



# REGULATORY AGENCY ACTION

tain suit for breach of the implied covenant of good faith and fair dealing because it found this cause of action be implicitly based on the existence of an enforceable contract, the court did permit the contractor to recover on both fraud and negligent misrepresentation causes of action. Since fraud and negligent misrepresentation, as tort claims, are not premised upon an enforceable agreement, the court found both causes of action viable by an unlicensed contractor in spite of section 7031. The holding in this case will likely be limited to those situations where an owner actively seeks out an unlicensed contractor, with knowledge of the lack of a valid license, contracts with that contractor, and then attempts to use section 7031 to avoid payment.

## RECENT MEETINGS:

At its January 18 meeting in Long Beach, CSLB adopted the recommendations of a special ad hoc committee on the proper licensee classifications for installation and removal of underground storage tanks (UST). Under the Board's new policy, plumbing contractors (class C-36) may install any UST that provides a service to a building; general engineering contractors (class A) may install UST for any purpose at any location; and limited-specialty service station equipment contractors (class C-61/D-40) may install fuel UST at service stations.

Also at its January 18 meeting, CSLB adopted a policy that future licensee examinations shall be developed such that passing scores are between 60% and 75% of the total examination questions. If complexities inherent in the license classification dictate the setting of a passing point lower than 60%, staff will be required to prepare a statement to the Board explaining the need for a lower passing point.

At its April 19-20 meeting, CSLB approved 13 conceptual 1991-92 budget change proposals (BCPs) in the amount of \$3,314,000. Included within these BCPs are proposals to expand the Unlicensed Activity Unit statewide, hire staff counsel independent of DCA counsel, and implement an additional Computer Assisted Testing (CAT) site. The staff counsel position would act as a liaison with the Office of the Attorney General and advise the Registrar on complex legal issues. Historically, the Board has relied upon DCA staff counsel to advise it; however, the Board is of the opinion that the large number of complicated legal issues presented before the Board justifies the addition of a specialist staff counsel position. The

CAT site is required because CSLB projects 65,000 license examinations to be given in fiscal year 1991-92, but the Board is only budgeted to administer 50,000 exams.

## FUTURE MEETINGS:

To be announced.

## BOARD OF COSMETOLOGY

*Executive Officer: Denise Ostton  
(916) 445-7061*

In 1927, the California legislature enacted the Cosmetology Act, establishing the Board of Cosmetology (BOC). The Board was empowered to require reasonably necessary precautions designed to protect public health and safety in establishments related to any branch of cosmetology. BOC's enabling legislation is found in Business and Professions Code section 7300 *et seq.*; the Board's regulations are codified in Chapter 9, Title 16 of the California Code of Regulations (CCR).

Pursuant to this legislative mandate, the Board regulates and issues separate licenses to salons, schools, electrologists, manicurists, cosmetologists, and cosmeticians. It sets training requirements, examines applicants, issues certificates of registration and licenses, hires investigators from the Department of Consumer Affairs to investigate complaints, and disciplines violators with licensing sanctions.

The Board is comprised of seven members—four public members and three from the industry. It is required to hold meetings at least four times per year.

## MAJOR PROJECTS:

*Merger with Board of Barber Examiners.* In the past several months, BOC members and staff have devoted considerable time and attention to AB 3008 (Eastin), the bill which will at long last merge BOC with the Board of Barber Examiners (BBE). (See *supra* agency report on BBE and CRLR Vol. 10, No. 1 (Winter 1990) p. 58, 64, and Vol. 7, No. 1 (Winter 1987) p. 1 for extensive background information on the merger issue.)

On January 29, BOC held a special meeting to discuss the concept with Mike Abbott, a consultant from Assemblymember Eastin's office. On March 4, BOC and BBE held a joint meeting to discuss the language of the bill. While the two boards were able to reach agreement on some issues, they disagreed on the timetable for the merg-

er, the name of the new board, and the concept of "administrative merger" versus "merged licenses."

