



believes it can effectuate these changes without a change in its regulations.

Fields of Expertise. For several months, BRGG and the Board of Registration for Professional Engineers and Land Surveyors (PELS) have been attempting to clarify respective fields of expertise between civil engineers who specialize in geotechnical work, and certified engineering geologists. (See CRLR Vol. 9, No.4 (Fall 1989) p. 77 for background information.)

At its January meeting, BRGG reviewed and unanimously adopted a revised Fields of Expertise document, with one change to its preamble. The document has been prepared by a joint PELS/BRGG Civil Engineers/Engineering Geology Committee, whose purpose was to study the "gray" areas where civil engineering and engineering geology overlap and to list activities which are normally done by each and may be performed by both. This is intended to be an internal office document to assist both BRGG and PELS staff in reviewing jurisdictional questions and complaints filed with the boards.

The document does not mention geophysicists, which caused concern that the omission implies geophysicists are unable to perform any of the functions listed. Rather than add a new category for geophysicists to the document, the Board voted to amend the preamble to include the wording, "This document does not apply to the practice of geophysicists."

Some geologists and geophysicists expressed concern that the Fields of Expertise document would be used as a guideline to set standards for state, county, or city agencies, or would be adopted as an official policy statement by either board. The Board responded, however, that this is an internal document with no legal status, and is not intended to be used as a guideline for the above-mentioned purposes.

LEGISLATION:

AB 469 (Harvey) would increase the maximum fee for the filing of an application for registration as a geologist or geophysicist from \$60 to \$100, the renewal fee for a geologist or geophysicist from \$100 to \$200, and the specialty renewal fee from \$20 to \$50. (See CRLR Vol. 9, No. 1 (Winter 1988) p. 48 for background information.) As amended May 29, the bill would require the Board to report to the legislature by June 30, 1992, on fee increase matters, and submit a copy of that report to the Joint Legislative Budget Committee. This bill is pending in the Senate

Appropriations Committee.

AB 3242 (Lancaster), the Department of Consumer Affairs' omnibus bill, would provide that a person who engages in any business for which a license is required may not bring a legal action for compensation for performance of an act for which licensure is required without proving that he/she was licensed during the time of the performance of the act. This bill is pending in the Senate Business and Professions Committee.

LITIGATION:

In *Geophysical Systems Corp. v. Seismograph Service Corp.*, No. CV 85-8359 AWT (C.D. Cal.) (June 11, 1990), a federal court ruled that the Federal Rules of Evidence, not the Geologist and Geophysicist Act, govern the admissibility of expert testimony in federal court. In this diversity breach of warranty action, plaintiff moved to disqualify three of defendant's expert witnesses who are geophysicists, on grounds that the rendering of expert testimony on aspects of geophysics as applied in the petroleum exploration industry constitutes the practice of geophysics, and that none of the witnesses are licensed as geophysicists in California. The court denied the motion on several grounds, including the fact that the rendering of expert testimony is not "practice" as that term is commonly understood for licensure purposes.

FUTURE MEETINGS:

To be announced.

BOARD OF GUIDE DOGS FOR THE BLIND

Executive Officer: Manuel Urena
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The Board of Guide Dogs for the Blind has three primary functions. The Board protects the blind guide dog user by licensing instructors and schools to ensure that they possess certain minimum qualifications. The Board also enforces standards of performance and conduct of these licensees as established by law. Finally, the Board polices unlicensed practice.

The Board, authorized by Business and Professions Code section 7200 *et seq.*, consists of seven members, two of whom must be dog users. In carrying out its primary responsibilities, the Board is empowered to adopt and enforce regulations, which are codified in Chapter 22, Title 16 of the California Code of Regulations (CCR).

The Board currently licenses three guide dog schools and 48 trainers.

MAJOR PROJECTS:

Implementation of SB 2229. Pursuant to Business and Professions Code section 7218, enacted in 1988, the Board has completed a lengthy study of the feasibility of developing programs to license providers of signal dogs for the deaf and service dogs for the physically disabled. The Board also evaluated accessibility laws guaranteeing the right of guide, signal, and service dog users to travel unimpeded and enter all places of public accommodation. During its study, the Board conducted a series of public hearings throughout California. (See CRLR Vol. 10, No. 1 (Winter 1990) pp. 71-72; Vol. 9, No. 1 (Winter 1989) p. 48; and Vol. 8, No. 4 (Fall 1988) p. 56 for background information.)

