



# REGULATORY AGENCY ACTION

cedure. The passage into law of AB 1417 (Speier) (Chapter 526, Statutes of 1989) requires BDE to establish a permit procedure for the use of conscious sedation by dentists. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 55 for background information.) The Board has appointed Dr. Joseph Anthony and Martha Hickey, as a subcommittee of the Enforcement Committee, to review the matter and propose recommendations.

**Regulatory Hearing.** At its November 17 meeting, the Board held a regulatory hearing on proposed amendments to section 1086(d), Chapter 10, Title 16 of the CCR, regarding the duties of dental auxiliaries. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 54; Vol. 9, No. 2 (Spring 1989) p. 54; and Vol. 9, No. 1 (Winter 1989) p. 45 for background information.) The Board adopted the proposed changes, which remove several restrictions on the ability of registered dental assistants to perform coronal polishing, but emphasizes that the coronal polish shall not be intended or interpreted as a complete oral prophylaxis.

**National Practitioner Data Bank.** Pursuant to the federal Health Care Quality Improvement Act of 1986, 42 U.S.C. § 11101 et seq., BDE is one of several state regulatory agencies which must report adverse disciplinary actions to a new federal data bank, which will collect this information and distribute it to health care entities which may employ licensed practitioners and to other state licensing boards. The data bank's operations are scheduled to commence in April 1990, with the purpose of tracking incompetent practitioners who move from hospital to hospital or state to state. BDE has right to query the data bank in connection with its licensing and discipline functions, and must report all disciplinary actions taken against dentists and hygienists. Specified health care entities, professional associations, and malpractice insurance companies must also report certain events to the data bank.

## LEGISLATION:

The following is a status update of bills described in detail in CRLR Vol. 9, No. 4 (Fall 1989) at page 55:

**AB 109 (Hayden)** would enact provisions governing the handling, storage, treatment, disposal, and transportation of medical waste. This bill is pending in the Senate inactive file.

**AB 550 (Moore)** would have provid-

ed that applicants who fail to pass BDE's skills examination after three attempts shall not be eligible for further examination until the applicant has completed a minimum 50 hours of education in each subject the applicant failed. This bill died in committee.

**SB 733 (Davis)**, which would have increased BDE's delinquency renewal fee and the fee for a registered provider of continuing education, died in committee.

**AB 1061 (Felando)**, which would affect the examination eligibility requirements for graduates of foreign dental schools, is pending in the Senate Rules Committee.

**AB 1703 (Vasconcellos)**, which would limit the type of advertising prohibited as unprofessional conduct by dentists, is pending in the Senate Business and Professions Committee.

**AB 459 (Frizzelle)** would have provided that any license issued by an agency within the Department of Consumer Affairs (DCA) may be renewed at any time after its expiration without limitation as to time, and without the requirement of reexamination. This bill has been dropped.

## LITIGATION:

In *California Dental Association v. Board of Dental Examiners*, No. 511723 (Sacramento County Superior Court), the CDA challenges BDE's decision that CDA's advertising campaign is illegal. In a complaint filed on December 14, CDA seeks to prevent BDE from carrying out its threat to obtain an injunction to compel the Association to stop its ad campaign. BDE claims that CDA's slogan—"We're the dentists who set the standards"—violates section 1680(i) of the Business and Professions Code (which prohibits advertising of superiority), and section 651 (which prohibits advertisements which are false or misleading).

CDA claims its slogan is not false or misleading, and that the statutes prohibiting its use are constitutionally invalid. The U.S. Supreme Court has held that commercial speech is protected under the first amendment so long as it is not false or misleading.

## RECENT MEETINGS:

At BDE's November 17-18 meeting in Burlingame, the Board elected its 1990 officers: Dr. Jean Savage, president; Dr. Joseph Anthony, vice-president; and Dr. Gloria Valde, secretary.

## FUTURE MEETINGS:

May 11-12 in Long Beach.  
July 20-21 in San Diego.  
September 14-15 in San Francisco.  
November 16-17 in Los Angeles.

## BUREAU OF ELECTRONIC AND APPLIANCE REPAIR

Chief: Jack Hayes  
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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 Chapter 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:

**BEAR/BAR Dual Licensure.** At a meeting of the Advisory Board's Executive Committee on October 17, BEAR Program Manager George Busman reported that BEAR had submitted to the Department of Consumer



Affairs (DCA) draft language of proposed amendments to the statutory provisions establishing the respective jurisdictions of BEAR and the Bureau of Automotive Repair (BAR). The proposed language clarifies conflicting registration requirements for businesses installing auto alarm systems. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 56 for detailed background information.) The proposal will be included in an omnibus bill to be introduced by DCA during the 1990 legislative session. The draft language was formally approved at the full Board's November 17 meeting in San Diego.