At an April 18 hearing on AB 3008 before the Assembly Committee on Governmental Efficiency and Consumer Protection, BBE took an oppose position, based on the reaction of its licensees to the merger concept. BBE also urged that the merger be administrative in nature, with retention of separate licenses for the different trades. BOC testified in support of the bill. As a result of the hearing, the bill was amended to provide separate license categories for barbers, cosmetologists, hairstylists, estheticians, manicurists, and electrologists. The barber pole is protected for use by barbers only. While the new board retains the authority to examine applicants for individual licensure, its licensing authority over schools and instructors was deleted, except that the board would retain the authority to develop the course curricula which must be taught in schools and to develop health and safety regulations for schools. An approved school would be one which is licensed by the Council for Private Postsecondary and Vocational Education created by SB 190 (Morgan) (see *infra* for further discussion of SB 190), and which provides a course of instruction approved by the new board.

BOC supports all of these changes. The bill has subsequently been amended several times, and BOC recently submitted a list of over 70 technical changes which are currently being incorporated.

*Clean-Up of SB 190 and AB 1402.* In recent months, there has been much confusion as to whether cosmetology schools are subject to the provisions of the Private Postsecondary and Vocational Education Reform Act (SB 190 (Morgan), Chapter 1307, Statutes of 1989) and the Maxine Waters School Reform and Student Protection Act (AB 1402 (M. Waters), Chapter 1239, Statutes of 1989). Collectively, these bills overhauled the Education Code in regard to the state's oversight of private postsecondary education. SB 190, in creating the Council for Private Postsecondary and Vocational Education (CPPVE), restructured the state licensure procedure and enhanced minimum standards for degree-granting institutions. (See CRLR Vol. 9, No. 4 (Fall 1989) pp. 53-54 for background information on SB 190.) AB 1402 provides extensive new consumer protection standards for students enrolled in private vocational schools, including required disclosure of student rights, financial stability and reporting requirements, mandatory admissions tests, 100% pro



rata refunds, and standards for school performance and accountability based on student course completion and job placement rates.

SB 190, which is not effective until January 1, 1991, applies to cosmetology schools, but not until 1994; it has always been BOC's understanding that it (not CPPVE) will have jurisdiction over and continue to license cosmetology schools during the three-year transition period. According to its author's office, AB 1402 was not intended to apply to cosmetology schools. However, it now appears that its provisions may in fact apply to cosmetology schools due to the double-joining of language in AB 1402 to language in SB 190, which is applicable to cosmetology schools. And due to the impact of AB 1402, the CPPVE created in SB 190 may have dual jurisdiction over cosmetology schools during the three-year transition period.

In January, the Postsecondary Education Commission expressed its opinion that, while BOC will continue to license cosmetology schools during the three-year transition period, BOC must enforce the new provisions of the Education Code pursuant to both SB 190 and AB 1402. However, nowhere in SB 190 or AB 1402 was BOC given the authority to enforce the Education Code.

Clean-up legislation is obviously required, and has taken the form of SB 194 and SB 1976 (to clean up SB 190) and AB 1401 (to clean up AB 1402). (See *infra* LEGISLATION.) Although BOC initially sought a one-year exemption from the provisions of AB 1402 (especially in light of the fact that the author's office admits the bill was never intended to apply to cosmetology schools), both authors' offices have stated their bottom line: they will not accept amendments exempting cosmetology schools from the new provisions of the Education Code.

Thus, at its January and March meetings, BOC discussed three options regarding proposed amendments to SB 194 and AB 1401 to ensure its jurisdiction over cosmetology schools during the three-year transition period. The Board voted to approve draft amendments expanding its authority and jurisdiction, preserving its jurisdiction over the licensing of cosmetology schools, and enabling it to enforce the provisions of the Education Code (which would be basically amended into its statutes in the Business and Professions Code).

However, BOC's position was subsequently rejected by both legislative authors, who decided to create a dual licensure scheme: during the three-year

transition period, schools of cosmetology will have to be licensed by both BOC and CPPVE, and each entity will enforce its own statutes. Additionally, schools of cosmetology will not be exempted from AB 1402 through AB 1401 (see *infra* LEGISLATION).

