



# 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  
(916) 920-6951

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



California Technical Bulletin 133, which will be incorporated by reference into the proposed regulatory changes to section 1374, Title 4 of the CCR, establishing higher flammability standards for furniture use in public buildings. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 59 for background information.)

The regulatory amendments will require that after June 1, 1991, all seating furniture sold for use in public occupancy buildings shall meet the test requirements set forth in Technical Bulletin Number 133. Amendments to section 1374.3 will also require labeling changes in conformance with the new standards.

Public hearings on the proposed regulations are tentatively planned for late summer.

**Insulation Program.** The Bureau is in the final phase of amending sections 1551-1565, Title 24, Part 12 of the State Referenced Standards Code regarding Standards for Insulating Material. (See CRLR Vol. 9, No. 2 (Spring 1989) p. 58 for background information.) The amendments will be presented to the State Building Standards Commission, which is charged with conducting public hearings. The amendments will ultimately be presented to the State Fire Marshal's Office for approval.

#### LITIGATION:

In *People v. Dyer Woodturnings, Inc.*, No. 362925 (Sacramento County Superior Court), Dyer agreed to pay civil penalties, investigation costs, and attorneys' fees amounting to \$8,970. Dyer, a Mississippi furniture manufacturer, did not admit to any violation of law, although the judgment enjoins Dyer from, among other things, placing upon its upholstered furniture "a label which implies that the furniture complies with the requirements of California law unless in truth and in fact said upholstered furniture does comply with the requirements of California law."

Of the \$8,970 judgment, the Bureau will receive \$1,000 to cover its investigation costs in the matter.

#### RECENT MEETINGS:

At the Advisory Board's March 13 meeting in Sacramento, Chief Damant announced that the Bureau's 1990-91 budgetary request for a Staff Services Analyst had been conditionally approved by the state Department of Finance. The Department approved funding for the new position for an eighteen-month term, to end December 31, 1991. The Bureau would then be required to demonstrate the "utility of

the position" for further renewal.

Damant said the imposed conditions cause a number of problems, including the difficulty involved in finding a qualified individual willing to accept a potentially temporary position, and the budgetary complications involved in a position which expires in the middle of a fiscal year. Damant noted that the first of the two problems will be more difficult to overcome.

Also at the March 13 meeting, Damant described the Bureau's "Yellow Pages Program," which is intended to detect businesses which have thus far evaded licensing with the Bureau. The program entails checking appropriate businesses listed in the phone book with those listed as licensed with the Bureau. Any business not licensed is sent a letter which explains the requirement and requests compliance. If there is no response following a second letter, a Bureau inspector is sent to the premises. Since July 1989, the program has netted \$10,000 in license fees from otherwise unlicensed activity.

#### FUTURE MEETINGS:

September 11 in San Francisco.  
December 11 in Los Angeles.

#### BOARD OF LANDSCAPE ARCHITECTS

*Executive Officer: Jeanne Brode (916) 445-4954*

The Board of Landscape Architects (BLA) licenses those who design landscapes and supervise implementation of design plans. To qualify for a license, an applicant must successfully pass the written exam of the national Council of Landscape Architectural Registration Boards (CLARB), an additional section covering landscape architecture in California, and an oral examination given by the Board. As of January 1, 1990, the oral exam requirement is deleted for all in-state applicants. In addition, an applicant must have the equivalent of six years of landscape architectural experience. This may be a combination of education from a school with a Board-approved program in landscape architecture and field experience.

The Board investigates verified complaints against any landscape architect and prosecutes violations of the Practice Act. The Board also governs the examination of applicants for certificates to practice landscape architecture and establishes criteria for approving schools of landscape architecture.

Authorized in Business and Professions Code section 5615 *et seq.*, BLA consists of seven members. One of the members must be a resident of and practice landscape architecture in southern California, and one member must be a resident of and practice landscape architecture in northern California. Three members of the Board must be licensed to practice landscape architecture in the state of California. The other four members are public members and must not be licentiates of the Board. Board members are appointed to four-year terms. BLA's regulations are codified in Chapter 26, Title 16 of the California Code of Regulations (CCR).

#### MAJOR PROJECTS:

**Regulatory Changes.** At BLA's March 26 meeting, the Board again considered proposed amendments to section 2620, Chapter 26, Title 16 of the CCR, concerning the educational and experience requirements for licensure applicants. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 73 and Vol. 9, No. 4 (Fall 1989) p. 61 for background information.) Daniel Buntjer, supervising counsel for the Department of Consumer Affairs (DCA), presented the Board with a legal interpretation of section 2620 in conjunction with section 5650 of the Business and Professions Code. Section 5650 requires landscape architect candidates to possess at least six years' training and educational experience to be eligible for the examination. The section also provides that a landscape architecture degree from a Board-approved school is the equivalent of four years training and educational experience. Mr. Buntjer interpreted section 5650 as requiring both education and job experience, thus precluding the Board from granting examination admission to any applicant who has not completed both requirements. The statute also implies that a candidate with a degree from a Board-approved school of landscape architecture must be given at least four years of educational credit. The Board voted to continue its discussion of section 2620 at its May 10 meeting, in order to receive additional public comment prior to adopting any changes.

On May 10, the Board received further legal advice. DCA legal counsel Don Chang interpreted the combination of section 2620 and section 5650 to mean that the Board could not grant more than four years' credit for any single degree in landscape architecture.

Following discussion, the Board approved draft language of amendments to section 2620. The new language would grant four years' credit for either