



reregistration and renewal of registration by \$5; and establish the Advisory Board on Repossession Agency Services, consisting of seven members, to meet as necessary to make certain inquiries and policy recommendations, and to assist and advise the BCIS chief. This bill is pending in the Senate Business and Professions Committee.

**SB 315 (Deddeh).** The Collection Agency Act, which provides for the licensing and regulation of collection agencies, sunsets on June 30, 1992. As introduced February 7, this bill would extend that repealing date until June 30, 1993. This bill is pending in the Senate Committee on Insurance, Claims and Corporations.

## RECENT MEETINGS:

At its January 31 meeting, CAB elected its 1991 officers; Bette Myers was elected Chair, John Espinosa was elected Vice Chair, and Esther Winston was elected Secretary.

At its January 18 meeting, PSAB elected as its 1991 officers Bruce Westphal as Chair, Alex Stiglitz as Vice Chair, and Francis Stoffels as Secretary. Two new Board members, public member Alfred MacBride and industry member Stephen Geil, were introduced at the January meeting. Board member John Taylor announced his plans to not seek reappointment to the Board when his term expires.

Also at its January meeting, PSAB members reviewed the progress made toward achieving their 1990 goals of encouraging more input and meeting attendance from the industry and encouraging more interaction between law enforcement and the private security industry. The Board discussed some forms of cooperation which are already in place, including the use of private security services in city halls and judicial buildings.

At both CAB's and PSAB's January meetings, Chief Alonzo Hall informed the boards that BCIS has gained an additional 22.5 positions. He noted that this should improve the turnaround time for application processing and complaint response/resolution. Two of the positions are auditors to work on the trust reconciliation/conservatorship problem in the collection agency industry. (See CRLR Vol. 10, No. 4 (Fall 1990) pp. 62-63; Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 78; and Vol. 10, No. 1 (Winter 1990) p. 62 for background information.) One auditor will be appointed to the Los Angeles office, the other to the Sacramento office; BCIS will now have a total of five auditors.

Chief Hall also reported that BCIS currently has 17 collection agencies under conservatorship, and noted that the conservatorship program has caused a large increase in the Bureau's enforcement costs. This will probably result in an increase in either an agency's required bond or in licensing fees.

## FUTURE MEETINGS:

**CAB:** April 5 in Oakland.  
June 21 in Costa Mesa.  
September 13 in Pasadena.  
January 1992 in Sacramento.

**PSAB:** April 12 in Sacramento.  
July 12 in Los Angeles.  
October 11 in San Francisco.  
January 17 in Fresno.

## 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.

## MAJOR PROJECTS:

**CSLB Complaint Disclosure Policy.** At its January 18 meeting, the full Board addressed the recommendation of the Enforcement Committee that CSLB seek a regulatory or legislative change to amend its current complaint disclosure policy, now codified at section 863, Division 8, Title 16 of the CCR ("Rule 863"). Rule 863 currently requires CSLB staff to disclose complaint information about a licensed contractor to an inquiring consumer on all complaints which survive initial screening, pass through preliminary investigation, and are assigned to a CSLB deputy for formal investigation; such information may

be disclosed (with a disclaimer that the complaint is still under investigation and no findings have been made or legal action taken) upon request until the complaint is found to be without merit. At a December 1990 meeting, the Enforcement Committee had agreed to recommend to the Board that the policy be amended to prohibit disclosure of a complaint to an inquiring consumer until it has been fully investigated and adjudicated, unless multiple complaints or a serious threat to health and safety are involved. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 55 and Vol. 10, No. 4 (Fall 1990) p. 65 for background information.)

At the January CSLB meeting, industry members argued that the current policy is unfair to contractors, and that disclosure of a complaint prior to final adjudication is tantamount to branding a licensee "guilty until proven innocent." Board member Frank Geremia stated that releasing complaint information before a final decision is made deprives a contractor of due process. Center for Public Interest Law representative Cheryl Forbes urged the Board to retain its current policy, as it assists consumers in making an informed decision about whether to hire a contractor. Forbes noted that the Board exists to protect consumers from incompetent contractors, and that Rule 863 furthers that interest while still prohibiting disclosure of frivolous complaints (which are screened out during preliminary investigation).

Following lengthy debate, the full Board generally agreed with the Enforcement Committee's recommendation, and referred the matter to the Legislative Committee for the drafting of legislation which would permit the Board to withhold complaint information until after a complaint has been adjudicated. However, following the January meeting, the Board decided to delay referral of the issue to the Legislative Committee until more public comment could be received by the Enforcement Committee.

