



*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

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.

The Advisory Board's May 25 meeting marked the final meeting for public member and Board Vice-President Myrna 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)



would each be modified to correct internal references to definitions within the chapter.

The Board also approved amendments to sections 2713 and 2736; the language of these proposals was further modified at the Board's May 25 meeting. As modified, section 2713 would interpret the term "place of business" to include "any branch office or location, whether or not repairs are conducted on the premises, which through solicitation or advertisements...would result in that location accepting equipment or requests for repair or installation." This language was drafted by Mr. Busman to address continuing Board concern regarding the use of video rental stores and other non-repair stores as drop-off points for separately located repair shops. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 67 for background information.)

Section 2736, which currently requires service dealers to disclose in writing on the service invoice all parts and labor not covered by a guarantee, would be amended to impose a mandatory thirty-day labor and ninety-day parts warranty on all service repairs in which the service dealer fails to disclose on the service invoice all parts and labor not covered by a guarantee. According to Mr. Busman, the ninety-day parts guarantee is consistent with standard industry parts guarantees. Department of Consumer Affairs (DCA) legal counsel Don Chang requested information to verify that the guarantees provided by the proposed amendments comply with industry standards.

Finally, the Advisory Board approved a proposal to add section 2702(s), to define the term "range" to mean "a freestanding or built-in cooking product containing a baking oven and cooktop. Range also means a baking oven or cooktop and any integrated ventilating equipment, installed in a residence as a built-in appliance."

The draft language of these proposals was approved by the Board at its May 25 meeting. According to Mr. Busman, the proposed regulatory changes will be released for a 45-day public comment period and formal rulemaking proceedings in the fall.

#### LEGISLATION:

*AB 3242 (Lancaster)*, DCA's omnibus bill, would exempt a person registered as a service dealer under the Electronic and Appliance Repair Dealer Registration Law from the requirement of registration under the Automotive Repair Act. (See CRLR Vol. 10, No. 1 (Winter 1990) pp. 66-67 and Vol. 9, No.

4 (Fall 1989) p. 56 for background information on the BEAR/BAR dual licensure issue.) This bill is pending in the Senate Business and Professions Committee.

*SB 2086 (Rosenthal)*, as amended June 4, would require service contracts to contain, or have set forth in a related document, specified information relating to the total cost and terms of payment of the service contract, and the protection of the buyer from loss in the event of bankruptcy of the seller. This bill has passed the Senate and is pending in the Assembly Committee on Governmental Efficiency and Consumer Protection.

*AB 2226 (Epple)*. Existing law regulates consumer warranties, and requires service contracts sold in lieu of, or in addition to, express warranties to meet specified requirements. As amended June 12, this bill would revise the time period for payment of a refund pursuant to a service contract, and would add to the requirements applicable to such service contracts that the contract apply only to items, costs, or time periods not covered by express warranty. This bill has passed the Assembly and is pending in the Senate Committee on Insurance, Claims and Corporations.

*AB 2532 (Vasconcellos)*, as amended June 21, would require any owner or operator of a retail store, cold storage warehouse, or commercial or industrial building, when servicing or disposing of a refrigeration system containing chlorofluorocarbons (CFCs), and any person who installs, replaces, or services those refrigeration systems, to reuse or recycle the CFCs. The bill would prohibit the intentional venting or disposal of CFCs; but would allow a facility to have a leakage of 10% in a twelve-month period. This bill is pending in the Senate Appropriations Committee.

#### RECENT MEETINGS:

At the Advisory Board's February meeting, Assistant Bureau Chief Gordon Boranian provided an update on the proliferation of CFC regulations and ordinances. CFCs are the primary refrigerant compounds used in domestic and commercial refrigeration systems and air conditioners, and have been cited as a primary catalyst in the deterioration of the ozone layer. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 67 for background information.) Mr. Boranian noted that the San Diego City Air Pollution Control Board has drafted a policy report announcing goals for the control of all chemicals known to contribute to ozone layer deterioration. If adopted as board policy, the report would require all businesses which repair, service, or

dispose of devices containing CFCs to recapture and recycle the chemicals. The report also suggested the restriction of CFC sales to businesses complying with these requirements, thus banning public sale of the compounds. Appliance industry representative Marcus Fearnough noted a recent federal assessment levied on the sale of freon, at \$1.37 per pound. Mr. Fearnough noted the tax would result in as much as a 600% increase in the cost of freon to the consumer, possibly making its use financially unreasonable. The provisions of AB 1718 (Hayden) have also been incorporated into the Environmental Protection Act of 1990, a voter initiative backed by Assemblymember Hayden, Attorney General John Van de Kamp, and a coalition of environmental groups including the Sierra Club and Citizens for a Better Environment. The so-called "Big Green" initiative, which will appear on the November ballot, would impose similar requirements regarding the sale, recapture, and recycling of CFC refrigerants and other ozone-depleting compounds.