*Refrigeration Transition Plans for CFC Moratorium.* At its October meeting, BEAR's Executive Committee discussed the potential ramifications of recent restrictions in chlorofluorocarbon (CFC) production and use on the refrigeration industry and consumers. In 1987, the international community adopted the Montreal Protocol, a treaty addressing CFC production and use, and the resulting deterioration of the ozone layer. Subject to ratification, the agreement sets production ceilings and aims toward the eventual elimination of CFC production and use. CFCs are used in prodigious amounts in the refrigeration and insulation fields. The Board is tracking the development of CFC recovery and recycling equipment which may soon be required of BEAR-registered refrigeration technicians, as well as alternative compounds being developed to replace CFCs. The Executive Committee resolved to draft letters to the manufacturers of recapturing and recycling equipment to monitor developments in the industry, and to continue monitoring the environmental impact of CFCs.

At the Advisory Board's November meeting, Jim Jenal from the City of Irvine addressed the Board on a city ordinance banning the use of CFCs in Irvine. The ordinance was presented as an example of the type of laws likely to be enacted in the wake of the Montreal Protocol and increasing local, state, and federal awareness of the destructive impact of CFCs on the environment. The ordinance requires the recapture and recycling of CFCs, an issue affecting BEAR registrants. Board member Marcus Fearnough voiced an industry concern that small business service dealers using minimal amounts of CFCs will not realistically be able to distribute the costs of the machines required for these functions by the Irvine ordinance. Mr.

Jenal noted that Whirlpool has developed a device to capture CFCs for recycling at another site. This development indicates that the industry can rise to the requirements and that options exist for small businesses.

*Technician Registration/ Certification.* At the October meeting of BEAR's Executive Committee, Advisory Board member Mr. Fearnough requested DCA legal counsel Don Chang to draft a list of recommendations BEAR may make within the scope of its jurisdiction regarding the development of a certification program for electronic and appliance technicians. The Advisory Board has been petitioned several times by industry members and organizations to establish a state certification system for technicians to ensure a higher standard of performance and quality repair for the consumer. At the Board's August meeting, Don Chang stated that BEAR could not adopt or enforce a registration program created by the industry or private parties. Such a program must be established by the state legislature. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 56 for background information.)

At the Advisory Board's November meeting, Bureau Chief Jack Hayes summarized Mr. Chang's report. BEAR may not endorse any private certification program for fear of the appearance of undue favoritism. Further, endorsement of a specific program would expose BEAR to liability to those relying on that endorsement. While the Board may voice generic support for all such programs, it may not endorse or enforce any particular program, nor may it mandate technician certification through such a program absent enabling legislation. Should the industry wish to establish such a program under BEAR's jurisdiction, it must pursue legislation on its own initiative. The Board requested a written copy of Mr. Chang's opinion, and decided to vote on the adoption of the opinion as a formal Board policy at its February meeting.

*Piercing Valve Regulations.* At its October meeting, the Executive Committee once again reviewed draft regulations addressing the use of temporary piercing valves in the repair of refrigerators. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 56; Vol. 9, No. 3 (Summer 1989) p. 50; and Vol. 9, No. 2 (Spring 1989) p. 55 for background information.) The draft regulations would define a clamp-on piercing valve, limit its use to temporary repairs, and require the

consumer's permission if the valve is to remain on the appliance. The Board expects to publish these proposed regulations for comment early in 1990.

*Registration of Video Rental Stores Accepting VCRs for Repair.* At the October Executive Committee meeting, George Busman noted a concern about registration requirements for video movie rental stores advertising VCR servicing. He stated that many registered service dealers advertise at video rental stores, where the machines can be dropped off for servicing. The video stores are not registered locations; the VCR is then brought to the dealer's registered shop for repair. The Committee requested the legal opinion of Don Chang on this issue. Mr. Chang stated that under section 2713 of the CCR, the satellite collection stores could be required to register as a place of business. The additional registration would be required of the service dealer, not of the rental store owner. By advertising in a video rental store, the service dealer would be "engaging in [the] business" of VCR repair under the meaning of the section, therefore establishing the store as a place of the service dealer's business. Finally, Mr. Chang stated statutory clarification may be an appropriate goal, as the existing laws do not clearly address this problem.

The Committee discussed concerns about potential registration enforcement problems caused by these unregistered video stores. Board member Fay Wood noted that BEAR has received few, if any, complaints from consumers against the video stores. Mr. Fearnough stated that, from the industry standpoint, complaints will not surface because the manufacturers will simply replace defective machines. However, Mr. Chang stated that consumer complaints are not necessary to establish the need for statutory change if the business practice to be addressed did not exist when current law was drafted. Ms. Wood ended the discussion by requesting a compilation of information on the problem from BEAR staff for further Committee review.