*Regulatory Changes.* On May 31, the Office of Administrative Law (OAL) approved the Board's amendment of section 916.14, Chapter 9, Title 16 of the CCR, which sets forth the required course curriculum for the 600-hour instructor training course offered by schools of cosmetology. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 64 for background information.)

On June 13, OAL approved the Board's amendment of section 919.4 (daily school recording of attendance) and its adoption of new section 986.1 (new information on sign required to be posted in cosmetology schools and establishments). (See CRLR Vol. 9, No. 4 (Fall 1989) p. 53 for background information on these changes.)

At BOC's May 6 meeting, it held a regulatory hearing on three other proposed changes. Following the hearing, the Board adopted them; the rulemaking file on the regulatory changes awaits review and approval by OAL. The Board amended section 990 to increase the Board's fees relating to the processing of applications, examinations, and issuance of initial licenses to their statutory limits. Next, BOC amended section 919.7, which currently specifies the requirements for schools to prepare records when a student completes a course of training, and the distribution of copies of those records. The amendments would require the record of completion to be prepared in triplicate, with one copy sent to the Board; clarify that the copy kept by the school need not be replaced by the Board-validated copy; and clarify when (and which) records, except the record of completion, may be destroyed by the school. Finally, the Board amended section 919.8, which imposes similar requirements for school records of withdrawal of a student.

On July 8, the Board was scheduled to hold another regulatory hearing on a proposed amendment to section 979. Existing cleansing/disinfection regulations currently distinguish between non-electrical instruments and equipment with sharp points or edges, and non-electrical instruments and equipment without sharp points or edges. This change would exempt haircutting shears from the disinfection requirements for non-electrical instruments and equipment with sharp points or edges, and

would require them to be disinfected in accordance with the requirements for non-electrical instruments and equipment without sharp points and edges.

#### LEGISLATION:

*AB 3008 (Eastin)*, as amended June 7, would repeal the Business and Professions Code sections which establish both BBE and BOC, and create the Board of Barbering and Cosmetology (BBC). The bill would generally revise, recast, and consolidate the two acts presently governing the practice of barbering and cosmetology; and provide for the licensing and regulation of persons engaged in practice as a barber, cosmetologist, electrologist, manicurist, or esthetician. BBC would consist of seven members: four public members and three members representing the professions. The bill, which would become operative on July 1, 1992, would require the new board and the Department of Consumer Affairs to assess the results of merging the two boards and to report to the legislature on or before June 30, 1995. This bill is currently pending in the Assembly Ways and Means Committee.

*AB 2925 (Mojonnier)*, as introduced on February 14, would require BOC to develop a health and safety course on hazardous substances, to be taught in licensed cosmetology schools. (See CRLR Vol. 10, No. 1 (Winter 199) pp. 64-65 for background information on this issue.) The bill would further provide that failure of an instructor to provide proof of compliance with continuing education requirements within 45 days of request by BOC shall result in automatic conversion of the license to inactive status until proof of compliance is provided. This bill is pending in the Senate Business and Professions Committee.

*SB 194 (Morgan)*, as amended May 23, makes numerous substantive and nonsubstantive changes to SB 190, the Private Postsecondary and Vocational Education Reform Act of 1989 (see *supra* MAJOR PROJECTS). With regard to BOC and schools of cosmetology, SB 194 would require private vocational educational institutions regulated by BOC to obtain and retain the approval of BOC, in addition to meeting the requirements of the CPPVE. At this writing, SB 194 is pending in the Assembly Ways and Means Committee.

*SB 1976 (Morgan)*, as introduced February 13, would repeal section 7391.2 of the Business and Professions Code which, effective January 1, 1991, would have the effect of requiring BOC



# REGULATORY AGENCY ACTION

to monitor and enforce the educational standards of the Private Postsecondary and Vocational Education Reform Act in the Education Code (SB 190; *see supra* MAJOR PROJECTS). It would also require schools of cosmetology to contribute to the CPPVE Student Tuition Recovery Fund, and remove the requirement that schools post a \$5,000 bond with BOC. At this writing, this bill is pending in the Assembly Ways and Means Committee.

