



These sections specify processing times for considering and issuing permits, in compliance with the Permit Reform Act, Government Code section 15374 *et seq.* (See CRLR Vol. 11, No. 1 (Winter 1991) p. 87 for background information.) The Board adopted the proposed regulations; at this writing, they await review and approval by OAL.

Citation and Fine Regulations. Following a February 16 hearing, BCSR adopted new regulatory sections 2480 and 2481, which provide for the issuance of citations, fines, and orders of abatement to CSRs who violate BCSR's statute or regulations. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 87; Vol. 10, No. 4 (Fall 1990) p. 104; and Vol. 9, No. 2 (Spring 1989) p. 74 for background information.) At the public hearing, several witnesses expressed concern that BCSR's Executive Officer is vested with sweeping discretion to write citations and issue fines. Concern was also raised that the language does not expressly require the EO to investigate before issuing the fines. The Board felt this was implied in the language, but the Board chair asked the EO to add language clarifying the investigation requirement.

The witnesses who testified unanimously agreed that a violation of Business and Professions Code section 8030.2(e), failure to repay the Transcript Reimbursement Fund, should be moved to the maximum fine category of \$1,001 to \$2,500, rather than the \$500 to \$1,000 category where it was originally placed. These witnesses stated that CSRs who failed to repay the Fund would still be profiting if the fine is not as stiff as possible.

Because the Board agreed to make the above-described modifications to the originally proposed regulatory language, the modified regulations must be released for an additional 15-day comment period. At this writing, BCSR has not yet commenced that 15-day comment period.

LEGISLATION:

AB 2002 (Horcher), as introduced March 8, would make numerous changes in BCSR's enabling act. Among other things, this bill would provide that all BCSR certificates shall expire on the last day of the birth month of the licensee, instead of on April 30 of each year; provide that gross negligence or incompetence in practice are grounds for discipline or denial of certification; set forth additional grounds for discipline or denial of certification, including physical or mental incapacity to perform the duties of a CSR, and inability to perform those duties because of abuse of chemi-

cal substances or alcohol; provide that a court reporting school is a court reporting training program or an institution which provides a course of instruction approved by the Board and by the Council for Private Postsecondary and Vocational Education, is a public school in this state, or is accredited by the Western Association of Schools and Colleges; provide that persons appearing *pro se* to represent themselves in a legal proceeding may not apply for reimbursement under the Transcript Reimbursement Fund; require BCSR to prescribe an application form for reimbursement from the Fund; change the delinquency fee for late certificate renewal to 50% of the renewal fee (but not less than \$25 nor more than \$150). This bill is pending in the Assembly Judiciary Committee.

RECENT MEETINGS:

At its February 16 meeting, the Board reminded those attending that license renewal dates are changing and licenses will now expire on the month of each reporter's birthdate. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 105 for background information.) Due to this change, fees for this year will range from \$47 to \$120 and will be effective for seven to eighteen months, depending on a licensee's birthdate.

The Board also discussed whether it should create specialty licenses for real time reporters or closed caption reporters. BCSR decided such specialty licensing is not within its jurisdiction and is also unnecessary, so it took no action on this agenda item.

FUTURE MEETINGS:

July 1 in Sacramento.
August 24 in northern California.

STRUCTURAL PEST CONTROL BOARD

Registrar: Mary Lynn Ferreira
(916) 924-2291

The Structural Pest Control Board (SPCB) is a seven-member board functioning within the Department of Consumer Affairs. The SPCB is comprised of four public and three industry representatives. SPCB's enabling statute is Business and Professions Code section 8500 *et seq.*; its regulations are codified in Division 19, Title 16 of the California Code of Regulations (CCR).

SPCB licenses structural pest control operators and their field representatives. Field representatives are allowed to work only for licensed operators and are limited to soliciting business for that operator. Each structural pest control

firm is required to have at least one licensed operator, regardless of the number of branches the firm operates. A licensed field representative may also hold an operator's license.

