



AB 2180 (*Baker*) was substantially amended on April 17 and no longer pertains to BOC.

## RECENT MEETINGS:

At BOC's March 10 meeting, Jerry Tabaracci, the State Director of the U.S. Department of Labor's Bureau of Apprenticeship and Training gave the Board a presentation on the provisions of the Shelley-Maloney Apprentice Labor Standards Act of 1939, Labor Code section 3070 *et seq.*, the statute which governs apprenticeships in California. Partly due to the pendency of AB 223 (*Felando*) (see *supra* LEGISLATION), BOC is interested in learning about the apprenticeship concept as an alternative to formal vocational education for persons who live in areas where state or private educational programs are not available. Also, the merger bill creating BBC has wiped out BOC's "junior operator" program under Business and Professions Code section 7331, which permitted persons who have spent two years learning or acquiring knowledge of the occupation of a cosmetologist in a licensed cosmetology establishment under the supervision of a licensed cosmetologist to be admitted to BOC's examination. Following Tabaracci's presentation, Board members agreed to take no action on the concept at this time, but to revisit the matter at a future meeting. The Board also agreed to support AB 223.

## FUTURE MEETINGS:

September 8 in Los Angeles.  
November 17 in San Francisco.

## BOARD OF DENTAL EXAMINERS

*Executive Officer:*  
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The Board of Dental Examiners (BDE) is charged with enforcing the Dental Practice Act, Business and Professions Code sections 1600 *et seq.* This includes establishing guidelines for the dental schools' curricula, approving dental training facilities, licensing dental applicants who successfully pass the examination administered by the Board, and establishing guidelines for continuing education requirements of dentists and dental auxiliaries. The Board is also responsible for ensuring that dentists and dental auxiliaries maintain a level of competency adequate to protect the consumer from negligent, unethical, and incompetent practice. The Board's regu-

lations are located in Division 10, Title 16 of the California Code of Regulations (CCR).

The Committee on Dental Auxiliaries (COMDA) is required by law to be a part of the Board. The Committee assists in efforts to regulate dental auxiliaries. A "dental auxiliary" is a person who may perform dental supportive procedures, such as a dental hygienist or a dental assistant. One of the Committee's primary tasks is to create a career ladder, permitting continual advancement of dental auxiliaries to higher levels of licensure.

The Board is composed of fourteen members: eight practicing dentists (DDS/DMD), one registered dental hygienist (RDH), one registered dental assistant (RDA), and four public members. The 1991 members are James Dawson, DDS, president; Gloria Valde, DMD, vice-president; Hazel Torres, RDA, secretary; Pamela Benjamin, public member; Victoria Camilli, public member; Joe Frisch, DDS; Henry Garabedian, DDS; Martha Hickey, public member; Carl Lindstrom, public member; Alfred Otero, DDS; Evelyn Pangborn, RDH; Jack Saroyan, DDS; and Albert Wasserman, DDS. At this writing, one practicing dentist position is vacant.

## MAJOR PROJECTS:

*Board Adopts Fee Increases.* At its May 10 meeting, the Board held a public hearing on proposed amendments to section 1021, Division 10, Title 16 of the CCR, which would increase BDE's various fees as follows:

- the initial application fee for the clinical examination for all dentists (not just U.S.-trained dentists) would be \$100;
- the initial application fee for the restorative technique examination for all dentists would be \$250;
- the fee for an application for reexamination would be set at \$75;
- the clinical examination or reexamination fee would increase from \$150 to \$450;
- the restorative technique examination or reexamination fee would be \$250;
- the biennial license renewal fee would increase from \$135 to \$150; for renewal periods commencing on or after October 1, 1991, the biennial fee would be \$240;
- the fee for initial licensure would increase from \$150 to \$240;
- the delinquency fee for license renewal would be changed from \$25 to "the amount prescribed by section 163.5 of the [Business and Professions] Code" (currently, 50% of the renewal fee for

the license in effect on the date of the renewal of the license, but not less than \$25 and not more than \$150);

-the fee for restoration of a license forfeited for failure to register would be deleted;

-the fee for a substitute certificate would increase from \$25 to \$50;

-the fee for a late change of practice registration would increase from \$25 to \$50;

-the fee for biennial renewal of a fictitious name permit, for renewal periods commencing on or after October 1, 1991, would be \$150;

-the delinquency fee for fictitious name permits which expire on or after October 1, 1991 would be one-half of the fictitious name permit renewal fee;

-the continuing education provider fee for all providers would increase from \$100 to \$250; and

-the continuing education nonregistered provider fee would be deleted.