Also at the February meeting, Advisory Board President Fay Wood announced that the Board would no longer entertain industry comments on problems with the service contract industry without written documentation of the existence of a legitimate consumer problem. The issue of service contracts has persisted for some time at BEAR Advisory Board meetings. Service contracts allow consumers to purchase extended warranty coverage for appliance and home electronic equipment, and are often sold by companies (called third party administrators) in the exclusive business of service contracts. The service dealer industry has noted at several past meetings that third party administrators are not always reliable, and often sell coverage which is not insured. According to service industry members, certain companies enter the business for a quick profit, and go out of business when claims from service dealers for repairs made under the contract accumulate. Some service contractors disappear, and others file for bankruptcy to indemnify themselves from claims on the coverage. By requesting documented evidence from the industry, BEAR hopes to obtain information that will provide a basis for investigation within the constraints of its jurisdiction.

At the April 24 Executive Committee meeting, Bureau Chief Jack Hayes announced a meeting scheduled for May 4 with California State Electronic Association (CSEA) members George



Brownyard and Stan Auerbach, and DCA Chief Deputy Director Claudia Foutz, to assess DCA support of the statutory establishment of a state certification program and continuing education requirements for service technicians. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 56 for background information.) The potential legislative action may be pursued by CSEA upon approval by Association members at CSEA's annual meeting in May. Mr. Brownyard and Mr. Auerbach are members of the CSEA Certification/Licensing Committee which is, according to Mr. Brownyard, presently completing the "sunrise questionnaire" required by DCA prior to drafting any legislation to establish a state-run regulatory agency or certification system. The questionnaire requires an assessment of the need for the regulatory system proposed. According to Mr. Brownyard, DCA was supportive of the certification proposal, and will attempt to work with CSEA in developing the program. CSEA action should not be confused with the separate action of the Bureau's Appliance Task Force. According to Assistant Chief Boranian, the Appliance Task Force has reported it is also working to complete the sunrise questionnaire for establishment of a certified technician program. If implemented, the program would potentially extend BEAR jurisdiction to technicians certified under the program.

At the May 25 Advisory Board meeting, several invited guests made presentations on service contracts, which have raised issues of major concern to the Bureau since 1985. DCA Supervising Attorney Richard Elbrecht discussed recent changes in the Song-Beverly Warranty Act regarding service contracts, which have imposed disclosure standards for service contracts and given consumers a right of cancellation on service contracts for home appliances and electronic products. Although Elbrecht believes these statutory changes have alleviated many consumer complaints, he suggested the addition of a loss ratio disclosure requirement to inform the consumer of the amount of his/her premium which will be used to pay claims.

Department of Insurance staff attorney John Fogg stated that most home electronic/appliance service contract sales in California are essentially unregulated; any definition of such a service contract as "insurance" would eliminate the small business owner's ability to compete with large operators. He too suggested a loss ratio disclosure requirement.

CSEA representative Stan Auerbach stated that CSEA favors service contracts backed by some form of insurance with a company licensed to do business in California; further, these contracts should disclose in bold type any and all exclusions of coverage for the product covered. Finally, any service dealer or consumer damaged or harmed by a third party administrator should have recourse through the Insurance Commissioner or an appointed arbitrator for reconciliation to avoid court action.

Several other trade association representatives noted the problems of the service dealer, who is often placed between the consumer who has a complaint regarding service contract coverage and the third party administrator. Board President Fay Wood read a letter from Senator Herschel Rosenthal, who is currently carrying SB 2086 (*see supra* LEGISLATION). Senator Rosenthal expressed regret that he had to delete a loss ratio disclosure requirement from his bill this year, but stated that he will seek a stronger and more consumer-protective bill next year when a more pro-consumer governor has taken office.

#### FUTURE MEETINGS:

August 17 in Burlingame.  
November 9 in San Pedro.

#### BOARD OF FUNERAL DIRECTORS AND EMBALMERS

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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 reason-

ably 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.* On January 12, the Office of Administrative Law (OAL) approved the Board's 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. 10, No. 1 (Winter 1990) p. 68; Vol. 9, No. 4 (Fall 1989) p. 57; and Vol. 9, No. 2 (Spring 1989) p. 56 for background information.) As amended, section 1265 permits an annual fee for administering a trust of not more than 4% of the year-end trust balance, and eliminates a previous restriction on the use of income for actual trust expenses. The amendment to section 1275 requires all preneed trust agreements or contracts to disclose whether the arrangement is guaranteed or nonguaranteed. The amendments to section 1265 and 1275 became effective on February 11.

At its January 25 meeting, the Board held another public hearing on its proposal to add section 1262, 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. 10, No. 1 (Winter 1990) pp. 68-69 and CRLR Vol. 9, No. 4 (Fall 1989) p. 57 for extensive background information.) Industry members expressed concern that the proposed regulation would be applied retroactively to existing contracts and delivered merchandise. Based on the industry's concerns, the Board approved a modification to the proposed regulatory language, which provides that the regulation will not apply to the delivery of merchandise pursuant to written contracts entered into before the effective date of the regulation. The Board issued public notice of the modified language and requested written comments. At this writing, the rulemaking file is being prepared for submission to OAL.

Also at its January 25 meeting, the Board held a public hearing on a proposal to add new section 1265.1 and amend existing section 1267, Chapter 12, Title 16 of the CCR, relating to accounting and bookkeeping practices. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 69 for background information.) Proposed section 1265.1 would require monthly posting of income to preneed accounts, and amended section 1267 would clarify the requirements for maintaining accounting records. At the