Licensees are classified as: (1) Branch 1, Fumigation, the control of household and wood-destroying pests by fumigants (tenting); (2) Branch 2, General Pest, the control of general pests without fumigants; (3) Branch 3, Termite, the control of wood-destroying organisms with insecticides, but not with the use of fumigants, and including authority to perform structural repairs and corrections; and (4) Branch 4, Roof Restoration, the application of wood preservatives to roofs by roof restorers. Branch 4 was enacted by AB 1682 (Sher) (Chapter 1401, Statutes of 1989), and became effective on July 1, 1990. An operator may be licensed in all four branches, but will usually specialize in one branch and subcontract out to other firms.

SPCB also issues applicator certificates. These otherwise unlicensed individuals, employed by licensees, are required to take a written exam on pesticide equipment, formulation, application and label directions if they apply pesticides. Such certificates are not transferable from one company to another.

SPCB is comprised of four public and three industry members. Industry members are required to be licensed pest control operators and to have practiced in the field at least five years preceding their appointment. Public members may not be licensed operators. All Board members are appointed for four-year terms. The Governor appoints the three industry representatives and two of the public members. The Senate Rules Committee and the Speaker of the Assembly each appoint one of the remaining two public members.

MAJOR PROJECTS:

Building Standards Regulation. Following a public hearing on January 11, the Board adopted by reference subsections 2516(c)(1), (2), (4), and (6), Title 24 of the CCR, into section 1991 of its own regulations in Title 16 of the CCR. Subsections 1991(a)(1) through (12) of the Board's regulations set forth the recommendations for corrective measures once a registered company has inspected a structure and reported its findings. Subsections 1991(a)(1), (6), (7), and (10) were identified by the State Building Standards Commission as being building standards, thereby requiring sections of 1991(a) to be incorporated into the Uniform Building Code. This action necessitates removing these



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sections from Title 16, and adopting by reference subsections 2516(c)(1), (2), (4), (6) of Title 24. This action will allow SPCB to retain the authority to enforce against licensees the intent of subsections 1991(a)(1), (6), (7), and (10).

At the hearing, the Board decided to also remove subsection 1991(a)(4), and incorporate by reference instead subsection 2516(c)(6.1) from Title 24. Due to this change, the Board released a modified version of the proposed amendments for a 15-day public comment period ending on February 25. At this writing, SPCB is preparing the rulemaking file for submission to the Office of Administrative Law (OAL).

Regulatory Change Permitting Alternative Treatments. At its April 5 meeting, SPCB was scheduled to hold a public hearing on proposed amendments to regulatory subsections 1991(a)(8) and (9). Subsection 1991(a)(8) currently requires structural pest control operators to exterminate all reported infestations of wood destroying pests by means of fumigation or exposure of the infestation for local chemical treatment. Because SPCB has recognized technological advances in the methods used to treat known infestations since the existing regulation was originally written, the proposed amendments would also allow for the use of other all-encompassing methods of treatment of the entire structure, removal of infested wood, or the use of any technology known to eradicate the infestation. The amendments also distinguish between the recommendations which must be made following a complete inspection as opposed to a limited inspection. References to subterranean termites in subsection 1991(a)(8) have been moved to subsection 1991(a)(9).

Continuing Education Regulations. At this writing, Board staff is still preparing the rulemaking file on SPCB's amendments to sections 1950, 1950.5, and 1953, relating to continuing education. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 88 and Vol. 10, No. 4 (Fall 1990) p. 106 for background information on these regulatory changes.)

LEGISLATION:

AB 1767 (Gotch), as introduced March 8, would revise the existing list of lethal fumigants; provide that simple asphyxiants, identified as liquid nitrogen and carbon dioxide, are not fumigants; and specify that SPCB may amend the list of simple asphyxiants and prescribe safety regulations for their use, storage, and application. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 89; Vol. 10, No. 4 (Fall 1990) p. 106; and Vol. 10, Nos. 2 &

3 (Spring/Summer 1990) pp. 122-24 for extensive background information on this issue.)

Under existing law, no Branch 4 registered roof restoration company or licensee may commence work until an inspection is made and a written inspection report containing specified information is delivered to the person requesting the inspection or that person's designated agent. If a contract for roof restoration work is entered into, a copy of the inspection report shall be filed with SPCB not later than five working days after the date the contract for work is executed. This bill would provide instead that a copy of the inspection report shall be filed with the Board at the time the report is delivered or not later than five working days after the date the inspection is made. This bill is pending in the Assembly Committee on Consumer Protection, Governmental Efficiency, and Economic Development.