On February 19 in Sacramento and March 13 in San Diego, the Enforcement Committee held special meetings for the purpose of receiving testimony on the Board's proposal to stiffen its complaint disclosure policy. At the February 19 meeting, Department of Consumer Affairs (DCA) Supervising Attorney Dan Buntjer presented a brief overview of the legislative history behind the Board's complaint disclosure policy, and described two relevant statutes. Business and Professions Code section 7124.5, enacted in 1979, prohibits the Board



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from disclosing complaints against a licensee unless done pursuant to a uniform policy adopted by DCA; DCA adopted such a policy in late 1979, and Rule 863 must conform with that policy. However, Business and Professions Code section 7124.6 states: "The registrar shall make available to members of the public the nature and disposition of all complaints on file against a licensee which have been referred for legal action." Interpreting section 7124.6 as a prohibition against the release of complaint information prior to "referral for legal action," Buntjer opined that Rule 863 is inconsistent with section 7124.6. Although Enforcement Committee public members Steve Lazarian and Skip Michael expressed concern about contractors who "work the system to its limits" (that is, contractors who are repeat offenders, abuse consumers until caught by the Board, and then settle just prior to the filing of legal action), industry members on the Committee and in the audience expressed approval of the Board's proposal to decrease the availability of complaint information.

At the Enforcement Committee's March 13 meeting, three representatives of the Center for Public Interest Law (CPIL) testified in support of existing Rule 863. CPIL Director Robert C. Fellmeth argued that Business and Professions Code section 7124.6 should be interpreted as a minimum (that is, the registrar is required to release information about a complaint at a point no later than its referral for legal action, but is not precluded from releasing complaint information earlier); thus, the Board's current policy is not inconsistent with the statute. The CPIL representatives also noted that 60% of all complaints received by CSLB are referred for investigation by a CSLB deputy. Thus, 40% of all complaints are either resolved through mediation prior to referral for investigation, or are frivolous and dismissed; either way, 40% of all complaints will never be disclosed. Of the 60% referred for formal investigation, at least one-third result in discipline by the Board. Therefore, CPIL argued that CSLB's preliminary screening is quite effective; complaints referred for investigation are a rich source of credible information about the competence of a particular contractor; and Rule 863 (which simply enables consumers to avail themselves of that information before investing a considerable amount of money in a contractor) should be retained.

Committee member Roger Lighthart asserted that the rule should be changed because the threat of public knowledge

of a complaint would provide additional incentive for a contractor to correct the problem. CPIL intern Cheryl Forbes rejected this assertion, stating that the existing procedure provides a better incentive to settle even sooner, during the screening and mediation phase. CPIL staff counsel Julie D'Angelo also noted that a contractor who disputes the validity of a complaint can always agree to participate in CSLB's arbitration program; once a contractor agrees to arbitration, the complaint is not disclosed to an inquiring consumer.

Discussion at the March 13 meeting also revealed that CSLB maintains a constant level of 6,000 complaints in its discipline system at any given time, and that it publishes as its "complaint backlog" only the number of pending complaints in excess of 6,000. While CSLB computes the average age of consumer complaints at their closure date (and asserts that 61.4% of all complaints are closed within 90 days), it does not compute the age of its backlog. The Board's computation of its complaint backlog is not time-sensitive, and the origin of the 6,000 "pipeline" figure is unclear. The CPIL representatives contended that the size (and unknown age) of the Board's complaint backlog argues for retention of Rule 863.

Committee member Geremia argued that Rule 863 is unfair to large contracting companies which regularly engage in hundreds of jobs all over the state; those companies will always be subject to more complaints than smaller companies. He also contended that a disclaimer is generally ineffective in protecting the contractor. However, the CPIL representatives argued that it would be affirmatively misleading for the Board to give a contractor a "clean bill of health" when in fact CSLB has received numerous serious complaints about that contractor which have survived preliminary investigation but, due to its backlog and the sheer length of the disciplinary process, has not yet reached a final decision on discipline.

Following the discussion, the Enforcement Committee voted to recommend to the full Board at its April 19 meeting that Rule 863 be amended to prohibit the disclosure of information about a consumer complaint until that complaint has been referred for legal action.

