



in the months and years ahead." At its April meeting, the Board agreed with Deputy Attorney General Earl Plowman that it should not accept illegally-obtained experience; that is, a person practicing without a license in another country, in violation of that country's laws, should not get credit here towards licensure. Contrary to CAMFT's assertions, BBSE determined that its decision applies to only one individual, and that one individual has not even submitted an application for acceptance of those hours yet. The Board reaffirmed its January decision, and decided to put the larger issue of in-state versus out-of-country experience on the agenda for its July meeting.

Also at its April 12 meeting, the Board announced that it would be moving to a new location in late May. BBSE's phone number will remain the same, but its new address will be 400 R Street, Suite 3150, Sacramento, CA 95814.

FUTURE MEETINGS:

October 17-18 in Sacramento.

CEMETERY BOARD

Executive Officer: John Gill
(916) 920-6078

The Cemetery Board's enabling statute is the Cemetery Act, Business and Professions Code section 9600 *et seq.* The Board's regulations appear in Division 23, Title 16 of the California Code of Regulations (CCR).

In addition to cemeteries, the Cemetery Board licenses cemetery brokers, salespersons, and crematories. Religious cemeteries, public cemeteries, and private cemeteries established before 1939 which are less than ten acres in size are all exempt from Board regulation.

Because of these broad exemptions, the Cemetery Board licenses only about 185 cemeteries. It also licenses approximately 45 crematories, 200 brokers, and 1,200 salespersons. A license as a broker or salesperson is issued if the candidate passes an examination testing knowledge of the English language and elementary arithmetic, and demonstrates a fair understanding of the cemetery business.

MAJOR PROJECTS:

OAL Disapproves Proposed Regulation. On April 1, OAL disapproved the Board's proposed adoption of section 2376, Title 16 of the CCR, which would define the point at which an initial sale will be deemed complete and specify the time within which money collected must

be deposited in an endowment care fund. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 62 and Vol. 11, No. 1 (Winter 1991) p. 52 for background information.) OAL rejected section 2376 on the basis that the proposed regulation is inconsistent with Health and Safety Code section 8738, the statute which section 2376 is intended to interpret.

Section 8738 provides that an endowment care cemetery is one which has deposited in its endowment care fund the minimum amounts required by law and requires that such a cemetery deposit specified amounts into its endowment care fund "at the time of or not later than the completion of the initial sale" of a plot. However, cemetery operators are apparently uncertain as to exactly when received endowment care funds must be deposited into the endowment care trust fund.

Proposed section 2376 would have provided that an initial sale shall be deemed complete upon receipt of all monies allocated in the contract for the purchase of the interment plot, provided, however, that any monies collected to provide for the care, maintenance, or embellishment of the cemetery shall be deposited in the endowment care fund not later than 30 days from the end of the month in which they were collected. According to OAL, the Board interpreted this 30-60 day time lag to be equivalent to "not later than" the date the funds were collected; OAL found this interpretation to be in conflict with and contradictory to section 8738. At this writing, it is not known whether the Board will attempt to revise proposed section 2376 to comply with OAL's findings.

LEGISLATION:

AB 1540 (Speier), as introduced March 7, would repeal the enabling statutes of the Cemetery Board and the Board of Funeral Directors and Embalmers, and enact the Cemeteries, Funeral Directors and Embalmers Act, with unspecified contents. This bill is still pending in the Assembly Committee on Consumer Protection, Governmental Efficiency, and Economic Development.

LITIGATION:

At this writing, the California Supreme Court has yet to schedule oral argument in *Christensen, et al. v. Superior Court*, No. S016890. The Supreme Court granted the request for review by real party in interest Pasadena Crematorium, and will examine the Second District Court of Appeal's June 1990 decision which substantially expanded the plaintiff class in this multi-million dollar tort action against several Board

licensees. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 62 and Vol. 10, No. 4 (Fall 1990) pp. 61 and 75 for background information.)

FUTURE MEETINGS:

To be announced.

BUREAU OF COLLECTION AND INVESTIGATIVE SERVICES

Chief: James C. Diaz
(916) 739-3028

The Bureau of Collection and Investigative Services (BCIS) is one of 38 separate regulatory agencies within the Department of Consumer Affairs (DCA). The Chief of the Bureau is directly responsible to the DCA Director.