AB 1832 (Areias), as introduced March 8, would add to the requirements for an original operator's license for the practice of structural pest control, licensure as a structural pest control field representative. This bill is pending in the Assembly Consumer Protection Committee.

LITIGATION:

In *Pestmaster Services, Inc., et al. v. Structural Pest Control Board*, No. F013188 (Feb. 19, 1991), a case of first impression, the Fifth District Court of Appeal reversed a judgment of the Stanislaus County Superior Court and held that a licensed pest control operator, relying solely on the inspection report of another licensed operator and without conducting its own inspection, may not perform corrective work recommended in the report.

SPCB disciplined Pestmaster and its owner for violations of Business and Professions Code section 8516(b) arising out of the performance of corrective work on two residences by a licensed employee of Pestmaster in the course of his employment. The work performed was recommended by other licensed pest control companies in standard structural pest control reports prepared after each conducted inspections of the residences. Pestmaster performed the recommended work without conducting its own inspection; instead, it chose to rely on the reports completed by those other companies. The Board interpreted section 8516(b) as requiring an inspection to be conducted by the licensee who eventually performs the corrective work. The superior court issued a peremptory writ of mandate reversing the Board's inter-

pretation of section 8516(b) and remanding the case for reevaluation of the disciplinary decision.

In reversing the lower court, the Fifth District considered section 8516's provisions in light of section 8518 and 8519 of the Structural Pest Control Act; the court found that these three sections are inextricably linked and should be read together. Section 8516(b) provides that a licensee may not commence work or issue a termite certification until an inspection has been made. The court found that section 8519, pertaining to the issuance of a termite certification, requires that a licensee conduct its own inspection before issuing a termite certification. The court examined the statutory language and found nothing to suggest that the inspection requirement for the commencement of work differs in any way from the inspection requirement for issuance of a termite certification. Because the Board's interpretation of the statute is reasonable and not clearly erroneous, the court held that it should not depart from that interpretation.

RECENT MEETINGS:

At SPCB's January 11 meeting, the Board decided to seek an author to introduce legislative changes to Business and Professions Code section 8516.1(c). When this statute was originally enacted, roof restoration companies contended that they performed many free inspections during mass solicitations which resulted in very few contracts; therefore, section 8516.1(c) currently requires Branch 4 companies to file inspection reports with the Board only if a contract is executed. However, that situation has changed because Branch 4 companies are now becoming involved in real estate transactions. Most Branch 3 companies inspect the roof from the ground, and if problems with wood-destroying organisms are suspected, recommend that the owner contact an appropriate tradesperson. Branch 3 companies which choose not to perform a complete roof inspection are now recommending that a Branch 4 company be hired to do so. However, most of these inspections are not being recorded with the Board because Branch 4 companies are not required to file reports that do not result in a contract. Therefore, consumers who request a search of SPCB records are unable to obtain complete information on a particular structure. Assemblymember Gotch subsequently introduced legislation to amend section 8516.1(c) (see *supra* LEGISLATION).

The Board also discussed seeking appropriate methods of monitoring new technological devices dealing with



termite infestation. It directed the Technical Advisory Committee to arrive at the best method for monitoring these procedures.

FUTURE MEETINGS:

September 5 in San Francisco.

TAX PREPARER PROGRAM

Administrator: Don Procida
(916) 324-4977

Enacted in 1973, abolished in 1982, and reenacted by SB 1453 (Presley) effective January 31, 1983, the Tax Preparer Program registers approximately 19,000 commercial tax preparers and 6,000 tax interviewers in California, pursuant to Business and Professions Code section 9891 *et seq.* The Program's regulations are codified in Division 32, Title 16 of the California Code of Regulations (CCR).

Registrants must be at least eighteen years old, have a high school diploma or pass an equivalency exam, have completed sixty hours of instruction in basic personal income tax law, theory and practice within the previous eighteen months, or have at least two years' experience equivalent to that instruction. Twenty hours of continuing education are required each year.

Prior to registration, tax preparers must deposit a bond or cash in the amount of \$2,000 with the Department of Consumer Affairs. Registration must be renewed annually, and a tax preparer who does not renew his/her registration within three years after expiration must obtain a new registration. The initial registration fee is \$50 and the renewal fee is \$40.

