member; Joe Frisch, DDS; Henry Garabedian, DDS; Martha Hickey, public member; Carl Lindstrom, public member; Alfred Otero, DDS; Evelyn Pangborn, RDH; Jack Saroyan, DDS; and Albert Wasserman, DDS. At this writing, one practicing dentist position is vacant.

MAJOR PROJECTS:

"Wasserman Letter" Found To Be "Underground Rulemaking." In September 1989, then-Board President Albert Wasserman, DDS, issued a statement condemning as illegal any office practice under which a dental auxiliary is allowed to perform dental treatment procedures on a new patient without specific instructions and prior to the patient having been examined by the dentist. The California Dental Hygienists Association (CDHA) filed a request for determination by the Office of Administrative Law (OAL), contending that the so-called "Wasserman letter" was an "underground regulation" which must be adopted pursuant to the Administrative Procedure Act (APA) before it may be enforced. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 71; Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 85; and Vol. 9, No. 4 (Fall 1989) p. 54 for extensive background information.) The Board responded to the request for determination in June, and OAL published its decision on November 30.

OAL determined that the statement issued by the Board was in fact a regulation, and therefore had no legal effect since it was never formally adopted pursuant to the APA. Among other things,

the APA requires an agency to give notice of a proposed adoption, amendment, or repeal of a regulation, and to afford interested persons the opportunity to comment on the proposed action.

In its response to the request for determination, the Board maintained that the challenged statement was not a regulation, but "simply a restatement of current law." However, OAL found no California statute, regulation, or judicial opinion that imposes the specific requirements stated in the Wasserman letter. Instead, OAL characterized the Board's position statement as an effort to "interpret, implement, and make specific the Dental Practice Act," and therefore a regulation as defined in Government Code section 11342(b).

Under Business and Professions Code section 1741, the duties of a dental auxiliary may be classified as either "general supervision" or "direct supervision" functions; these classifications must be accomplished through APA rulemaking by the Board. The Wasserman letter insisted that dental auxiliaries may not perform general supervision functions on a new patient who has not yet been examined by the supervising dentist. However, OAL found that neither Business and Professions Code section 1741 nor any properly-adopted regulation requires that a dentist examine and diagnose a patient *prior* to issuing instructions to an auxiliary as to general supervision dental procedures. Thus, the requirements contained in the Board's position statement do in fact amend and make specific the Dental Practice Act. For that reason, OAL determined that the Wasserman letter is a regulation and is "without legal effect" until properly adopted according to the standards set forth in the APA.

OAL also noted that, during 1988-89, BDE attempted to adopt a regulatory change containing the precise restriction imposed by the Wasserman letter. In that rulemaking proceeding, the Board itself admitted that "the law is unclear," and proposed rulemaking to clarify the responsibilities of a dentist regarding the dental procedures which could be performed by auxiliaries before examination, diagnosis, and treatment has been rendered by the dentist. That proposed rulemaking was rejected by the Director of the Department of Consumer Affairs as unnecessary and unfair to the poor, disabled, and elderly. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 54 for background information.)

Regulatory Changes. In its effort to implement AB 1417 (Speier) (Chapter 526, Statutes of 1989), the Board published proposed conscious sedation