Pursuant to the Collection Agency Act, Business and Professions Code section 6850 *et seq.*, the Bureau regulates the practices of collection agencies in California. Collection agencies are businesses that collect debts owed to others. The responsibility of the Bureau in regulating collection agencies is twofold: (1) to protect the consumer/debtor from false, deceptive, and abusive practices and (2) to protect businesses which refer accounts for collection from financial loss. The Bureau also plays an important role in protecting collection agencies from unlawful competition by the detection and prohibition of unlicensed activity within the industry.

In addition, eight other industries are regulated by the Bureau, including private security services (security guards and private patrol operators), repossession, private investigators, alarm company operators, protection dog operators, medical provider consultants, security guard training facilities, and locksmiths.

Private Security Services. Regulated by the Bureau pursuant to Business and Professions Code section 7544 *et seq.*, private security services encompass those who provide protection for persons and/or property in accordance with a contractual agreement. The types of services provided include private street patrols, security guards, watchpeople, body guards, store detectives, and escort services. Any individual employed to provide these services is required to register with the Bureau as a security guard. Any security guard who carries a firearm and/or baton on the job must possess a firearm permit issued by the Bureau. The Bureau operates to protect consumers from guards who unlawfully detain, conduct illegal searches, exert undue force,



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and use their authority to intimidate and harass.

Repossessors. Repossession agencies repossess personal property on behalf of a credit grantor when a consumer defaults on a conditional sales contract which contains a repossession clause. Any individual employed by these services is required to be registered with the Bureau. Pursuant to the Repossessors Act, Business and Professions Code section 7500 *et seq.*, the Bureau functions to protect consumers from unethical methods of repossessing personal property, such as physical abuse resulting in bodily harm, threats of violence, illegal entry onto private property, and misrepresentation in order to obtain property or information about property.

Private Investigators. Private investigators conduct investigations for private individuals, businesses, attorneys, insurance companies, and public agencies. The scope of their job generally falls within the areas of civil, criminal, and domestic investigations. Any private investigator who carries a firearm on the job must possess a firearm permit issued by the Bureau. Pursuant to Business and Professions Code section 7512 *et seq.*, the Bureau oversees private investigators to protect consumers and clients against investigators who misrepresent, impersonate, or make threats in order to obtain desired information; perform inadequate or incompetent investigations; fail to substantiate charges or charge more than the amount agreed upon; and alter, falsify, or create evidence.

Alarm Company Operators. Alarm company operators install, service, maintain, monitor, and respond to burglar alarms. These services are provided to private individuals, businesses, and public entities. Any employee responding to alarms who carries a firearm on the job must be registered by the Bureau and possess a Bureau-issued firearm permit. Pursuant to the Alarm Company Act, Business and Professions Code section 7590 *et seq.*, the Bureau regulates this industry in order to protect clients from potential theft or burglary, invasion of privacy or misrepresentation by alarm companies, and failure on their part to render service as agreed.

Protection Dog Operators. Protection dog operators train, lease, and sell dogs for personal and/or property protection. They also provide patrol services using trained dogs. Individuals employed by any of these services must be registered by the Bureau. These services are employed by private individuals, business entities, and law enforcement agencies. Pursuant to Business and Profes-

sions Code section 7550 *et seq.*, the Bureau serves to protect against possible violations in this industry, such as inadequately trained or physically abused dogs, overcharges for services, invasions of privacy, or potential theft or burglary of property.

Medical Provider Consultants. Medical provider consultants are contract collectors who provide in-house collection services to medical facilities. They contact insurance companies and/or patients to try to collect on medical debts on behalf of the medical provider. Nevertheless, consultants cannot themselves collect on delinquent debts. Instead, they must turn the debt over to an independent, licensed collection agency in order to avoid any conflict of interest. Medical provider consultants may be licensed by the Bureau pursuant to Health and Safety Code section 1249.5 *et seq.*

Training Facilities and Instructors. These facilities provide required firearm training to licensed private investigators; power to arrest and firearm training to alarm agents who respond to alarm systems; and power to arrest, firearm, and baton training to security guards. Upon completion of training, individuals must pass examinations before they may be issued the appropriate permits. Pursuant to Business and Professions Code section 7552 *et seq.*, the Bureau regulates these facilities in order to ensure that required training is provided to licensed individuals, and that only those qualified possess the proper permits to provide service to the consumer.

Locksmiths. Locksmiths install, repair, open, modify, and make keys for locks. These services are provided to private individuals, businesses, and public entities. Pursuant to Business and Professions Code section 6980 *et seq.*, the Bureau regulates this industry in order to protect clients from potential theft or burglary, invasion of privacy, and misuse of a locksmith's skills, tools, or facilities for the commission of a crime.