At the May 10 hearing, the Board voted unanimously to adopt the above-described regulatory changes, and directed staff to release for a 15-day public comment period any adopted language which differed from the noticed language. At this writing, the proposed regulatory revisions await approval by the Department of Consumer Affairs and the Office of Administrative Law (OAL).

*BDE Seeks RDHEF Rules Changes.* On May 31, BDE published notice of its intent to seek revisions to its regulations affecting registered dental hygienists in extended functions (RDHEF). Existing regulations, adopted in 1976, list the duties which may be assigned to an RDHEF and the settings in which they may be undertaken. However, these regulations were invalidated in 1989 in *Californians for Safe Dental Regulation v. Board of Dental Examiners*, No. 336624 (Sacramento County Superior Court), based on lack of a rulemaking record. Specifically, the court invalidated section 1089(c) and (d), Division 10, Title 16 of the CCR, because the rulemaking file before the court did not contain sufficient facts from which the court could determine whether the RDHEF regulations were consistent with the standards of good dental practice and the health and welfare of patients, as required by Business and Professions Code section 1762.

Following the court's ruling, BDE delegated to COMDA the responsibility of evaluating all possible RDHEF duties in order to recommend a course of action to the Board. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 85 for background information.) COMDA



recommended that the Board repeal existing section 1089(c) and (d), and adopt new section 1089(c) and (d), to list six functions for the RDHEF. Specifically, new section 1089(c) would provide that an RDHEF may perform cord retraction of gingivae for impression procedures; take impressions for cast restorations; take impressions for space maintainers, orthodontic appliances, and guards; prepare enamel by etching for bonding; and fit trial endodontic filling points. New section 1089(d) would provide that an RDHEF may undertake these duties in a treatment facility under the jurisdiction and control of a supervising licensed dentist, or an equivalent facility approved by BDE. According to BDE, in the absence of acceptable functions unique to the RDHEF, the extended functions categories for the registered dental assistant and RDH will be congruent in order to implement the career ladder concept envisioned by the legislature.

Further, BDE proposes to amend section 1082.2(a) and (c) to conform examination requirements to the new duties; the examination for RDHEF will be the same as that for registered dental assistant extended function (RDAEF). Also, proposed amendments to section 1083(d) would specify that any RDH who has passed the RDAEF examination shall be licensed as an RDHEF without having to sit for further examination. Finally, BDE proposes to repeal section 1067(q), (r), and (s) on the grounds that these subsections refer to the invalidated regulation and are unnecessary.

BDE was scheduled to hold a public hearing on these regulatory proposal on July 26 in Burlingame.

*Conscious Sedation Permit Procedure Approved by OAL.* On April 1, BDE's conscious sedation permit procedure regulations were approved by OAL. Creation of the permit procedure was required by AB 1417 (Speier) (Chapter 526, Statutes of 1989). The conscious sedation permit procedure approved by OAL is virtually identical to that which currently exists for general anesthesia, with certain exceptions. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 71; Vol. 11, No. 1 (Winter 1991) pp. 58-59; and Vol. 10, No. 4 (Fall 1990) p. 71 for detailed background information on the Board's new regulations.)

### LEGISLATION:

*AB 1918 (Moore)*, as amended April 15, would prohibit persons and specified entities from discriminating, with respect to employment, staff privileges, or the provision of, or contracts for, professional services, against a licensed

dentist on the basis of the educational degree held by the dentist. This bill would also state the intent of the legislature that all persons licensed in this state to practice dentistry shall be accorded equal professional status and privileges, without regard to the degree earned. This bill passed the Assembly on May 30 and is pending in the Senate Business and Professions Committee.

*SB 664 (Calderon)*, as introduced March 5, would prohibit dentists, among others, from charging, billing, or otherwise soliciting payment from any patient, client, customer, or third-party payor for any clinical laboratory test or service if the test or service was not actually rendered by that person or under his/her direct supervision, except as specified. This bill is pending in the Senate Business and Professions Committee.

