



information through the major public utilities in southern California.

Also at the October 11 Executive Committee meeting, Bureau Chief Jack Hayes indicated that the recently-published statement in GTE's yellow pages, which directs consumers to contact BEAR for registration requirement information, has been effective as a method of consumer outreach. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 74 for background information.) The statement appears at the beginning of each of the various headings where a consumer would find a business activity requiring BEAR registration. To determine the success of each of BEAR's efforts to increase public awareness, the Executive Committee suggested that, in the future, consumers who call the Bureau should be asked how they received information about BEAR.

At the November 9 meeting of the Bureau's Advisory Board, Mr. Boranian provided an update on toxic parts. He noted that BEAR has not located a definitive study on toxic parts yet, but is continuing its search for relevant reports or studies. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 74 for background information.) Currently, BEAR is gathering information on the shipment of toxic waste out of the United States to Taiwan for disposal or recycling, a practice in which many American companies are allegedly engaged. In addition, Mr. Boranian reported that he raised the issue of toxic parts at a meeting he attended with officials from Japan. He asked the officials, some of whom represent major electronic manufacturers, to look into the matter and relay any relevant information to BEAR. Finally, information is being gathered on recent federal legislation regarding lead and tin ratios in solder.

Also at the November 9 meeting, BEAR's Advisory Board once again discussed several issues relating to service contracts. Service contracts allow consumers to purchase extended warranty coverage for appliances and home electronic equipment, and are often sold by companies in the exclusive business of selling service contracts. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 74 for background information.) The Advisory Board suggested that an effort be made to educate consumers and service dealers regarding service contracts due to the steady stream of problems which have arisen. For example, BEAR staff noted that some service contract companies refuse to pay certain service dealer charges following repairs made under

the contract. As a result, some service dealers have decided to charge the consumer "up front" on a repair under a service contract to protect against "no-pay" or "slow-pay" from the administrator. Staff cautioned that, under such circumstances, the consumer must be apprised of the charges in writing and dealers must not violate the contract's estimate provision and applicable regulations. BEAR's legal counsel, offering a preliminary opinion on the legality of the service dealer action, stated that the terms of the contract between the consumer and administrator and the agreement between the administrator and service dealer would control. If the service contract is silent as to which party is responsible for payment, the consumer would have a legitimate claim that the service dealer action is in violation of the contract.

Board President Fay Wood emphasized that the Board cannot effectively address service contract payment problems, or any other problems arising with the sale and administration of service contracts, without consumer and service dealer input. The Board suggested that a brochure and letter be distributed by BEAR, requesting service dealers to provide consumers with complaint forms to be submitted to the Bureau when disagreements over service contracts arise, and that the Bureau's complaint form and fact sheet be published in the California State Electronics Association's magazine, *Service Dealer*. Mr. Hayes stated that he would write a guest editorial to the magazine highlighting the problem to all member dealers.

## FUTURE MEETINGS:

May 17 in the San Diego/Palm Springs area.

August 16 in the Seaside/Monterey area.

November 22 in Long Beach.

## BOARD OF FUNERAL DIRECTORS AND EMBALMERS

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The Board of Funeral Directors and Embalmers licenses funeral establishments and embalmers. It registers apprentice embalmers and approves funeral establishments for apprenticeship training. The Board annually accredits embalming schools and administers licensing examinations. The Board inspects the physical and sanitary conditions in funeral establishments, enforces price disclosure laws, and approves

changes in business name or location. The Board also audits preneed funeral trust accounts maintained by its licensees, which is statutorily mandated prior to transfer or cancellation of a license. Finally, the Board investigates, mediates, and resolves consumer complaints.

The Board is authorized under Business and Professions Code section 7600 *et seq.* The Board consists of five members: two Board licensees and three public members. In carrying out its primary responsibilities, the Board is empowered to adopt and enforce reasonably necessary rules and regulations; these regulations are codified in Division 12, Title 16 of the California Code of Regulations (CCR).

## MAJOR PROJECTS:

*Proposed Regulatory Changes.* The Board has decided not to pursue its earlier proposed amendments to section 1262, Division 12, Title 16 of the CCR. As originally introduced in early 1990, the amendment would have prohibited the practice of "constructive delivery" of merchandise purchased under a preneed trust arrangement. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 89; Vol. 10, No. 1 (Winter 1990) pp. 68-69; and Vol. 9, No. 4 (Fall 1989) p. 57 for extensive background information.)

On December 7, the Board noticed its intent to amend section 1257 and add new section 1259 to its regulations. Section 1257 would be amended to provide for an increase in various licensing fees of embalmers and funeral directors. For example, under the proposed amendments, the application fee for a funeral director's license would be increased from \$150 to \$400, and the application fee for an embalmer's license would be increased from \$50 to \$150. New section 1259 would convert the Board's present annual license renewal schedule to an anniversary date or cyclical renewal schedule. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 75 for background information.) The Board was scheduled to hold a public hearing on these proposed regulatory changes on January 24.