The purpose of the Bureau is to protect the health, welfare and safety of those affected by these industries. To accomplish this, the Bureau regulates and reviews these industries by its licensing procedures and by the adoption and enforcement of regulations. For example, the Bureau reviews all complaints for possible violations and takes disciplinary action when violations are found. The Bureau's primary method of regulating, however, is through the granting or denial of initial/renewal license or registration applications. Education is also utilized to assist in achieving Bureau goals.

Consumers and clients may pursue civil remedies to resolve complaints and disputes currently within the regulatory authority of the Bureau. In addition, class action suits may be filed on behalf of consumers by the Attorney General's office and local district attorneys against businesses which engage in repetitive unethical business practices.

Two advisory boards function within the Bureau to advise the Chief and the DCA Director on policy matters relating to their respective industries. The Collection Agency Board (CAB) acts pursuant to Business and Professions Code section 6863.5 *et seq.*, and the Private Security Advisory Board (PSAB) is created under Business and Professions Code section 7516 *et seq.*

MAJOR PROJECTS:

Trust Reconciliation Statements. Money collected from debtors by a collection agency must be placed in a trust account; Business and Professions Code section 6915 requires agencies to give BCIS an accounting of these funds semi-annually in the form of a Trust Reconciliation Statement. Statements covering the first six months of 1991 must be submitted to the Bureau by August 10; failure to meet this deadline will result in the automatic suspension of the collection agency license pursuant to Business and Professions Code section 6916, unless BCIS has authorized an extension.

At CAB's April 5 meeting, then-BCIS Chief Alonzo Hall reported that the Bureau is still reviewing the 700 statements filed for the six-month period ending December 31, 1990. He noted that 68 agencies which did not file statements for that period were sent suspension letters. Chief Hall reported that, based on a review of 300 statements, approximately 27 agencies appear to be in a trust violation status; BCIS will conduct the necessary audits and determine whether conservatorships are necessary.

BCIS Releases Collection Agency Bulletin. In its May 1991 *Collection Agency Information Bulletin*, BCIS reminded licensees that Business and Professions Code section 6926.8(c) provides that money belonging to a customer or debtor who cannot be located should be deposited in a separate account; Bureau auditors advise collection agencies to set up a separate unclaimed fund trust account which includes the designation "unclaimed funds" in its title. According to BCIS, moneys in this account (or unclaimed moneys that are not in a separate account) may not be included in the agency's main trust account balances on



the Trust Reconciliation Statement; such unclaimed funds must be reported separately. The *Bulletin* reports that if such funds are not claimed within seven years following their collection, they are considered unclaimed property, and the licensee must report and deliver the money, with any accrued interest, to the State Controller.

The *Bulletin* also reported that the number of collection agencies placed in conservatorship has increased from three in 1989 to a current level of 18 active conservatorships. According to BCIS, most conservatorships stem from misappropriation of trust funds or failure to pay sums owed to clients. Once appointed, a conservator will take possession of all agency documents, records, bank accounts, and mail, and will assume control of the agency until the problems are corrected or the agency is closed. If the conservator finds evidence of criminal activity, DCA's Division of Investigation and local law enforcement agencies will be notified. (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.)

The *Bulletin* also reported that BCIS is aware that some collection agencies are adding their commission onto the debtor's bill; according to BCIS, this practice may violate the Federal Fair Debt Collection Practices Act, 15 U.S.C. section 1692(f)(1), which prohibits the collection of any amount from a debtor unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

Collection Agency Complaint Information. The May 1991 *Collection Agency Information Bulletin* reported that the number of complaints received by the Bureau regarding collection agencies decreased from 1,351 in fiscal year 1988-89 to 949 in fiscal year 1989-90. The *Bulletin* reported the following as the most common types of complaints:

- The debtor disputes his/her bill with the collection agency, and/or claims that the agency did not provide verification of the debt owed.

- The debtor claims that the collection agency harassed the debtor over the telephone by shouting or using obscene language, or failed to properly identify himself/herself or the agency he/she represents.

- The debtor claims that the collection agency made improper threats of lawsuits or garnishment in violation of the Federal Fair Debt Collection Practices Act, Civil Code section 1788.10(c), and section 628.5 of the California Code of Regulations.

- The creditor claims that the collection agency failed to remit or report moneys collected.