At the Advisory Board's November meeting, Mr. Busman requested a legal opinion from Mr. Chang as to how the satellite stores should be registered. The Board then tabled the issue, pending review of Mr. Chang's upcoming memorandum.

#### LEGISLATION:

*AB 2532 (Vasconcellos)* would



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require the use of refrigerant recycling equipment approved by BAR in the servicing of vehicle air-conditioners having chlorofluorocarbon refrigerants. This bill is pending in the Assembly Committee on Environmental Safety and Toxic Materials.

## RECENT MEETINGS:

At BEAR's November meeting, Mr. Busman stated that Bobbye Copeland of Pacific Bell had notified him that PacBell has chosen to place fillers throughout the PacBell yellow pages referring readers to the "Smart Shopper" pages, which list state agencies regulating professions advertising in the book. BEAR will be listed among these agencies, but will not be specifically mentioned elsewhere in the directory. Mr. Busman also mentioned that GTE's yellow pages has agreed to include a short paragraph underneath each relevant heading mentioning BEAR's existence and jurisdiction. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 57 for background information.)

At the November meeting, industry member Don Irwin stated a concern about the variety of telephone book headings that have been created by advertisers for servicing and repair. The list includes "Authorized Service," "Authorized Factory Service," and "Factory Authorized Service," among others. Mr. Irwin stated that there is no distinction among these headings; rather, they have been invented by advertisers to ensure that their name appears first under that particular heading. Mr. Irwin further alleged that the variety of headings only serves to confuse the consumer, and asked BEAR to establish specific headings to be used in the yellow pages. Ms. Wood stated that if the manufacturers and the industry can establish that a legitimate consumer problem exists, BEAR will be pleased to address the problem at that time.

The Board also mentioned that another potential jurisdictional conflict with BAR exists. The installation of cellular telephones in automobiles appears to fall into the same jurisdictional pocket as does the auto burglar alarm. (See *supra* MAJOR PROJECTS.) The Board stated that the issue will be postponed as developing technology seems to be making the units so small that installation may no longer be required in the near future.

At the close of the November meeting, the Board elected new officers for

1990. Public member Fay Wood will serve as President of the Advisory Board; and public member Myrna Powell was elected as Vice President. Myrna Powell will replace Fay Wood as the Chair of the Executive Committee; Tom Tsutoaka will represent the appliance industry and Armen Karagosian will represent the electronics industry on the Committee.

## FUTURE MEETINGS:

May 25 in Lake Tahoe.  
August 10 in Burlingame.  
November 10 in Los Angeles.

## 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.

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 Chapter 12, Title 16 of the California Code of Regulations (CCR).

## MAJOR PROJECTS:

*Preneed Trust Regulatory Changes.* At its September 28 meeting, the Board adopted final language for proposed amendments to sections 1265 and 1275, Chapter 12, Title 16 of the CCR, relating to the use of income from a preneed trust. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 57; Vol. 9, No. 2 (Spring 1989)

p. 56; and Vol. 8, No. 4 (Fall 1988) p. 55 for background information on these changes.) The proposed change to section 1265 would establish an annual fee for administering a trust of not more than 4% of the year-end trust balance, and eliminate an existing restriction on the use of income for actual trust expenses. Amended section 1275 would expand and clarify existing designation and disclosure requirements for guaranteed and nonguaranteed preneed trust agreements or contracts. The Board submitted its rulemaking file on the regulatory changes to the Office of Administrative Law (OAL) on December 15. At this writing, OAL has not yet completed its review.

*"Constructive Delivery" of Merchandise Under a Preneed Trust.* At its November 30 meeting, the Board held a public hearing on the proposed addition of section 1262 to Chapter 12, Title 16 of the CCR, to prohibit the practice of "constructive delivery" of merchandise purchased under a preneed trust arrangement. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 57 for background information.) The purpose of the proposed regulation is to prevent a licensee from circumventing the trusting requirements of a preneed funeral arrangement. Existing law (Business and Professions Code section 7735 *et seq.*) provides that all funds delivered to a funeral director to pay for funeral services and merchandise shall be held in trust for the purpose for which they were paid; that the trust shall be fully revocable (except in certain limited circumstances); and that the trustor shall be entitled to the return of the corpus of the trust and any accrued income upon cancellation of the trust. However, section 7741 provides that none of these provisions apply to, among other things, "merchandise that is delivered as soon as paid for." The statute provides no definition of this term.

Proposed regulatory section 1262 would define "delivery" to mean actual personal delivery of the merchandise to the purchaser; provide that any payments received for merchandise where actual personal delivery will be delayed shall be held in trust until the merchandise is actually in the possession of the purchaser; and specify that delivery of a warehouse receipt does not constitute "delivery of merchandise" under section 7741 of the Business and Professions Code.

"Constructive delivery" (that is,