The Board must report its findings to the legislature on or before June 30. At its February 23 meeting, the Board discussed the first draft of its report, which examined the issues and significant subjects which arose during the course of the Board's study.

The draft report recognized several areas requiring legislative attention. The critical need is to develop better methods of ensuring access of assistance (guide, signal, and service) dogs to public places. The Board noted that the general public must also be better informed about the rights of assistance dog users. In addition, the report cited the need for a reliable method enabling the general public to determine which persons with dogs have valid accessibility claims. Finally, the Board determined that the state should license providers of signal and service dogs.

Under current California law (California Civil Code sections 54.1 and 54.2), assistance dog users are legally entitled to access to places of public accommodation. However, the Board acknowledged that the single most difficult problem faced by dog users is refused admission to such places. Many employees in places of public accommodation are unsure of the rights of dog users and whether a particular individual and dog qualify for admittance. The Board cited the need for greater public awareness of the rights of dog users as a means of overcoming the problem of refused access.

The Board proposed several methods to increase public awareness of assistance dogs and the rights of their users. To gain greater access to public places, the Board suggested that a statewide identification system be implemented and administered by the Board. To



receive identification, dog users would be required to show that they have a disability appropriate to the type of dog being used, and that the dog and user are properly trained. Out-of-state residents would be issued temporary identification cards while traveling in California. Both the user and the dog would be issued official identification, which would assure businesses and public agencies that the individual and dog qualify for access. Notices outlining the access rights of assistance dog users would also be posted at the entrances of places of public accommodation. The notices would both inform the public of the access law and advise business personnel of their legal responsibilities. Finally, the Board recommends that a toll-free hotline number be established to provide information to persons needing assistance in understanding or enforcing the law.

By implementing these recommendations, the Board hopes to eliminate the problems encountered by dog users in attempting to enter public places. When admittance is refused, the dog user may suffer harm or great inconvenience. For example, a dog user in the middle of a trip who is refused admittance to an airplane may be left stranded without alternative means of transportation. The Board feels that with increased public awareness of the law, and easy identification of those entitled to the law's protection, the potential access problems of dog users can be minimized.

The Board's draft report also recommended the licensing of signal and service dog providers. Opponents claim that there is no evidence of abuse in signal or service dog usage to warrant licensing. In addition, opponents worry that a licensing program would interfere with their ability to bring relatively low-cost services to clients. However, the Board contends that the licensing of signal and service dog providers is necessary for the same reasons which support the licensing of guide dog providers.

Licensing of guide dog providers was instituted in light of poor or non-existent training of dogs by the then "established" schools. Irreparable harm may result to a dog user if the dog is not properly trained. An improperly trained dog will not perform safely in public or manage the various problems which may arise in public settings (e.g., crossing a busy avenue, dealing with approaching strangers). Licensing enables the dog user to reasonably expect that the dog will be obedient, trained in specific skills, and prepared for performance in public situations.

In conjunction with its proposed

licensing scheme, the Board proposed standards for signal and service dogs and their instructors. Signal dogs would be required to respond to auditory signals, including telephone rings, doorbells (or door knocking), and smoke alarms. The standards of service dogs would require the dog to assist the physically disabled user in such functions as retrieval of dropped items, fetching items out of reach, and pulling a wheelchair. The instructors would be required to have knowledge of the special problems of the hearing-impaired and physically disabled, as well as the ability to train both the prospective assistance dog and its user.

The draft report proposed that the current Board be reorganized to reflect the increased scope of the Board's functions. Specifically, the Board recommended that two signal dog users and two service dog users be added to the Board. The additions would correspond to the current requirement that the Board have two guide dog users. The proposed additions would increase the number of Board members to eleven.