*Administration/Budget.* At the Board's January meeting, CSLB Administrative Officer Linda Brooks reported that the Governor's proposed budget for 1991-92 would provide CSLB with 21 new positions and an increase of \$1.5 million. She also reported that based on

CSLB staff assumptions and projections, the Board will have a reserve fund of \$15.8 million in 1994-95; she remarked that this is an inadequate reserve and that the Board may have to increase fees at that time.

Ms. Brooks also noted that CSLB is working on the joint enforcement system project mandated by AB 2282 (Eastin) (Chapter 1386, Statutes of 1990), which requires CSLB to conduct a feasibility report on the sharing of data and joint enforcement efforts with the Franchise Tax Board, Employment Development Department, and the Department of Industrial Relations. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 67 for background information.)

*CSLB Reviews Communications Outreach Program.* In 1989-90, CSLB initiated an extensive review of its internal organization, staffing, and ability to meet its mandate to promote the health, safety, and general welfare of the public in matters related to construction. The Board retained the Real Estate and Land Use Institute (RELUI) of the California State University to conduct a survey of California homeowners to determine consumer awareness of and satisfaction with CSLB activities. RELUI retained Pacific/West Communications Group, Inc., to develop a long-term communications outreach program based on all available CSLB information, research, and survey results.

The study found that respondents generally had a very low level of knowledge about CSLB and its resources. Those who did have contact with CSLB expressed frustration with the lack of accessibility. Also, many of those surveyed had complaints about contractors which they never filed due to perceived bureaucratic unapproachability or lack of awareness about the Board.

Based on the survey's findings, CSLB and Pacific/West developed a three-year Communications Outreach Program which addresses levels of awareness, involvement, and satisfaction with CSLB. The program was designed to ensure that all consumers and contractors receive the CSLB message, either directly from CSLB or indirectly from business and government agencies which assist consumers and contractors in construction-related matters as "channels of information."

At its February 20 meeting, CSLB's Public Information Committee announced its three primary goals for the Communications Outreach Program. The first goal is to inform the consumer; targeted audiences include consumer advocacy groups, legislators, homeowners, media, banks and lending agencies,



retailers and distributors, permitting offices, designers and architects, and relevant state and county agencies. The second goal is to inform the contractor; this goal will include contacting licensed contractors, potential contractors, unlicensed contractors, and trade associations. The third goal is to handle crisis communications and special issues; recommended strategies include crisis response, mediation, and issues outreach.

#### LEGISLATION:

**AB 425 (Mountjoy).** Existing law provides that contractors' licenses may be issued to individual owners, copartnerships, and corporations, and sets forth specified methods by which these various types of applicants shall qualify for a license. An applicant qualifying on behalf of an individual or firm shall be a person responsible for exercising direct supervision and control of his/her employer's or principal's construction operations. Existing law also provides that this person shall not act in the capacity of a qualifying person for an additional individual or firm unless specified conditions are met; current law does not limit the number of firms a qualifying person may act as a qualifier for. As introduced February 5, this bill would limit the number of firms a qualifying person may act as a qualifier for to three in any one-year period. This bill is pending in the Assembly Committee on Consumer Protection, Governmental Efficiency and Economic Development.

**AB 497 (Bentley).** Existing law provides that the Registrar may refer specified complaints regarding contractors to arbitration if certain conditions are met, including the existence of evidence that the complainant has suffered or is likely to suffer damages in an amount greater than \$2,500 and less than \$25,000. As introduced February 13, this bill would permit referral to arbitration if there is evidence that the complainant has suffered or is likely to suffer damages in an amount greater than \$5,000 and less than \$25,000.

Existing law provides for mandatory referral to arbitration in all cases involving specified complaints regarding contractors, if certain conditions are met and the damage is equal to or less than \$2,500, and establishes a pilot project regarding this mandatory arbitration. Pursuant to the pilot project, CSLB is authorized to contract with a consultant who shall evaluate and assist with the program and report to the legislature on or before September 1, 1991, regarding various aspects of the project. This bill would provide for mandatory referral to

arbitration when the contract price or the demand for damages is equal to or less than \$5,000, and would provide that the consultant to the pilot project shall report to the legislature on or before September 1, 1992. This bill is pending in the Assembly Consumer Protection Committee.