According to the *Bulletin*, when consumers request complaint information about a collection agency, the Bureau will not provide a summary of the type or number of complaints received or mediated regarding that agency. Instead, the Bureau will provide a summary of all notices of warning (which are issued when an auditor finds a violation during an audit of a collection agency) and any disciplinary action taken against an agency; the Bureau will also disclose whether the agency has been or is in conservatorship. Information provided will span only the three-year period preceding the consumer's request. According to the *Bulletin*, the Bureau will continue to maintain its historical record of complaints received and mediated, but this information will not be available to the public.

BCIS Releases Repossession Agencies Bulletin. In its April 1991 *Repossession Agencies Information Bulletin*, BCIS reported that, as of March 1991, the Bureau had a total of 1,133 reposessor licensees, including 223 reposessor agency licensees, 281 reposessor qualification certificates, and 629 reposessor employee registrations.

In the *Bulletin*, BCIS also noted a dramatic increase in the amount of fines assessed against reposseors, from a total of \$2,715 assessed in fiscal year 1987-88, to assessments of \$15,450 in fiscal year 1988-89 and \$12,075 in fiscal year 1989-90. BCIS stated that the increase is due to its expanding enforcement activities as well as a rise in the type of violations which result in higher fines. For example, prior to fiscal year 1988-89, the two most common violations were failure to register or late registration of an employee, and repossession without assignment; both violations carry a fine of \$25 for the first violation and \$100 for each subsequent violation. However, in recent years, the two most common violations are conducting a business at a location other than the licensed location and aiding or abetting unlicensed practice; both of these violations carry a penalty of a \$1,000 fine or license revocation. Another violation occurring frequently is entering a private building or secured area without legal consent; this violation may result in a fine of \$500 or license revocation. For the first nine months of fiscal year 1990-91, BCIS has collected a total of \$19,625 in fines; 80% of that amount has resulted from aiding or abetting unlicensed practice.

The *Bulletin* also contained BCIS' current fee schedule as it pertains to reposseors; current fees include \$750 for an initial repossession agency license; \$450 for repossession agency license renewal; \$250 for an initial qualification certificate; and \$200 for qualification certificate renewal.

BCIS Releases Private Patrol Operator Bulletin. According to BCIS' April 1991 *Private Patrol Operator/School Program Information Bulletin*, as of March 1991, the Bureau had a total of 164,579 private patrol licensees and registrants, as well as training facility licensees; this total includes 144,506 security guard licensees and 1,617 private patrol operator licensees.

In the *Bulletin*, BCIS reported on a number of issues regarding firearms. For example, the *Bulletin* reports that it has historically been the Bureau's policy that the length of a licensee's firearm barrel may be no less than four inches; it is believed that this policy may have been adopted to eliminate the possibility that licensees would violate Penal Code section 12001, which prohibits the unlawful carrying and possession of a concealed weapon. However, upon further review, the Bureau noted that section 12001 describes a concealable firearm as any firearm having a barrel length of less than 16 inches. Because the Bureau has no legal authority to limit firearm barrel length, the *Bulletin* reported that BCIS' four-inch barrel length policy is no longer in effect.

The *Bulletin* further stated that to carry a concealed weapon, licensees, qualified managers, and registered security guards must possess a concealed weapons permit authorized by a local law enforcement agency, in addition to completing a Bureau-approved firearm training course and obtaining the Bureau's firearm permit.

In a related item, the *Bulletin* discussed whether retired peace officers in possession of a concealed weapons permit must obtain a Bureau-issued firearm permit in accordance with Business and Professions Code section 7522(l). According to BCIS' legal counsel, retired peace officers may qualify for a licensing exemption, if (1) the retired peace officer is engaged in private employment approved by the chief law enforcement officer of the jurisdiction where the employment takes place; and (2) the retired peace officer is in the uniform of a public law enforcement agency. However, according to BCIS, if both of these conditions are not met, the retired peace officer must obtain the appropriate Bureau permits regardless of



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possession of a concealed weapons permit.

Stun Gun Use by Private Patrol Operators. The April 1991 *Private Patrol Operator/School Program Information Bulletin* also reported that BCIS has been asked whether a registered security guard employed by a private patrol operator may possess or use a stun gun while on duty. According to Business and Professions Code section 7544.5(f), a registered security guard employed by a private patrol operator must obtain (1) a certificate from an approved training facility certifying that such employee is proficient in the use of that specified caliber of firearm, and (2) a current and valid firearm qualification permit issued by DCA. However, the *Bulletin* noted that since the Bureau has never approved a course for carrying and using a stun gun, the DCA Director is unable to issue the required certificate of training. Therefore, the *Bulletin* concluded that stun guns may not be carried or used by registered security guards employed by private patrol operators.