In the area of costs, guide dog schools do not usually charge fees to their students. In contrast, existing signal and service dog organizations charge modest fees for student applications. The Board recommends that the law allow licensed assistance dog schools to charge a modest fee at the school's discretion. The Board suggests a fee not to exceed \$200 in any five-year period. Fees proposed by a school would require Board approval. While the Board acknowledges that the fee would in no way defray the cost of training the dogs, the fee would serve as an indicator of the student's motivation.

As part of its study, the Board was required to evaluate the use of trainable animals other than dogs. The Board reviewed a full range of other animals, including cats, monkeys, horses, lizards, and birds. The Board recognized that these animals have educational and therapeutic value. However, the Board concluded that animals other than dogs are limited in size and trainability, precluding their use for any effective mobility or helping purposes.

After the Board made changes to the first draft, a revised draft was distributed for public comment on March 12. At its May 4 meeting, the Board reviewed the revised draft and the public comments received.

The Board received extensive public comment from the two schools in California which currently train signal dogs. Both schools contended that licensing signal dog schools is unneces-

sary and inappropriate. To support their contention, the schools cited the Board's own draft report. The report acknowledged that there is no evidence to indicate any training or fundraising abuses in the signal dog schools. Also, the schools noted that while guide dogs are used primarily in public settings, signal dogs are primarily used within the home. The schools argued that the irreparable harm associated with a poorly trained guide dog on the street does not exist for a signal dog user in the home. The organizations also strongly objected to the proposed increase in licensing fees. For example, the Board recommends increasing a school's application fee from the current \$25 to \$500. Both of the existing signal dog schools feared that the proposed licensing and fee structure would drive them out of business.

Another area arousing public comment was the proposed statewide identification program. The public comment focused on whether participation in the identification program would be mandatory or optional for the dog user. Commenters expressed concern that mandatory participation would translate to state control of dog users. In addition, it was noted that the issuance of temporary identification cards to out-of-state residents would be similar to a nation issuing visas to foreign visitors.

Based on the public comment, the Board decided to drop all language in the draft report concerning identification cards for out-of-state residents. The Board also inserted language emphasizing that any statewide identification program would be optional for the dog user. The Board stressed that the purpose of the proposed identification program is to assist dog users in asserting their legal rights of access to areas of public accommodation, and not to impose state control over dog users.

The Board reaffirmed its recommendation that licensing is the proper administrative control over signal and service dog schools. The Board believes that licensing is necessary to establish a baseline criteria for dog training and obedience. The Board noted that signal and service dogs are trained to perform certain functions while away from the user's home. The Board is of the opinion that so long as a dog is used in public to assist its owner, irreparable harm may result from an improperly or poorly trained dog. In addition, the Board feels that licensing schools provides reassurance to contributors that the organization is legitimate in its training endeavors.

With these modifications, the Board



REGULATORY AGENCY ACTION

approved the final language of the report at its May 4 meeting. At this writing, the Board's staff is preparing the report for distribution to the legislature by June 30.

LEGISLATION:

AB 4241 (Connelly), as amended May 23, would increase the special need allowances currently paid to users of guide dogs to \$40, and further increase that amount to \$50 beginning July 1, 1991. The bill would provide that the allowance shall be provided for blind or disabled recipients of benefits under the SSI and SSP programs, and would specify that the allowance shall be for guide dogs, signal dogs, or other service dogs, to pay for dog food and other costs associated with their care and maintenance. The bill is pending in the Senate Committee on Health and Human Services.

LITIGATION:

In Sullivan v. Vallejo City Unified School District, No. CIV S-89-1505 LKK (March 1, 1990), the U.S. District Court for the Eastern District of California restrained the school district from interfering in any way with the plaintiff's right to be accompanied by her service dog while attending public school.

Sullivan is a physically disabled student who uses a wheelchair for mobility. Sullivan also utilizes a service dog. When the school she attended refused to allow her to bring her service dog into the classroom, Sullivan filed suit under California Civil Code sections 54.1 and 54.2. These statutes provide that the physically disabled have the right to be accompanied by a service dog into places of public accommodation.

