



presents further risk of substantial harm. In the past, BEAR could not initiate a request for a phone disconnect order without first revoking the license of, or obtaining a criminal conviction against, the business owner. Recent decisions, however, indicate that the Bureau need only obtain evidence that the phone in question is being used for criminal purposes in order to obtain a court order requiring the PUC to order the disconnect. However, the fact that a business owner is not properly registered with BEAR is insufficient to obtain the court order; BEAR must receive substantial consumer complaints which link the owner to fraud or dishonest dealing.

According to Mr. Busman, BEAR recently utilized the telephone disconnect provision in its enforcement program. In December 1990, BEAR successfully sought the telephone disconnection of Robert Leslie, dba Arctic Refrigeration, Penguin Refrigeration, and Electro-Kold Refrigeration, which advertised in numerous telephone directories in the Bay Area. BEAR initiated the investigation based on numerous consumer complaints. In one complaint, an elderly invalid woman whose refrigerator had been repaired by Arctic Refrigeration was verbally abused over the telephone when calling Arctic to report a foul odor coming from the refrigerator. Several weeks later, the refrigerator caught fire while the woman was sleeping. The fire was suppressed and another repair facility determined that Arctic had improperly wired an installed part, causing the fire. Subsequently, investigators for the Santa Clara County District Attorney placed the business owner under arrest for operating an appliance repair business without a current and valid registration and failing to return parts as required by law.

The second recent disconnect order was obtained against Cesar Valderrama of AC Refrigeration, All Refrigeration Major Appliance Repair, All Mechanical Engineering, Tru Temp Engineering, CC Appliance, and A&D Air Conditioning and Appliance Service. In the affidavit supporting the order to terminate phone service, charges against Valderrama included operating a business without a registration, fraud and dishonest dealings, and incompetent or negligent repairs. In one complaint, agents for Valderrama are alleged to have defrauded an elderly widow out of more than \$600 on a refrigeration repair.

Cyclical Renewal. Currently, all BEAR registrations must be renewed on June 30, the end of the state's fiscal year. Under a cyclical renewal system, registration would be renewed one year from

the date of original issuance; the benefit of such a system is a more efficiently distributed workload for the Bureau. At the February 22 Advisory Board meeting, Mr. Busman announced that a proposed fee schedule to phase in a cyclical renewal system has been developed. The fees would be adjusted accordingly and new applications processed during the phase-in would be renewed on their anniversary date.

After reviewing the proposal, the Advisory Board suggested that the proposal be sent to the DCA Director for inclusion in the Department's omnibus bill (AB 1893). If the proposal is included and the bill is successful, the system should become effective January 1, 1991.

LEGISLATION:

SB 101 (Lockyer), as amended February 25, provides that if a retailer enters into a contract for the service or repair of merchandise, whether or not sold by it to the consumer, the retailer is required to specify a four-hour period to make the service or repair requested by the consumer under the contract if the consumer's presence is required, and provides a cause of action in small claims court for failure of the retailer to commence service or repair within that time period, subject to certain exceptions. This bill is pending in the Senate Appropriations Committee.

RECENT MEETINGS:

At the January 24 meeting of the Bureau's Executive Committee, Assistant Chief Gordon Boranian provided an update on the toxic parts issue. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 61 and Vol. 10, No. 4 (Fall 1990) p. 74 for background information.) He noted that regulations of the state Department of Health Services require warning labels for appliances which vent to the outside and have a gas or oil energy source; the label must warn consumers that the by-products of the appliances present a danger to human health. At the February 22 Advisory Board meeting, Mr. Boranian stated that BEAR is currently gathering information on the dumping and recycling of toxic parts overseas, and reviewing U.S. Environmental Protection Agency rules proposing further restrictions on the use of lead and lead-based substances (such as solder).

At its February 22 meeting, BEAR's Advisory Board continued its discussion of several issues relating to service contracts. Service contracts allow consumers to purchase extended warranty coverage for appliances and home elec-

tronic equipment, and are often sold by companies in the exclusive business of service contracts. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 61 and Vol. 10, No. 4 (Fall 1990) p. 74 for background information.) Specifically, the Board again addressed the problem of service contract companies which 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 for work covered by the service contract and then assist the consumer in getting reimbursement from the service contract company. Zeferino Lopez, BEAR's Senior Field Representative, emphasized that when service dealers seek up-front payment for repairs, a written estimate is required and all applicable rules of the Bureau apply.

The Advisory Board also suggested that an effort be made to educate consumers and service dealers regarding service contracts. President Fay Wood noted that BEAR will be sending letters to consumer affairs agencies and the Better Business Bureau to solicit their assistance. An audience member suggested that BEAR consider requiring the sellers of service contracts to publish its name, address, and phone number on the service contract so that consumers will know how to register their complaints.