**AB 1071 (Mountjoy).** Existing law prior to January 1, 1990, required CSLB to require an applicant previously found to have failed to pay a contractor, subcontractor, consumer, or employee based on a recorded and unsatisfied judgment from a court of law or an unsatisfied arbitration award, to file a bond or other security to a maximum of \$50,000 as a condition precedent to the issuance, reinstatement, reactivation, or renewal of a contractor's license. Commencing January 1, 1990, until January 1, 1992, those provisions would be revised by, among other things, providing that failure of a licensee to notify the Board within 90 days of any entered and unsatisfied judgment shall result in the automatic suspension of the license. After January 1, 1992, prior law will be reinstated. As introduced March 5, this bill would delete the January 1, 1992, expiration date of the revised provisions, thus making them operative indefinitely; except that the automatic suspension provision described above would be deleted. This bill would also repeal the prior law which would otherwise have become effective January 1, 1992. This bill is pending in the Assembly Consumer Protection Committee.

**AB 2192 (Frazee).** Existing law provides for the transfer of funds from the Contractors' License Fund to the Controller for the exclusive use of the California Uniform Construction Cost Accounting Commission. As introduced March 8, this bill would, in addition, require CSLB to provide for and collect an unspecified voluntary contribution from applicants for new or renewal licenses issued under the CSLB, to be transferred to the Controller for the exclusive support of the Commission; the bill would also provide for reimbursement to CSLB for costs in establishing an accounting system to process the contributions. This bill is pending in the Assembly Consumer Protection Committee.

**AB 513 (Mountjoy).** Under existing provisions of the CSLB, a contractor includes any person, except a nurseryman or gardener, who is employed as an independent contractor, by any licensee, to remove trees, prune trees, remove tree limbs or stumps, or to engage in tree or limb guying. As introduced February 13, this bill would instead, for those purpos-

es, define contractor to include any person not otherwise exempt under those licensing provisions, who performs tree removal, tree pruning, stump removal, or engages in tree or limb guying. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 55 for background information.)

Existing law excludes from the definition of contractor any person, including but not limited to, a nurseryman or gardener who is, or is employed by, an owner or occupier of property, as specified. This bill would, instead, exclude a person performing the activities of a gardener or nurseryman whose activities do not include certain enumerated activities specified in the CSLB or those of a landscape contractor. This bill is pending in the Assembly Consumer Protection Committee.

**AB 1969 (Areias)** would appropriate \$1 million from the Contractors License Fund to CSLB, without regard to fiscal year, to be made available for expenditure in the event of a state of emergency declared by the Governor, to fund the programs and activities of CSLB related to the emergency. As introduced March 8, this bill is pending in the Assembly Consumer Protection Committee.

**SB 56 (Ayala).** Existing law authorizes the Registrar 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. As introduced December 4, 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.

**AB 800 (Frazee),** as introduced February 26, would require a public agency, prior to awarding a contract or issuing a purchase order, to verify that the contractor was properly licensed when the contractor submitted the bid, subject to specified exceptions. This bill would also require the Registrar to issue a citation to any employee of a public entity who knowingly awards a contract or issues a purchase order to an unlicensed contractor. This bill is pending in the Assembly Consumer Protection Committee.

**AB 1382 (Lancaster).** Existing law provides that a person who engages in any business for which a contractor's license is required may not bring an



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action for compensation for performance of any act for which the license is required without alleging and proving that he/she was licensed during the time of the performance of the act. Existing law provides that the judicial doctrine of substantial compliance shall not apply in these circumstances. As introduced March 7, this bill would delete the prohibition of the application of the judicial doctrine of substantial compliance in these circumstances. This bill is pending in the Assembly Consumer Protection Committee.

**AB 1746 (Eaves).** Existing law requires every employer, at the time of each payment of wages, to furnish each employee with an itemized written statement showing specified information, and to keep those records for at least three years; an employer who fails to do so is subject to a civil penalty in the amount of \$250 per employee for the first violation and \$1,000 per employee for each subsequent violation. As introduced March 8, this bill would additionally provide that any holder of a valid state contractor's license who violates the statement or records requirement twice within a five-year period shall, upon notice by the Labor Commissioner to CSLB, have his/her contractor's license revoked by the Board. This bill is pending in the Assembly Committee on Labor and Employment.

**AB 506 (Mountjoy).** Existing law defines a contractor for purposes of licensing to include a person who undertakes or offers to undertake the cleaning of grounds or structures in connection with a construction project, and whether or not it involves the addition to, or fabrication into any structure, project, development, or improvement of any material or article of merchandise. As introduced February 13, this bill would delete this provision from the definition of contractor for purposes of licensing. This bill is pending in the Assembly Consumer Protection Committee.