*SB 1004 (McCorquodale)*, as amended May 7, would prohibit health facilities from denying, restricting, or terminating a dentist's staff privileges on the basis of economic criteria unrelated to his/her clinical qualifications or professional responsibilities. This bill would define economic criteria as factors related to the economic impact on the health facility of a dentist's exercise of staff privileges in that facility, including, but not limited to, the revenue generated by the dentist, the number of Medi-Cal or Medicare patients treated by the dentist, and the severity of the patients' illnesses treated by the dentist. This bill is pending in the Senate Health and Human Services Committee.

The following is a status update on bills reported in detail in CRLR Vol. 11, No. 2 (Spring 1991) at pages 71-72:

*AB 194 (Tucker)*, as introduced January 4, would provide that, on and after January 1, 1993, an applicant for a license to practice dentistry in this state who fails to pass the skills examination after three attempts shall not be eligible for further reexamination until the applicant has successfully completed a minimum of 50 hours of additional education at an approved dental school. A foreign-trained dental applicant who fails to pass the required restorative technique examination after three attempts would not be eligible for further reexamination until the applicant has successfully completed a minimum of two academic years of education at an approved dental school. This bill is pending in the Assembly Ways and Means Committee.

*AB 1158 (Speier)*, as amended May 22, would permit any person licensed under the Medical Practice Act as a physician who is not licensed to practice dentistry under the Dental Practice Act

to apply to BDE for a special permit in oral and maxillofacial surgery and would authorize BDE to issue a special permit if the applicant furnishes evidence satisfactory to the Board that he/she meets certain eligibility requirements, including having a license to practice dentistry in another state. This bill, which would provide that every provision of the Dental Practice Act applicable to a person licensed to practice dentistry is applicable to a person to whom a special permit is issued, is pending in the Assembly Ways and Means Committee.

*AB 2120 (Cortese)*, as amended April 15, would prescribe the functions which may be performed by dental assistants and registered dental assistants under direct and general supervision. This bill is pending in the Assembly Health Committee.

*SB 650 (Alquist)*, as amended April 15, would authorize BDE to establish by regulation a system for issuing a citation, which may contain an order of abatement or an order to pay an administrative fine, for violation of the applicable licensing law or any regulation adopted pursuant to that law. This bill would also authorize BDE to inspect the books, records, and premises of any dentist licensed under the Dental Practice Act in response to a complaint that the licensee has violated the applicable licensing law, and would allow the Board to employ inspectors for this purpose. This bill passed the Senate on May 9 and is pending in the Assembly Health Committee.

*SB 777 (Robbins)* would, commencing July 1, 1992, provide for the certification and licensure of dental technicians and dental laboratories under the Board's jurisdiction. As amended April 29, the bill would enlarge the membership of the Board by adding a certified dental technician as a member, and would create a Dental Laboratory and Technology Committee, commencing July 1, 1992, under the Board's jurisdiction, consisting of five members appointed by the Board. This bill, which is opposed by the Board, is still pending in the Senate Business and Professions Committee.

*AB 91 (Moore)*, as introduced December 4, would require a dentist, dental health professional, or other licensed health professional to sign his/her name or enter his/her identification number and initials in the patient's record next to the service performed, and to date those treatment entries. This bill would also prohibit a person licensed under the Dental Practice Act from requiring or utilizing a policy for the delivery of dental care that discourages necessary care or dictates clearly



excessive, inadequate, or unnecessary treatment, the violation of which would constitute unprofessional conduct. This bill was passed by the Assembly on March 14 and is pending in the Senate Business and Professions Committee.

*SB 934 (Watson)*, as amended May 22, would prohibit a dentist from using any toxic and carcinogenic materials to repair a patient's oral condition or defect unless the dentist obtains prior informed consent from the patient. This bill, which the Board opposes, is still pending in the Senate Business and Professions Committee.

## LITIGATION:

In *Alexander D. v. State Board of Dental Examiners*, No. A048932 (May 13, 1991), the First District Court of Appeal upheld the constitutionality of Business and Professions Code section 820, which provides that "[w]henver it appears that any person holding a license, certificate or permit under [Division 2 of the Business and Professions Code]...may be unable to practice his or her profession safely because the licensee's ability to practice is impaired due to mental illness, or physical illness affecting competency, the licensing agency may order the licensee to be examined by one or more physicians and surgeons or psychologists designated by the agency."

