



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

Executive Officer: Frank Dellechiaie
(916) 445-1920

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.



The Board may issue a certificate of registration as a geologist or geophysicist without a written examination to any person holding an equivalent registration issued by any state or country, provided that the applicant's qualifications meet all other requirements and rules established by the Board.

The Board has the power to investigate and discipline licensees who act in violation of the Board's licensing statutes. The Board may issue a citation to licensees or unlicensed persons for violations of Board rules. These citations may be accompanied by an administrative fine of up to \$2,500.

The eight-member Board is composed of five public members, two geologists, and one geophysicist. BRGG's staff consists of two full-time employees (Executive Officer Frank Dellechiaie and his secretary) and two part-time personnel. The Board's committees include the Professional Practices, Legislative, and Examination Committees. BRGG is funded by the fees it generates.

MAJOR PROJECTS:

New Executive Officer. At its October meeting, the Board held public interviews of two candidates for the position of Executive Officer. Dr. Frank Dellechiaie, formerly of the Department of Health Services, was offered the position and became the Board's new Executive Officer upon John Wolfe's retirement on November 25.

Regulatory Changes. At its October meeting, the Board discussed the text of proposed new section 3022, Title 16 of the CCR, which the Board adopted in January 1990 but has not yet submitted to the Office of Administrative Law for approval. Section 3022 is intended to specify criteria for approval of a foreign school's curriculum in geology or geophysics. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 76; Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 91-91; and Vol. 10, No. 1 (Winter 1990) p. 71 for background information.) At the October meeting, the Board approved modifications to the language of the proposed section; specifically, the Board deleted subsections (b)(1) and (b)(2), concerning some of the special procedures to be employed in the evaluation of applicants whose professional instruction in geology or geophysics was obtained outside the United States. The deleted portions of proposed section 3022 would have required an applicant to obtain an evaluation of his/her educational credentials at the applicant's expense, under specified conditions, and would have given the Board the option of considering and accepting certified copies of documents

or affidavits which establish the applicant's eligibility for examination or registration, under specified conditions. The Board will continue to discuss the proposed language of section 3022 at future meetings.

Budget. At its October meeting, the Board was given a presentation by a representative of the Department of Consumer Affairs' Budget Office regarding restructuring the Board's process for collecting license renewal fees. Under current procedures, all license renewal fees are collected biennially, on June 30 of even-numbered years; changing to a system in which renewal fees would be payable on the licensee's birthdate would help eliminate the uneven workload and cash flow under the present system. Under the proposed system, the fees would gain interest at an earlier date and much of the "roller coaster" aspect of the budget under the present system could be avoided. The Board approved the adoption of the staggered renewal system for the 1992-93 budget.

Enforcement. At the October meeting, then-Executive Officer John Wolfe reported that approximately 100 complaints are on file with the Board. Most of these complaints are reports by Board licensees concerning unauthorized practice. The Board requested a budget change proposal of \$30,000 to hire a consultant to help reduce the backlog of complaints; the Board received \$10,000 for fiscal year 1990-91 for this purpose.

FUTURE MEETINGS:

To be announced.

BOARD OF GUIDE DOGS FOR THE BLIND

Executive Officer: Manuel Urena
(916) 445-9040

The Board of Guide Dogs for the Blind has three primary functions. The Board protects the blind guide dog user by licensing instructors and schools to ensure that they possess certain minimum qualifications. The Board also enforces standards of performance and conduct of these licensees as established by law. Finally, the Board polices unlicensed practice.

The Board, authorized by Business and Professions Code section 7200 *et seq.*, consists of seven members, two of whom must be dog users. In carrying out its primary responsibilities, the Board is empowered to adopt and enforce regulations, which are codified in Division 22, Title 16 of the California Code of Regulations (CCR).

The Board currently licenses three guide dog schools and 48 trainers.

MAJOR PROJECTS:

Implementation of SB 2229. Pursuant to Business and Professions Code section 7218, enacted in 1988, the Board recently completed its study regarding the feasibility of developing programs to license providers of signal dogs for the deaf and service dogs for the physically disabled. The Board also evaluated accessibility laws guaranteeing the right of guide, signal, and service dog users to travel unimpeded and enter all places of public accommodation.

In June 1990, the Board submitted its findings to the legislature in a final report entitled *Report to the Legislature: Guide, Signal, and Service Dogs*. The final report was based on the product of the two earlier drafts which were distributed for public comment. Among other things, the report concluded that the licensing of signal and service dog providers would be both possible and beneficial. (See CRLR Vol. 10, No. 4 (Fall 1990) pp. 76-77; Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 92-94; and Vol. 10, No. 1 (Winter 1990) pp. 71-72 for detailed background information.)

On November 15, the Senate Subcommittee on the Rights of the Disabled held an interim hearing to enable members of the state's disabled community and others affected by the recommendations to respond to the Board's report. Comments at the hearing, primarily from signal and service dog providers, were overwhelmingly opposed to the Board's findings. According to signal and service dog providers, regulation and licensing would not improve the assistance dog field. Since the Board did not find significant abuses in assistance dog programs or clientele dissatisfaction in its study, the providers argued that licensing would unnecessarily increase governmental "red tape" and ultimately interfere with the ability of the programs to provide relatively low-cost services to their clientele.

Another attack on the report was launched by independent assistance dog trainers—that is, trainers who are not affiliated with either the three signal dog schools or the service dog school. These trainers criticized the Board's conclusion that "privately trained" animals do not provide the same level of service as those trained in a formal program. Independent trainers argued that trainer competence is not dependent on whether or not the trainer works in a school. Furthermore, these trainers contended that the inability to obtain a license under a new system that does not recognize them