*Consumer Guide.* The Board has completed its final revisions to a general information booklet for consumers regarding funeral services and cemeteries. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer) p. 91 and Vol. 10, No. 1 (Winter 1990) p. 70 for background information.) Although the Board approved the printing of 5,000 copies of the guide, it has insufficient funds in its current budget to cover the cost of the printing. Therefore, the guide is not



## REGULATORY AGENCY ACTION

expected to be available to consumers until April or May of 1991.

### LEGISLATION:

**Anticipated Legislation.** The California Funeral Directors Association (CFDA) may sponsor two pieces of legislation in 1991. One of the proposed bills would create a new category of licensee in the funeral industry, entitled "arrangement counselor." Currently, there is no licensing requirement in California for people who work with families to make funeral arrangements, although many other states impose such a requirement. Under the draft language of the bill, an applicant would be required to pass a Board examination in order to become a licensed arrangement counselor. The bill would grandparent in people who already have sufficient experience as an arrangement counselor; provide that, by 1995, all arrangement counselor applicants must hold an associate of arts degree; and require the Board to mandate a continuing education program for all arrangement counselors.

CFDA's other legislative proposal would seek to increase the educational requirements for licensed embalmers, from the current requirement of completion of a nine-month embalming program to completion of a twelve-month embalming program; require that, by 1995, all embalmers applying for a license must hold an associate of arts degree; and require the Board to mandate a continuing education program for all licensed embalmers. Significantly, this bill would do away with the state embalmers' licensing examination, and instead require all applicants to pass a national embalming examination. Finally, this proposal would allow apprentice embalmers to practice embalming at two funeral establishments, so long as the establishments are jointly owned and are in close proximity to each other.

### LITIGATION:

The lawsuit filed by Funeral Securities Plans, Inc. (FSP) against the Board (No. 512564, Sacramento County Superior Court), alleging that the Board violated the Bagley-Keene Open Meetings Act, Government Code section 11120 *et seq.*, has prompted the Board to file a cross-complaint against FSP alleging, among other things, that the complaint against the Board is frivolous. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 75 and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 90-91 for background information.) The Board alleges that the suit was brought by FSP for no other reason than to gain access to confidential Board

information via the discovery process. At this writing, both parties are involved in discovery, and several depositions have been taken. A trial date has been set for February 5; however, prior to trial, the Board plans to file a motion for either full or partial summary judgment.

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

David Wayne Sconce, who operated Pasadena Crematorium and Lamb Funeral Home in Pasadena, is serving jail time for mishandling decedents' remains by removing organs and gold fillings, and has also been charged with the murder of a rival mortician who died over two years ago. Sconce, who claims he is innocent, is charged with murdering Timothy Waters with oleander, an evergreen shrub containing toxic digoxin, which can affect the heart's electrical impulses and trigger a heart attack.

### RECENT MEETINGS:

At its October 9 and November 29 meetings, the Board considered a request for determination submitted by Hillside Memorial Park and Mortuary, regarding the applicability of section 1261, Division 12, Title 16 of the CCR, to preneed funeral arrangement trusts where the depositor-trustor is not the beneficiary. Under Business and Professions Code Section 7735, funeral directors are prohibited from soliciting or entering into preneed contracts that require payment to the funeral director for funeral services if the delivery of such services is not immediately required, unless the payments are held in trust and subject to reporting requirements imposed by the Board under Business and Professions Code section 7740.

Regulatory section 1261 defines certain arrangements which are not considered "preneed arrangements" and which are exempt from section 7735's scope: (1) if the funeral director's client directly deposits his/her own money in a bank or savings and loan association trust account in the name of the client as trustee for the funeral director, provided that, until death, the client retains the

exclusive power to hold, manage, pledge, and invest the funds at any time; and (2) if there is no delivery whatsoever to the funeral director to pay for the services or merchandise until such services or merchandise have been provided.

A significant portion of Hillside's preneed arrangements involve family members wishing to set up a preneed trust for their elderly parents. Hillside asked the Board to determine that such arrangements are not covered by Business and Professions Code section 7735, and that such arrangements fall within the exemptions in section 1261. The Board determined that these arrangements do not fit within section 1261; thus, these arrangements are permitted under state law but must be accomplished through the establishment of a formal preneed trust subject to the Board's reporting requirements.

### FUTURE MEETINGS:

March 28 in Compton.

May 23 in San Francisco.

July 25 in San Diego.

### BOARD OF REGISTRATION FOR GEOLOGISTS AND GEOPHYSICISTS

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The Board of Registration for Geologists and Geophysicists (BRGG) is mandated by the Geology Act, Business and Professions Code section 7800 *et seq.* The Board was created by AB 600 (Ketchum) in 1969; its jurisdiction was extended to include geophysicists in 1972. The Board's regulations are found in Division 29, Title 16 of the California Code of Regulations (CCR).

The Board licenses geologists and geophysicists and certifies engineering geologists. In addition to successfully passing the Board's written examination, an applicant must have fulfilled specified undergraduate educational requirements and have the equivalent of seven years of relevant professional experience. The experience requirement may be satisfied by a combination of academic work at a school with a Board-approved program in geology or geophysics, and qualifying professional experience. However, credit for undergraduate study, graduate study, and teaching, whether taken individually or in combination, cannot exceed a total of four years toward meeting the requirement of seven years of professional geological or geophysical work.