Security Guard Training Proposals. At PSAB's April 12 meeting, Board member Stephen Geil reported on the progress of the Private Security Training Committee, a task force established to address training needs of the security guard industry. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 63; Vol. 11, No. 1 (Winter 1991) p. 54; and Vol. 10, No. 1 (Winter 1990) p. 61 for background information.) At the Committee's first meeting in March, three basic security officer categories were identified: commercial/industrial, street/vehicle patrol, and other. The Committee also identified fourteen basic areas in which every security officer should be trained in order to perform security functions at any job location. These areas are powers to arrest; uniform; ethics and responsibilities; role understanding; civil rights; communication; basic law; access control; foot patrol; fire and safety; emergency procedures; public relations; loss control; and observation. At future meetings, the Committee will prioritize these training areas and formulate a plan identifying specific training needs. Mr. Geil anticipates presenting this plan to the Board at its January 1992 meeting.

BCIS Gets New Chief. On May 2, Governor Wilson announced the appointment of James C. Diaz of Clayton as the new BCIS Chief; this appointment is subject to Senate confirmation. Diaz, former Director of Human Resources at Pacific Bell/Pacific Telesis Group, will receive an annual salary of \$71,220.

BCIS Change of Address. BCIS is moving its offices to 400 R Street, Suite 2001, Sacramento, CA 95814; the move should be completed by midsummer.

LEGISLATION:

SB 1083 (Robbins), as introduced March 8, would provide that persons licensed as collection agencies are deemed to be attorneys-in-fact for purposes of depositing or transferring client funds to or from individual or pooled client trust deposits with banks, and that the authorized signatures and instructions of these licensees on items deposited and transfers made to and from the trust deposits of their clients are valid, whether or not the principal-agent relationship is indicated on the item or instruction. This bill is currently pending in the Senate Judiciary Committee.

The following is a status update on bills reported in detail in CRLR Vol. 11, No. 2 (Spring 1991) at pages 64-65:

AB 1180 (Murray), as amended May 15, would substantially revise existing law applicable to private investigators. For example, AB 1180 would extend DCA's rulemaking authority to cover private investigators and their employees; extend that rulemaking authority to the establishment of procedures, qualifications, fees, and conditions under which licensed private investigators and security guards who hold valid firearms qualifications cards will be issued a permit by the DCA Director to carry a concealed firearm; and specify that these procedures are the exclusive means whereby those licensees, acting within the scope of the activities for which they are licensed, may carry a concealed firearm. This bill is pending in the Assembly Ways and Means Committee.

SB 560 (Vuich), as amended May 6, would increase from \$1,000 to \$10,000 the fine imposed against any person who violates or conspires to violate any provision of the Repossessor Act, or who knowingly engages an unlicensed repossession agency after being notified by BCIS of that agency's unlicensed status. This bill, which would make a number of other changes to the Repossessor Act, passed the Senate on May 16 and is pending in the Assembly Committee on Consumer Protection, Governmental Efficiency, and Economic Development.

SB 315 (Deddeh), as introduced February 7, would extend the repealing date of the Collection Agency Act from June 30, 1992 until June 30, 1993. This bill passed the Senate on April 22 and is pending in the Assembly Committee on Banking, Finance, and Bonded Indebtedness.

RECENT MEETINGS:

At CAB's April 5 meeting, BCIS Program Manager Steve Baker reported that staff is in the process of categorizing consumer complaints received, and is setting up a tracking system to follow the progress of complaints as they are handled by the Bureau. Of the 2,640 complaints received during fiscal year 1990-91, BCIS has issued 68 notices of warning and 83 suspensions.

Also at CAB's April 5 meeting, industry member Jerry Springer commented that his term, as well as the terms of public members Rigoberto Banuelos and Robert Hanson, will expire as of June 30. All three members have served two consecutive terms on CAB, the maximum term allowed by law.

At its April 12 meeting, PSAB introduced its new public member, Charles Mier of Sacramento.

At PSAB's April 12 meeting, Deputy Chief Ernest Luzania reported that staff is preparing a revision of BCIS' firearms manual and expects to distribute the revised manual by June.

FUTURE MEETINGS:

CAB: September 13 in Pasadena.
January 1992 in Sacramento.
PSAB: October 11 in San Francisco.
January 17 in Fresno.

CONTRACTORS STATE LICENSE BOARD

Registrar: David Phillips

(916) 366-5153

Toll-Free Information Number:
1-800-321-2752

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.