FUTURE MEETINGS:

August 16 in the Seaside/Monterey area.

November 8 in Long Beach.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Executive Officer: James B. Allen
(916) 445-2413

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.



REGULATORY AGENCY ACTION

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. On January 24, the Board held a public hearing on its proposed amendments to section 1257, Title 16 of the CCR. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 61 and Vol. 10, No. 4 (Fall 1990) p. 75 for background information.) The proposed amendment, which sought to increase the various licensing fees of embalmers and funeral directors to the statutory maximum, received a significant amount of opposition from the industry. Several industry members questioned the need for any increase in fees, and were distressed and angered by the large fee increase called for in the proposal. For example, the proposal sought to raise the embalmer license renewal fee from \$50 to \$125, the funeral director renewal fee from \$150 to \$400, and the application for an embalmer's license from \$50 to \$150. Due to the tremendous industry opposition and the Board's dissatisfaction with staff's budget analysis upon which the increases were based, the proposed amendment was referred back to staff.

At its January 24 meeting, the Board also held a public hearing on its proposal to add section 1259 to its regulations, to convert the Board's present annual license renewal schedule to an anniversary date renewal schedule. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 61 and Vol. 10, No. 4 (Fall 1990) p. 75 for background information.) The Board adopted the proposed regulation subject to a few technical modifications which were made in response to various public comments received during the regulatory hearing. The modified language states that on and after January 1, 1992, all renewable licenses issued by the Board shall expire annually on the last day of the month in which the license was originally issued. The technical modifications received no opposition within the Administrative Procedure Act-required fifteen-day comment period, and the Board formally adopted the proposed regulation on February 15; at this writing, the Board is finalizing the rulemaking file to send to the Office of Administrative Law for approval.

LEGISLATION:

SB 637 (Roberti), as introduced March 5, would require, on and after July 1, 1995, that an applicant for licensure as an embalmer submit evidence to the Board that he/she has attained an associate of arts degree, a science degree, or an equivalent level of higher education. Existing law requires an applicant for an embalmer's license to successfully complete a course of instruction of not less than nine months, embracing specified subjects, in an embalming school approved by the Board. This bill would instead require completion of a course of instruction of not less than one academic year in an embalming school approved by the Board and accredited as specified.

Existing law requires an applicant for an embalmer's license to pass an examination which includes specified subjects. This bill would instead authorize the Board to require passage of the National Board exam, a test administered by the Conference of Funeral Service Examining Board.

Existing law requires the Board to hold at least one meeting annually for the purpose of examining applicants for an embalmer's license. This bill would delete that requirement and require the Conference of Funeral Service Examining Board to administer the National Board examination not less than four times annually at an accredited school of mortuary science in this state.

This bill would also require the Board to adopt regulations requiring continuing education of licensed embalmers; provide that an embalmer apprenticeship certificate expires when the holder has been issued a license as an embalmer, or six years from the date of registration, whichever occurs first; and amend existing law regarding the term of apprenticeship for applicants for embalmer licensure. This bill is pending in the Senate Business and Professions Committee.

AB 1540 (Speier). Existing law provides for the regulation and licensure of funeral directors and embalmers by the Board and the regulation and licensure of cemetery brokers and salespersons by the Cemetery Board. As introduced March 7, this bill would repeal those provisions and enact the Cemeteries, Funeral Directors and Embalmers Act, with unspecified contents. This bill is pending in the Assembly Committee on Consumer Protection, Governmental Efficiency and Economic Development.

AB 1981 (Elder). As introduced March 8, this bill would, commencing July 1, 1992, require any person employed by, or an agent of, a funeral director who consults with a family of a

deceased person or its representatives concerning the arranging of funeral services to be licensed by the Board as an arrangement counselor, or to be designated as an arrangement counselor trainee; set forth qualification and licensure requirements for an arrangement counselor's license; require, on and after July 1, 1995, an applicant for licensure to possess an associate of arts, science, or equivalent degree; and require the passage of an arrangement counselor examination. However, this bill would exempt from the examination requirement persons who have been performing the duties of an arrangement counselor for two consecutive years or five of the last ten years, for a licensed funeral director, immediately prior to July 1, 1992; the bill would also exempt from its requirements preneed arrangement counselors. This bill is pending in the Assembly Consumer Protection Committee.

LITIGATION:

The lawsuit filed against the Board by Funeral Securities Plans, Inc. (FSP) (No. 512564, Sacramento County Superior Court) alleges that the Board violated the Bagley-Keene Open Meeting Act (Act), Government Code section 11120 *et seq.* (See CRLR Vol. 11, No. 1 (Winter 1991) p. 62; Vol. 10, No. 4 (Fall 1990) p. 75; and Vol. 10, Nos. 2 & 3 (Spring/Summer) pp. 90-91 for background information.) The case went to trial on February 5 and lasted for three days. The court has taken the case under submission and has requested post-trial briefs; final reply briefs were due in mid-March.