### LITIGATION:

On March 11, in *Lambert v. Superior Court of Marin County*, No. A052158, the First District Court of Appeal determined that a trial court erred in not considering an owner's motion to remove a mechanic's lien from property since the motion is a permissible procedure for removing the lien.

In June 1988, petitioners Claude and Micheline Lambert hired contractor William MacEwen to make major alterations to their home in San Rafael. The total contract price was \$327,705, and the work was to be completed within one year. Two years and several change

orders later, the Lamberts discharged MacEwen and hired another contractor to finish the work. MacEwen recorded a mechanic's lien for \$117,328.05 against the Lamberts' property for "general contracting and related building services; general construction materials and confiscated materials; charges for delay." MacEwen then sued for damages for breach of contract and to foreclose the lien. His unopposed request to stay proceedings pending arbitration was granted. After arbitration was set and the stay request was pending, the Lamberts moved to remove the lien, arguing that they had already paid MacEwen \$361,000, well over the contract price. After a hearing, the court denied the motion, stating that the Lamberts did not avail themselves of the statutory remedy for disputing the lien. This petition followed.

Article XIV, section 3, of the California Constitution permits mechanic's liens for the value of labor and material to persons who have provided labor or furnished material and states that the legislature shall provide enforcement of such liens. The court noted that there are a variety of ways to remove a mechanic's lien, including Civil Code section 3143, upon which the trial court relied. Citing *Connolly Development, Inc. v. Superior Court*, 17 Cal. 3d 803 (1976), the First District held that section 3143 "is not the exclusive means for removing a mechanic's lien." The court also dismissed the trial court's concern about duplicating and anticipating the arbitrator's decision, stating that the court's inquiry would be limited to the probable validity of the lien. The court concluded that if "a claimant may use a mechanic's lien to protect the eventual award of an arbitrator, it follows from...discussion in *Connolly* that an owner may ask the court to remove an improper lien while arbitration is pending."

On January 24 in *Hydrotech Systems Ltd. v. Oasis Waterpark*, No. S015248, the California Supreme Court held that an unlicensed contractor's fraud claim based on a false promise to pay, against the person for whom the work was done, is barred by Business and Professions Code section 7031.

Hydrotech contracted with Wessman Construction Company to design and construct a 29,000-square-foot "surfing pool" using Hydrotech wave equipment; the contract price was \$850,000. Hydrotech sued Wessman and Oasis Waterpark, claiming that more than \$110,000 in "retainage" amounts was withheld even though the pool had been completed. A second amended complaint alleged fraud, breach of implied

contract, money due and owing, and breach of a written contract. Hydrotech alleged that Wessman was to arrange for a licensed California contractor to work with Hydrotech, but this never occurred. Oasis and Wessman demurred on the ground that Hydrotech's complaint failed to allege that Hydrotech possessed a California contractor's license, and was thus barred from recovering compensation under section 7031. Initially, the trial court sustained Wessman's demurrer to the written-contract claim but granted Hydrotech leave to amend. All other demurrers were sustained without leave to amend. The court also ordered dismissal of all defendants except Wessman. A court of appeal reversed the trial court's judgment which dismissed the fraud count but affirmed the dismissal of the complaint in all other respects.

The California Supreme Court reversed in part and affirmed in part, noting that Business and Professions Code section 7031 states that "no person engaged in the business or acting in the capacity of a contractor, may bring or maintain any action" in a California court to recover "compensation for the performance of any act or contract for which a [contractor's] license is required...without alleging and proving" that he/she "was a duly licensed contractor at all times during the performance of [the] act or contract..." The court held that "regardless of the equities, section 7031 bars all actions, however they are characterized, which effectively seek 'compensation' for illegal unlicensed contract work....However artful the pleadings, if the primary fraud alleged is a false promise to pay for unlicensed construction work, and the primary relief sought is compensation for the work, section 7031 bars the action."

On March 14, Morgan Hill contractor Leo Sausedo was sentenced to 90 days in county jail for recklessly disposing of asbestos. This was the first felony prosecution in Santa Clara County for violation of state hazardous waste control laws regarding asbestos. In addition to the jail sentence, Sausedo was ordered to pay \$11,500 in fines and penalties and was placed on probation for three years.

