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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

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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 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



attended the northern California hearing.

At its May 11 meeting, the Board reviewed and approved the draft language developed by staff as a result of the informational hearing. Under the draft rules, licentiates who hold CS permits must complete fifteen units of coursework related to CS and to medical emergencies every two years, in order to renew the permit. The fee for a permit, renewal permit, and for a CS onsite inspection is \$250. The proposed rules also define the terms "sedated" and "recovering from sedation", as used in the statute; and flesh out the composition of onsite inspection teams and the office facilities, equipment, and drugs required in the dental office in which CS is being administered. The proposed rules also set forth the manner in which the permit applicant will be observed and tested in his/her administration of CS prior to permit issuance.

The Board tentatively plans to officially publish these proposed regulatory changes this summer, and hold a public hearing on the changes at its September 14-15 meeting in San Francisco.

Board Policy Statement Regarding Dental Auxiliaries Challenged. In May 1989, Department of Consumer Affairs Director Michael Kelley rejected the Board's addition of new regulatory section 1066, which would have made it unprofessional conduct for any dentist to permit or require an auxiliary to perform any procedure on a patient not previously seen by the dentist, with four limited exceptions. In his letter of disapproval, DCA Director Kelley stated that the changes implicit in the regulations are unnecessary and would disproportionately impact low-income patients. (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 extensive background information.)

After an unsuccessful attempt to override Kelley's veto at the July 1989 meeting, BDE decided to issue a policy statement on its enforcement of existing law in this area. In September 1989, then-Board President Albert Wasserman, DDS, issued a statement condemning as illegal any office practice under which auxiliaries are allowed to perform dental treatment procedures on a new patient without specific instructions and prior to the patient having been examined by the dentist.

In November 1989, the California Dental Hygienists Association (CDHA) filed a request for determination by the Office of Administrative Law (OAL), contending that the so-called "Wasserman letter" is an "underground regulation" which must be adopted pur-

suant to the Administrative Procedure Act before it may be enforced. In its March 1990 newsletter, CDHA characterized the Wasserman letter as "interpreting existing law to be exactly what was vetoed by Mr. Kelley."

On May 11, OAL opened its public comment period on the request for determination, which closed on June 11. BDE has until June 25 to submit a response; and OAL should publish its decision by July 25.

Regulatory Changes. On April 16, OAL approved BDE's amendments to regulatory section 1014.1(d), (e), and (g), which set standards for radiographic operatories. OAL also approved the Board's amendment to section 1076(b), which allows RDA applicants to apply for the licensing examination prior to graduation if the school certifies that the student is expected to graduate. (See CRLR Vol. 9, No. 3 (Summer 1989) pp. 48-49 for background information on these changes.)

At its November 1989 meeting, the Board adopted proposed amendments to section 1086(d) which remove several restrictions on the authority of RDAs to perform coronal polishing. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 66 and Vol. 9, No. 4 (Fall 1989) p. 54 for background information.) At this writing, these changes still await approval by OAL.

Public Outreach Subcommittee. In March 1988, the Board stated its "number one objective" is for better and more frequent communication with consumers and licensees. The Board publishes a quarterly news bulletin for its licensees which focuses on disciplinary action, but it is not available to consumers. But the Board admits it has "fallen short" when it comes to communicating with the public, whose protection is the reason for the Board's existence. Thus, the Board recently restructured the Publication Subcommittee as the Public Outreach Subcommittee, and charged it with enhancing communications with the consumer.

At its January meeting, the Board reviewed a proposal to publish disciplinary actions in local newspapers, as a low-cost way of reaching the public. The Medical Board of California currently utilizes this practice. While several public members supported this idea as an effective way to communicate important information to the public, industry member Dr. Saroyan stated that he is opposed to publishing disciplinary actions in local newspapers; likewise, Dr. Otero stated that any communication with the consumer should be of a positive nature. While no vote was taken,

Board President Dr. Savage announced that the Board's consensus was that notices of disciplinary actions including the dentist's name should not be published in newspapers. The Board will contact other consumer boards to research their consumer education programs.