In 1989, the Board served appellant with an order and petition compelling him to undergo a psychiatric examination; the petition alleged a factual basis for the ordered examination based on appellant's bizarre statements and conduct. Appellant challenged the Board's action, contending that his due process rights were violated by the order and that section 820 is unconstitutional because no standards of reasonable cause or guidelines are stated in the statute. The Board countered that section 820 is constitutional and appellant's due process rights were not violated because the order prescribed in the statute is investigatory, not adjudicatory.

The First District agreed with the Board, stating that "both the language of the statute itself and surrounding code sections as well as the legislative history demonstrate the investigatory purpose of the examination....In other words, the psychiatric examination is an investigatory tool, the result of which may be used by the Board to determine if formal adjudicatory proceedings will be brought."

Further, the court reviewed the four factors which must be considered in determining the extent to which state procedural due process is available: the

private interest affected; the risk of erroneous deprivation of such interest through the procedure used, and the value of substitute procedures; the dignitary interest in informing the individual of the nature, grounds, and consequences of the action and enabling him/her to answer to a responsible governmental official; and the governmental interest, including the function involved and additional fiscal or administrative burdens. In weighing these concerns, the court found that appellant's property interest (his license to practice dentistry) is not at stake, his liberty is only minimally affected, and his privacy is protected by a confidential investigation; the risk of erroneous deprivation is remote because any discipline would be the result of a separate adjudicatory hearing; appellant was served with the order and petition setting forth the background facts and the written psychiatric evaluation, and the later adjudicatory hearing provides full opportunity for rebuttal; and the government's interest in protecting the public from unsafe or incompetent practitioners would be severely impacted by the necessity for every preliminary investigation to be conducted with full due process protections.

## FUTURE MEETINGS:

September 20-21 in Los Angeles.  
November 15 in San Francisco.

## BUREAU OF ELECTRONIC AND APPLIANCE REPAIR

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The Bureau of Electronic and Appliance Repair (BEAR) was created by legislative act in 1963. It registers service dealers who repair major home appliances and electronic equipment. BEAR is authorized under Business and Professions Code section 9800 *et seq.*; BEAR's regulations are located in Division 27, Title 16 of the California Code of Regulations (CCR).

Grounds for denial or revocation of registration include false or misleading advertising, false promises likely to induce a customer to authorize repair, fraudulent or dishonest dealings, any willful departure from or disregard of accepted trade standards for good and workmanlike repair and negligent or incompetent repair. The Electronic and Appliance Repair Dealers Act also requires service dealers to provide an accurate written estimate for parts and labor, provide a claim receipt when

accepting equipment for repair, return replaced parts, and furnish an itemized invoice describing all labor performed and parts installed.

The Bureau continually inspects service dealer locations to ensure compliance with the Electronic and Appliance Repair Dealers Registration Law and regulations. It also receives, investigates and resolves consumer complaints.

The Bureau is assisted by an Advisory Board comprised of two representatives of the appliance industry, two representatives of the electronic industry, and five public representatives, all appointed for four-year terms. Of the five public members, three are appointed by the Governor, one by the Speaker of the Assembly, and one by the Senate President pro Tempore.

## MAJOR PROJECTS:

*Governor Wilson Appoints New BEAR Chief and Deputy Chief.* On May 2, Governor Wilson announced the appointments of K. Martin Keller as Chief and Curtis L. Augustine as Deputy Chief of BEAR.

Keller, a 39-year-old Republican from San Francisco, is the former Vice President of Pacific Financial Printing, where he has been employed for the past eight years. Keller has been active in California politics as a member of both the San Francisco County and the State Republican Central Committee. In addition, he co-chaired the Wilson for Governor Campaign in San Francisco last year. As Chief of the Bureau, Keller will receive an annual salary of \$58,896.

Currently, Keller is in the process of assisting the Governor in filling the three vacancies on the Bureau's Advisory Board, which include one electronics industry member and two public members. Keller hopes to have a full Board for the October 4 meeting in Sacramento.

Augustine, a 32-year-old Republican from Walnut Creek, is a former Director of Marketing and Sales for Scribner, Jackson Associates. As BEAR Deputy Chief, he will receive an annual salary of \$50,424.

*BEAR to Tackle Service Contract Abuse.* At its May 17 meeting, the Advisory Board once again addressed the issue of service contract abuses by third-party administrators. Although BEAR has no jurisdiction over third-party service contract administrators, it has documented a large number of problems in this area which have victimized both service dealers and consumers. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 73; Vol. 11, No. 1 (Winter 1991) p. 61; and Vol.