The school district contended that since schools may restrict access to their premises, they could not be characterized as places to which the general public is invited. However, the District Court broadly interpreted the California statute, finding that public schools serve a significant segment of the population. Additionally, the court noted that public school attendance is generally mandatory for children between the ages of six and sixteen. The court held that the law mandates that, to the extent a facility is open to members of the general public, access must be equally available to disabled and able-bodied persons alike. The court concluded that to construe the statute in a narrower manner would undermine the remedial purpose of the access laws.

The school district also attempted to

justify exclusion of the service dog on two broad grounds: the dog was unnecessary to the plaintiff, and the school's concern over space and health. The court rejected both arguments. The court noted that under the statute, whether the dog is actually needed during the school day is not dispositive. The protection afforded to Sullivan by the statute would be undermined if the school could effectively deny Sullivan use of the service dog outside of school by prohibiting the dog from accompanying her in school. With regard to the space and health concerns, the court noted that the legislature has determined that concerns of that character may not override the right of a physically disabled person who uses a service dog to full and equal access to public facilities accompanied by the dog.

The court noted that while certain factors may be considered in determining the manner in which the dog is incorporated into the classroom (e.g., proximity of location to classmates with allergies), the school is required to place the plaintiff in the least restrictive environment possible.

FUTURE MEETINGS:

To be announced.

BUREAU OF HOME FURNISHINGS AND THERMAL INSULATION

Chief: Gordon Damant
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The Bureau of Home Furnishings and Thermal Insulation (BHF) is charged with regulating the home furnishings and insulation industries in California. As a division of the state Department of Consumer Affairs, the Bureau's mandate is to ensure that these industries provide safe, properly labeled products which comply with state standards. Additionally, the Bureau is to protect consumers from fraudulent, misleading, and deceptive trade practices by members of the home furnishings, insulation, and dry cleaning industries. The Bureau is established in Business and Professions Code section 19000 *et seq.*

The Bureau establishes rules regarding furniture and bedding labeling and sanitation. To enforce its regulations, which are codified in Chapter 3, Title 4 of the California Code of Regulations (CCR), the Bureau has access to premises, equipment, materials, and articles of furniture. The Bureau may issue notices of violation, withhold products from sale, and refer cases to the Attorney

General or local district attorney's offices for possible civil penalties. The Bureau may also revoke or suspend a licensee's registration for violation of its rules.

The Bureau is also charged with the registration of dry cleaning plants throughout the state. The registration process includes submission of information regarding the plant's onsite storage, treatment, and disposal of toxic wastes. The Bureau, however, has no enforcement authority regarding this function.

The Bureau is assisted by a thirteen-member Advisory Board consisting of seven public members and six industry representatives.

MAJOR PROJECTS:

Bureau License Fees. The Bureau is considering the imposition of a 20% increase in its biennial license fees. (See CRLR Vol. 9, No. 2 (Spring 1989) p. 58 for background information.) As the result of inflation, the Bureau will soon face a budget deficit. A license fee increase is one way the Bureau can prevent such a shortfall.

At the Advisory Board's March 13 meeting, Bureau Chief Gordon Damant explained that existing law imposes a ceiling on the maximum fees that the Bureau may charge. However, even with a 20% increase, license fees will remain below the maximum allowed.

In addition to the fee increase, the Bureau is also investigating ways to enforce timely renewal payments by existing licensees, and to detect businesses which have thus far evaded licensing and payment of fees.

Sanitization. The Bureau is addressing the problem posed by the present use of formaldehyde in the sanitization of mattress products. One the one hand, formaldehyde has been found to be carcinogenic, although only in concentrations much greater than those used in the sanitization process. One the other hand, the traceability characteristics of the chemical enable the Bureau's inspectors to determine whether or not a manufacturer has in fact sanitized its products. The Bureau is working with the Department of Health Services and the Department of Food and Agriculture in an effort to resolve this dilemma.

The Bureau is also considering replacement of the word "sterilization" with "sanitization" throughout all applicable regulations. The Bureau has determined that use of the word "sterilization" is misleading. (See CRLR Vol. 9, No. 2 (Spring 1989) p. 59 for background information.)

Furniture Flammability. The Bureau is finishing its modifications to