At the Board's May 11 meeting, the Public Outreach Subcommittee presented a list of recommendations regarding the Board's approach to consumer education and protection: (1) the public outreach method should be at a low- or no-cost level; (2) BDE should not publish "problems" within the profession, because that would lead to more requests for information and put the Board on the defensive; and (3) the thrust of the public outreach program should be that the Board is a state agency whose aim is protection of the consumers of California.

Regulations to Create Registered Dental Hygienists with Extended Functions (RDHEF) Category. Currently, the extended functions (EF) designation is only available to RDAs, although some RDHs are taking the RDAEF test. At its March meeting, the Board approved a recommendation by the Committee on Dental Auxiliaries to schedule regulatory hearings on rules establishing RDHEF functions. COMDA's recommendations include the following: (1) the three periodontal procedures listed in section 1089(c)(4), (5), and (6), concerning temporary stabilization, debridement of the periodontal surgical site, and placement of intra-oral sutures, should be deleted because it considers them unworkable in today's environment; and (2) the RDA Extended Functions listed in section 1087(c)(4), (5), and (6), concerning the preparation of enamel for etching by bonding, formulating indirect patterns for endodontic post and care castings, and fitting trial endodontic filling points, should be included in the RDHEF licensure category. COMDA says that the recommended changes satisfy the career ladder concept by providing a means of advancement for RDHs.

Continuing Education. Continuing education (CE) providers must renew biennially with the Board and submit a detailed report of courses offered in the past two years. At its March meeting, the Board accepted the following Continuing Education Subcommittee recommendations: (1) in the event of a dispute over acceptability of a course and/or renewal, the provider has the right to appeal; the subcommittee will hear the appeals and make recommendations to the Board; (2) if a provider fails



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to renew or if the renewal is denied, the provider's name will be printed in the Board's bulletin; the bulletin notice will carry notification to check with BDE's office for current provider status; (3) to maintain an active license status, all licensees must comply with the CE requirements, including disabled licensees. An inactive license status is an automatic waiver of the CE requirement; however, prior to activating a license, the CE requirement must be satisfied.

LEGISLATION:

SB 2243 (Davis), as amended May 10, would revise and increase fees for licensing and regulation of dentists. The Board would have to report to the fiscal committees of each house of the legislature whenever it increases any fee, with rational and justification for the increase. This bill is in the Assembly Health Committee.

AB 2798 (Moore), as amended April 30, would require applicants for dental licenses who fail to pass the skills examination after three attempts to complete a minimum of 50 hours of education at an approved dental school in each subject they failed, before they may take the examination again. The bill would also delete the requirement that a foreign-trained dental applicant receive the degree of doctor of dental medicine or doctor of dental surgery from a school listed by the World Health Organization or approved by the Board; and would affect provisions relating to a foreign dental graduate's failure to pass the examination. This bill is pending in the Senate Business and Professions Committee.

AB 2799 (Moore), as amended April 2, would delete the provision making it a misdemeanor for persons to append the letters "D.D.S.," "D.D.Sc.," or "D.M.D." to their names without having the right to assume the title conferred upon them by diploma from a recognized dental college or school legally empowered to confer the title. Under the bill, any person licensed to practice dentistry in California may append the letters "D.D.S." to their name. This bill is pending in the Senate Business and Professions Committee.

AB 2806 (Hauser), as amended May 29, would authorize the increase of dental auxiliary fees, not to exceed specified amounts, by resolution of BDE. Those fees fixed by the Board would not be subject to approval of the Office of Administrative Law. This bill is pending on the Senate floor at this writing.