Members of the State Bar of California, accountants regulated by the state or federal government, and those authorized to practice before the Internal Revenue Service are exempt from registration.

An Administrator, appointed by the Governor and confirmed by the Senate, enforces the provisions of the Tax Preparer Act. He/she is assisted by a nine-member State Preparer Advisory Committee which consists of three registrants, three persons exempt from registration, and three public members. All members are appointed to four-year terms.

RECENT MEETINGS:

The Advisory Committee has not met since December 13, 1988, and no new appointments have been made since the terms of all of the Committee members expired on December 31, 1988.

FUTURE MEETINGS:

To be announced.

BOARD OF EXAMINERS IN VETERINARY MEDICINE

Executive Officer: Gary K. Hill
(916) 920-7662

Pursuant to Business and Professions Code section 4800 *et seq.*, the Board of Examiners in Veterinary Medicine (BEVM) licenses all veterinarians, veterinary hospitals, animal health facilities, and animal health technicians (AHTs). The Board evaluates applicants for veterinary licenses through three written examinations: the National Board Examination, the Clinical Competency Test, and the California Practical Examination.

The Board determines through its regulatory power the degree of discretion that veterinarians, AHTs, and unregistered assistants have in administering animal health care. BEVM's regulations are codified in Division 20, Title 16 of the California Code of Regulations (CCR). All veterinary medical, surgical, and dental facilities must be registered with the Board and must conform to minimum standards. These facilities may be inspected at any time, and their registration is subject to revocation or suspension if, following a proper hearing, a facility is deemed to have fallen short of these standards.

The Board is comprised of six members, including two public members. The Board has eleven committees which focus on the following BEVM functions: continuing education, citations and fines, inspection program, legend drugs, minimum standards, examinations, administration, enforcement review, peer review, public relations, and legislation. The Board's Animal Health Technician Examining Committee (AHTEC) consists of the following political appointees: three licensed veterinarians, three AHTs, and two public members.

MAJOR PROJECTS:

Enforcement Complaint Review Workshop. Sections 4883 and 4875 of the Business and Professions Code authorize the Board to suspend or revoke a license and/or cite and fine a licensee for violations of the Veterinary Practice Act. Most of the violations for which the Board is authorized to take disciplinary action are specified in section 4883; guidelines for classifying violations for the purpose of assessing fines are specified in section 2043, Division 20, Title 16 of the CCR.

The Board recently began a review of its complaint processing system. The process begins with the referral of incoming complaints to either a BEVM executive staff member or to William Steinmetz, DVM, a Board consultant. Routine complaints, such as a veterinarian's refusal to release medical records or refusal to release an animal to its owner until the owner remits payment for medical services, are mediated over the phone. If the complaint cannot be mediated over the phone, Board staff sends a complaint form to the complainant to complete and return to the Board. Once the form is returned, an executive staff member reviews the complaint and sends an acknowledgment letter to the complainant. At that time, notice of the complaint is sent to the respondent veterinarian along with a request for copies of medical records, lab reports, and X-rays. If the respondent consulted with another veterinarian on the procedure or treatment complained of, Board staff sends a letter to that veterinarian requesting similar documents.

All death-related complaints are sent directly to either the northern or southern complaint review committee (CRC). These committees are composed of volunteer, practicing veterinarians. If the complaint is not death-related, Dr. Steinmetz reviews the complaint and medical records; based on his review, he either notifies the complainant and the respondent that the case is closed for lack of merit or refers the case to the appropriate CRC for further review.

Once the CRC receives the complaint, it has the option of closing the case for lack of merit, requesting additional information, recommending formal investigation, closing the case with admonishment, or assessing a citation and fine against the veterinarian. If the CRC recommends investigation, a CRC veterinarian/consultant begins the fact-finding process. Then an expert witness, a salaried veterinarian, evaluates the facts found; if the expert finds a violation of the Practice Act, the case is referred to the Attorney General's office for preparation of an accusation. The case against the veterinarian is then heard by an administrative law judge, who renders a proposed decision to the Board; the final disciplinary decision rests with the Board.

During its recent review of the complaint handling process, the Board agreed to make its admonishment letters more specific; some veterinarians have noted that these letters do not provide details regarding the acts for which the veterinarian is being admonished. In order to encourage consulting veterinarians