In a somewhat related action, the Board has filed a lawsuit against FSP for alleged violations of preneed reporting laws (No. 205308, Riverside County Superior Court). The basis for this lawsuit is the Board's belief that FSP violated the state's preneed trust reporting laws when FSP removed the corpus of a preneed trust from First Interstate Bank and placed the money under the control of FSP's owner, David Newcomer IV, and two of his employees as trustees. According to the Board, this action violated Business and Professions Code section 7736, which states that only one trustee of a preneed account may be a funeral director or employee. Here, three trustees were either a funeral director or an employee of the enterprise which sold the preneed contract. The Board also claims that FSP violated the preneed trust laws by investing the trust corpus in annuities and creating a "custodial" account without the knowledge and consent of all trustees. Allegedly, Newcomer took this action on his own without



consulting his two employees who were serving as co-trustees. This custodial account is in Kansas, and FSP has refused to allow the Board access to the financial records of the account. On January 25, the Riverside County Superior Court issued a preliminary injunction requiring FSP to allow the Board access to the financial records of the custodial fund and further requiring FSP to provide the Board with monthly statutory reserve figures for the custodial account.

In *Christensen, et al. v. Superior Court*, No. S016890, the California Supreme Court is reviewing 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.) Final reply briefs were filed on March 4; at this writing, the court has not yet scheduled oral arguments.

RECENT MEETINGS:

At its January 24 meeting in Ontario, the Board discussed the possibility of discontinuing the use of the California state embalmers' licensing examination. The state examination would be replaced by the National Board examination. One reason behind the proposed change is the fact that the majority of states use the national embalming examination. Legislation addressing this issue was subsequently introduced (*see supra* LEGISLATION).

Also at its January 24 meeting, the Board discussed the criteria and procedures it uses in recognizing and approving embalming schools and programs. The Board discussed the possibility of amending its current embalming program accreditation rule to specify the American Board of Funeral Service Education as the sole accreditation body for California embalming schools and programs. This rule would not substantially affect California's two embalming programs, the San Francisco College of Mortuary Science and Cypress Community College, because they are already accredited by the American Board of Funeral Service Education.

Also at its January 24 meeting, the Board elected its 1991-92 officers: Virginia Anthony was elected President, Carol Weddle was elected Vice-President, and Wesley Sanders was elected Secretary.

FUTURE MEETINGS:

July 25 in San Diego.
September 26 in Eureka.
November 21 in Brea.

BOARD OF REGISTRATION FOR GEOLOGISTS AND GEOPHYSICISTS

Executive Officer: Frank Dellechaie (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 Dellechaie 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. Currently, two public member positions on BRGG are vacant.

MAJOR PROJECTS:

Enforcement. At its February 20 meeting, the Board discussed ways to handle its backlog of 100 outstanding complaints, which mostly concern licensees reporting unlicensed practice. Board members noted that its lack of enforcement work is due to its lack of enforcement staff and funding, and suggested the preparation of a budget which would add one full-time professional and one full-time clerical assistant to work on the complaint backlog. Cost estimates for the two additional positions range between \$100,000 and \$160,000. Possible sources for these salary costs include the Geology Trust Fund, the use of which would require legislative approval. Until additional staff can be obtained, the Board may hire former BRGG Executive Officer John Wolfe as a part-time consultant to help process complaints. At current staff levels, it will be difficult to make progress in the processing of the complaint backlog, in view of the continuing rapid increase in the number of applications for registration.

Examinations. The BRGG registration examinations will be given only once during 1991 (in November), but Executive Officer Frank Dellechaie stated at the February meeting that he would like the Board to give two exams next year. He has proposed several ways to expedite exam grading, including the greater use of automated correction. In the past, the Board's resistance to automated grading has been due to the inclusion of exam questions involving a large amount of geological interpretation, especially mapping questions and others which ask for graphical solutions. The potential for a relatively wide range of correct responses to some of these exam questions makes their grading subjective and time-consuming. Mr. Dellechaie has suggested that such exam questions could be restructured to resolve unnecessary ambiguities and to allow use of automated grading of their answers.

BRGG's exams will soon undergo an extensive validation process. Validation will include the use of detailed questionnaires sent to the Board's licensees asking them to help evaluate how well the current exams relate to their areas of practice. In particular, Board staff has prepared a Request for Proposals to solicit a consulting firm to prepare an occupational analysis of the practice of engineering geology; develop an examination plan; and develop, administer, and analyze the results of a questionnaire to assess the importance of reciprocity to licensed engineering geologists in California. The Request for Proposals puts a