AB 2934 (Moore), as amended June 12, would require a dentist or dental

health professional to sign his/her name in the patient record, or to place his/her identification number and initials next to the service performed, and to date those treatment entries. The bill would require any person licensed under the Dental Practice Act (DPA) who is the owner, operator, or manager of a dental office to ensure compliance with those requirements. Repeated violations of the above provision would constitute unprofessional conduct. The bill would prohibit a person licensed under the DPA from requiring or utilizing a policy for the delivery of dental care that discourages necessary care or dictates clearly excessive, inadequate, or unnecessary treatment, as specified, the violation of which would constitute unprofessional conduct. The bill would also authorize dental patients to rescind contracts or plans with a dental office or plan for a period of three days, as specified. The bill is pending in the Senate Business and Professions Committee.

AB 3037 (Speier), introduced February 20, would require dental advertising or referral services which make over 50% of their referrals to one individual, association, partnership, corporation, or group of three or more dentists, to disclose that fact in all public communications. Violation of this bill would be a misdemeanor. The bill is pending in the Senate Business and Professions Committee.

AB 3187 (Statham), as amended May 23, would authorize BDE to establish a system to issue a citation with an administrative fine to licensees for violations of the Board's statutes or regulations and require BDE to establish a regular inspection program. This bill, which will become operative only if SB 2243 is enacted and becomes effective on or before January 1, 1991, is pending in the Senate Business and Professions Committee.

SB 1799 (Alquist), as introduced January 18, would require the State Director of Health Services to report to the legislature the number and percentage of dentists in each county who provide services to Medi-Cal beneficiaries. This bill is in the Assembly Health Committee.

AB 2124 (Felando), as amended March 14, would provide that dental professional society peer review bodies may be represented by an attorney even if the licentiate declines to be represented by an attorney, provided the licentiate has the option to be so represented. Hospitals that are exempted from specific notice and hearing requirements are required to afford a licentiate due process in proceedings relating to summary

suspension or restriction of privileges, as specified. This bill is pending on the Senate floor at this writing.

The following is a status update of bills previously described in CRLR Vol. 10, No. 1 (Winter 1990) at page 66:

AB 109 (Hayden), as last amended September 7, 1989, would enact provisions governing the handling, storage, treatment, disposal, and transportation of medical waste. The bill is in the Senate inactive file awaiting amendments.

AB 1061 (Felando) provides that a person who has been issued a degree of doctor of dental medicine or doctor of dental surgery by a foreign dental school shall be eligible for an examination for a license to practice dentistry. The requirement that the foreign dental school be listed by the World Health Organization or Board-approved was deleted by this bill, which was signed by the Governor on June 12 (Chapter 133, Statutes of 1990).

AB 1703 (Vasconcellos) as amended January 11, would no longer prohibit the advertising by dentists of "superior" and "painless" services as unprofessional conduct, so long as the advertising is not false and misleading. The bill is in the Senate Business and Professions Committee.

LITIGATION:

In Flanzer v. Board of Dental Examiners, No. G006277 (Fourth District Court of Appeal) (May 30, 1990), the court overruled the Board's imposition of community service as a condition of license reinstatement, where the revocation was based solely on incompetence.

In 1980, BDE revoked the license of Arnold H. Flanzer based on gross ignorance or efficiency under Business and Professions Code section 1670. Flanzer's first petition for reinstatement was denied; his second petition was granted subject to eleven separate conditions, including remedial training, continuing education, a requirement that he engage in solo practice or with no more than one other professional associate, and community service.

In considering Flanzer's challenge to the conditions imposed on his reinstatement, the court upheld all except the community service requirement. Under Business and Professions Code section 1671(e), BDE is authorized to impose a community service requirement only in cases other than those which present violations relating to quality of care. Because Flanzer's license was revoked strictly for incompetence, BDE was not authorized to require him to engage in community service.



California Dental Association v. Board of Dental Examiners, No. 511723 (Sacramento County Superior Court), is a declaratory relief action in which CDA seeks to prevent BDE from enforcing a cease and desist letter ordering CDA to stop a particular advertising campaign. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 66 for background information.) At this writing, the parties are engaged in discovery; a motion for summary judgment is expected during the fall.