*AB 1401 (M. Waters)*, as amended June 12, would clarify existing exemptions from AB 1402 (*see supra* MAJOR PROJECTS) and create several new, limited exemptions; liberalize vocational school recruitment restrictions imposed by AB 1402; standardize the length of courses offered in vocational schools; and specify the contents of the student written agreement with the school. Contrary to BOC's wishes, AB 1401 would not exempt cosmetology students from the provisions of AB 1402 for a one-year period. At this writing, AB 1401 is pending in the Senate Appropriations Committee.

## RECENT MEETINGS:

At its January meeting, upon recommendation of its Consumer Services Committee, BOC voted to adopt proposed changes to the Board's inspection program. Business and Professions Code section 7314.5 gives the Board broad authority to inspect schools and establishments "to assure compliance with the law and regulations." BOC currently has four inspector positions and one half-time clerical position to carry out the inspection program. As of October 1989, BOC had 24,588 licensed establishments. If each of the existing businesses were inspected only once per year, each inspector would have an inspection "caseload" of 6,220 inspections per year. This number does not include additional directed inspections.

The proposed changes to the inspection program will, among other things, include continuation of a modified designated target area, rotation of inspector school assignments, initiation of a "blitz" target area program (assign a target area with two to four inspectors in the same area at the same time), continuation of training for inspectors, expansion of consumer information and education efforts, and continued efforts to acquire more inspectors.

## FUTURE MEETINGS:

October 14 in Monterey (tentative).

December 9 in southern California (tentative).

## BOARD OF DENTAL EXAMINERS

*Executive Officer: Georgetta Coleman*  
(916) 920-7197

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 regulations are located in Chapter 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 1990 members are Jean Savage, DDS, president; James Dawson, DDS, vice-president; Gloria Valde, DMD, 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; Hazel Torres, RDA; and Albert Wasserman, DDS.

## MAJOR PROJECTS:

*Conscious Sedation Permit Procedure.* The enactment of AB 1417 (Speier) (Chapter 526, Statutes of 1989) requires BDE to establish a permit procedure for the use of conscious sedation by dentists by January 1, 1992. (See CRLR Vol. 10, No. 1 (Winter 1990) pp. 65-66 and Vol. 9, No. 4 (Fall 1989) p. 55 for background information.) Conscious sedation (CS) differs from general anes-

thesia (GA) in that, under CS, patients are able to maintain an airway independently and continuously, and respond appropriately to physical stimulation and verbal command. Under GA, patients are in a controlled state of depressed consciousness or unconsciousness, accompanied by partial or complete loss of protective reflexes.

Under the new statute (sections 1647.2-1647.9 of the Business and Professions Code), in order to become eligible for a permit, a dentist must submit evidence showing that he/she has successfully completed a sixty-hour course in CS, that his/her office has the appropriate equipment and drugs required by the Board, and that he/she has satisfactorily completed at least twenty cases of administration of CS for a variety of dental procedures. The applicant must also show that he/she is in complete compliance with the requirements of the 1985 Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry of the American Dental Association. Once a dentist is permitted, biennial permit renewal requires completion of a fifteen-hour course of study related to CS.

Under new section 1682 of the Business and Professions Code, it is unprofessional conduct for a dentist to: (1) have more than one patient undergoing CS at any given time unless each patient is continuously monitored on a one-to-one basis by either the dentist or another licensed health professional authorized to administer CS or GA; (2) fail to closely monitor patients recovering from CS or GA; (3) fail to continuously monitor these patients during the dental operation; (4) have dental office personnel directly involved with the care of these patients who are not certified in basic cardiac life support and recertified biennially; (5) fail to obtain the written consent of the patient prior to administering CS; and (6) fail to report, in writing, to BDE within seven days after the death or removal to a hospital or emergency center for medical treatment for more than 24 hours, any patient to whom CS or GA was administered.

At its January 19 meeting, the Board approved staff's proposed timetable for the drafting of language and adoption of regulations to implement the permit requirement, which included two informational hearings—one in northern and one in southern California during February. The southern California hearing was later cancelled, because it was felt that the northern California hearing provided ample information, and several southern California representatives