Sausedo was hired to remodel a house in the Rose Garden area of San Jose in December 1989. According to Deputy District Attorney John Fioretta, Sausedo was warned by neighbors, his job foreman, and a plumber that the insulation on pipes in the basement contained asbestos. A City of San Jose inspector also told Sausedo that if he wasn't sure about the insulation, the pipes should be inspected. Sausedo



disregarded the warnings and hired laborers, including teen-age boys, to remove the asbestos, sweep it up, and dispose of it, causing the asbestos to become airborne. According to Fioretta, removal of the asbestos by a licensed firm would have cost \$2,000-\$5,000.

Neighbors alerted authorities when they saw asbestos being placed in a dumpster, Fioretta said. Karen Phillips, an inspector with the Bay Area Air Quality Management District, told Sausedo to halt work until it could be determined if the pipe insulation contained asbestos. According to Fioretta, as soon as Phillips left, Sausedo ordered the job finished.

#### RECENT MEETINGS:

At the January 19 Board meeting, CSLB Registrar David Phillips announced that the Board's Automated Phone Response System was being tested by CSLB staff; the new toll-free number will not be made public until the testing period is concluded. This 36-line service will permit callers using a touch-tone phone to request license information, forms, office locations and hours, complaint information, etc.; except for license information, the system will be available 24 hours a day.

At CSLB's January 19 meeting, the Licensing Committee recommended that a Weatherization and Energy Conservation Contractor be defined as a person who installs, removes, modifies, maintains, or repairs energy conservation products limited to the following: door and window weatherstripping, caulking, water heater pipe wrap, water heater blanket, insulating gaskets for electrical outlet covers, shade screens, shutters, storm windows, tinted window film, and residential water flow-restricting devices installed onto existing fixtures. This definition does not include insulation, glazing or heating, ventilating and air conditioning work. The Board adopted the proposal.

Also at the January 19 meeting, the Board adopted the Licensing Committee's suggestion that it revise Business and Professions Code section 7058.5 regarding asbestos certification examinations. According to the Committee, licensees who have no interest in performing asbestos removal are having trouble in bidding on projects which involve asbestos and related work and in obtaining the asbestos certification. Currently, a licensee must have the asbestos certification regardless of whether he/she is going to actually perform the work or subcontract it out. The revised language would require the certification

only if the licensee is actually going to perform the asbestos work.

#### FUTURE MEETINGS:

June 6 in Sacramento.

July 19 in Ontario.

#### 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, 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 Considers Issuing Temporary License.* At its January 20 meeting, BOC discussed the feasibility of issuing temporary licenses to cosmetology school graduates who are awaiting examination. Proponents of the temporary license concept argue that the four- to sixteen-week waiting period after graduation and prior to examination imposes a financial hardship on applicants; they assert that the applicants may not practice their trade without a cosmetology license, and

therefore need a temporary license in order to practice. In addition, Education Code section 94316.5 requires that at least 70% of vocational school students obtain employment in the field studied within six months of graduation; cosmetology school owners argue that the waiting period for the exam and licensure decreases the chance that students will obtain jobs in the cosmetology field within six months of graduation.

However, section 101.6 of the Business and Professions Code provides that the purpose of a regulatory board is to ensure that persons possess the requisite skills and qualifications necessary to provide safe and effective services to the public; section 7414 of the Business and Professions Code states that "under no circumstances shall a temporary [cosmetology] license be issued." BOC determined that section 7414 would have to be amended in order to allow temporary licenses to be issued, and agreed that the Board would not sponsor such legislation at this time. BOC bases its opposition to such legislation in part on its belief that issuing temporary licenses will not solve the problem of the waiting period for the licensing examination and that temporary licenses would not ensure consumer protection. Several audience members stated that they may pursue such legislation, or may attempt an amendment to Education Code section 94316.5 to require the six-month period to begin running from the date the applicant takes the cosmetology examination instead of the graduation date.

*Status Update on Regulatory Changes.* Following a January 20 public hearing, BOC adopted proposed changes to section 990, Division 9, Title 16 of the CCR. The amendments will 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. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 57 for background information.) This regulatory amendment is awaiting approval by the Department of Consumer Affairs and the Office of Administrative Law.

#### LEGISLATION:

*AB 1161 (Eastin).* Existing law, commencing July 1, 1992, provides for the replacement of the Board of Cosmetology and the Board of Barber Examiners by a new Board of Barbering and Cosmetology, and will provide for the regulation of those professions by that board. Among other things, the new board is required to appoint an executive officer