FUTURE MEETINGS:

September 14-15 in San Francisco.
November 16-17 in Los Angeles.

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 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.

The Advisory Board's May 25 meeting marked the final meeting for public member and Board Vice-President Myma Powell, whose second term as a public member expired on June 1. The statutory limitation for Board service on a particular board is two terms. At the May meeting, Marcus Fearnough was elected to succeed Ms. Powell as Vice-President, and Board President Fay Wood appointed him Chair of the Executive Committee. Ms. Powell's replacement on the Board is awaiting appointment by the Governor's office. June 1 also marked the expiration of the first term of Advisory Board service of Carol Morrow and Stuart Oatman, both public member gubernatorial appointees. The expiration of their terms will leave Advisory Board membership at five, the minimum number required for a quorum, and leave the composition of the Board at two appliance industry members, one electronics industry member, and two public members. The Board will have a total of four vacancies in conjunction with the February resignation of electronic industry member Michael Nakamura. Bureau Chief Jack Hayes has notified the Governor's Appointments Secretary of the potential quorum problem to expedite appointments to the Board.

MAJOR PROJECTS:

Draft Regulatory Changes Reviewed. At the January 23 meeting of the Advisory Board's Executive Committee, BEAR Program Manager George Busman introduced draft language for modifications and additions to twelve sections of Chapter 27, Title 16 of the CCR. The draft language was subsequently reviewed by the full Advisory Board at its February 16 meeting in Santa Barbara. Following minor grammatical clarifications, all twelve section changes were approved by the Board for suggested adoption by BEAR following notice and a public hearing.

Section 2702(r) would be added to define clamp-on piercing valves used to enter closed refrigeration systems, and section 2741 would be amended to regulate clamp-on piercing valve use. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 67; Vol. 9, No. 4 (Fall 1989) p. 56; and Vol. 9, No. 3 (Summer 1989) p. 50 for background information.)

Section 2710(c) would be added to prohibit any person serving as an officer of a corporation at the time it is served with an accusation, placed on suspension, or has its registration revoked by BEAR, from obtaining registration prior to the completion of disciplinary proceedings and/or discharge of penalties

imposed by BEAR. The amendment seeks to prevent officers of a corporation from avoiding the discipline imposed upon their corporation by BEAR. According to Mr. Busman, corporate officers are often not named in accusations and complaints against the corporation, allowing them to change employment location and avoid disciplinary action. The proposed amendment would establish BEAR disciplinary jurisdiction over these officers to ensure proper disciplinary action.

Section 2717 would be modified to prevent issuance of a BEAR registration to a person attempting to acquire the firm name and/or telephone number of a registered service dealer who has been served with an accusation. Each such application would require individual investigation and subsequent written approval by BEAR. The section seeks to prevent the transference of the store to a third-party representative of the accused service dealer. This practice is often used by accused and disciplined service dealers to maintain their business interest in the store despite their unregistered or potentially unregistered status.

Section 2721(e) would be modified to establish uniformity in employee identification requirements on claim receipts and invoices. The modification would allow employees to identify themselves either by signature or employee identification number.

Section 2724 would be amended to increase the period of time service dealers must maintain service records from one to two years. The amendment seeks uniformity between BEAR regulations and Business and Professions Code section 9842.

Section 2751(i) would be modified to incorporate provisions of Business and Professions Code section 9844, which requires service dealers to disclose diagnosis fees in writing prior to diagnosis work, and to provide written estimates justifying the diagnosis. The proposed amendment would prohibit service dealers advertising service calls at a set price from charging additionally for diagnosis fees and work without prior disclosure of the additional charges to the consumer in writing.

Section 2765(c) would be added to exempt from return to consumers parts containing toxic materials identified as a health hazard by a government agency. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 56 for background information.) The exemption would also apply when the manufacturer of the replacement part has provided specific safety disposal procedures for the part.

Section 2730, 2754, and 2765(b)