



control study which compared and contrasted the emissions test programs in Arizona, California, Kentucky, New Jersey, and Oregon. Among other things, the study revealed that California has the highest cost for inspection or reinspection, as well as the longest reported average inspection time. California also conducts the largest number of annual inspections.

Also at the August 10 meeting, a representative of BAR's Public Information Office reported that the Governor had declared September "Smog Check Month," and noted that eight Clean Air Fairs were to be held throughout the state during the fall.

FUTURE MEETINGS:

To be announced.

BOARD OF BARBER EXAMINERS

Executive Officer: Lorna P. Hill
(916) 445-7008

In 1927, the California legislature created the Board of Barber Examiners (BBE) to control the spread of disease in hair salons for men. The Board, which consists of three public and two industry representatives, regulates and licenses barber schools, instructors, barbers, and shops. It sets training requirements and examines applicants, inspects barber shops, and disciplines violators with licensing sanctions. The Board licenses approximately 22,000 barbers, 5,000 shops, and 20 schools.

BBE's enabling act is found at Business and Professions Code section 6500 *et seq.*; the Board's regulations are located in Chapter 3, Title 16 of the California Code of Regulations (CCR).

MAJOR PROJECTS:

Merger with Board of Cosmetology. On August 27, BBE once again voted to oppose AB 3008 (Eastin), which was signed by the Governor on September 30 (Chapter 1672, Statutes of 1990). This bill merges BBE with the Board of Cosmetology (BOC). (See *infra* LEGISLATION; see also CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 73; Vol. 10, No. 1 (Winter 1990) p. 58; and Vol. 7, No. 1 (Winter, 1987) p. 1 for extensive background information.) As the bill's major defect, BBE cited its failure to require an adequate number of establishment inspections. Additionally, BBE expressed concern regarding the constitutionality of Business and Professions Code section 7310(c) (to be added by the bill), a provision which subjects the new board's appointment of an executive

director to confirmation by the Director of the Department of Consumer Affairs (DCA). BBE and audience members agreed that BBE had given in on the issue of allowing the merged board to use BBE's inspectors, since BOC apparently has fewer inspectors and conducts fewer inspections than does BBE, but that Assemblymember Eastin had ignored many of BBE's requests. Therefore, the Board decided to send telegrams to Assemblymember Eastin, the Governor, and all senators voicing its opposition to the bill.

Review of Instructors' Examination. At the Board's July 9 meeting, BBE appointed a committee comprised of Board member Edna Mayhand, barber Frank Chirco, and trade representative Red Carter to review BBE's instructors' examination in conjunction with the staff of DCA's Central Testing Unit. The instructors' examination committee was established in response to extremely low pass rates on the exam. In fiscal year 1989-90, for example, only seven of the 26 people who took the examination passed. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 74 for background information.)

On August 27, committee chair Edna Mayhand reported that she had reviewed the examination and would meet with instructors and barber college owners to elicit suggestions regarding the examination.

Draft Regulations Establishing Administrative Fines. On August 27, the Board decided to schedule public hearings to consider proposed regulatory changes establishing administrative fines for barber colleges which do not file student applications with the BBE within fourteen days of student enrollment, and for apprentices who transfer from one training class or employer to another and who fail to file a transfer form with BBE within twenty days of transfer.

BBE expected to release more information regarding these hearings in the near future.

LEGISLATION:

AB 3008 (Eastin), as amended August 27, repeals the Business and Professions Code sections which establish both BBE and BOC, and creates the Board of Barbering and Cosmetology (BBC). The bill generally revises, recasts, and consolidates the two acts presently governing the practice of barbering and cosmetology; provides for the licensing and regulation of persons engaged in the practice of performing specified acts relating to barbering, cosmetology, and electrolysis; and provides that persons licensed as barbers or cos-

metologists will be licensed pursuant to the act. BBC will consist of nine members: five public members and four members representing the professions. The bill, which will become operative on July 1, 1992, requires BBC and DCA to assess the results of merging the two boards and to report to the legislature on or before June 30, 1995. This bill was signed by the Governor September 30 (Chapter 1672, Statutes of 1990).

AB 1108 (Epple), as amended July 7, deletes existing maximum limits on licensing fees charged by BBE until January, 1994, and increases the maximum fees effective January, 1992. This bill was signed by the Governor on September 30 (Chapter 1673, Statutes of 1990).

RECENT MEETINGS:

At its August 27 meeting, BBE decided to allow the use of video educational aids in barber schools and to look for alternative locations in which to hold barber examinations in northern California. The Board also discussed BBE's projected insufficient revenues for fiscal year 1991-92. Finally, the Board reviewed its disciplinary guidelines and decided that the guidelines should remain intact and the Board should try to follow them.

FUTURE MEETINGS:

To be announced.

BOARD OF BEHAVIORAL SCIENCE EXAMINERS

Executive Officer: Kathleen Callanan
(916) 445-4933

Authorized by Business and Professions Code section 4980 *et seq.*, the eleven-member Board of Behavioral Science Examiners (BBSE) licenses marriage, family and child counselors (MFCCs), licensed clinical social workers (LCSWs) and educational psychologists (LEPs). The Board administers tests to license applicants, adopts regulations regarding education and experience requirements for each group of licensees, and appropriately channels complaints against its licensees. The Board also has the power to suspend or revoke licenses. The Board consists of six public members, two LCSWs, one LEP, and two MFCCs. The Board's regulations appear in Chapter 18, Title 16 of the California Code of Regulations (CCR).

MAJOR PROJECTS:

Enforcement Program. In April, BBSE began distributing a consumer brochure on psychotherapist sexual mis-



conduct entitled *Professional Therapy Never Includes Sex!* Pursuant to SB 1277 (Watson), enacted in 1987, psychotherapists are required by law to provide a copy of this brochure to any patient who has been a victim of sexual exploitation by another psychotherapist. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 74; Vol. 9, No. 4 (Fall 1989) p. 47; Vol. 7, No. 4 (Fall 1987) p. 42; and Vol. 7, No. 2 (Spring 1987) p. 60 for background information.)

During the first three months of brochure distribution, BBSE received 316 complaints against psychotherapists, 115 of which concerned alleged sexual misconduct. In light of the fact that the Board received a total of 407 complaints in the previous eleven months, BBSE has recognized the need for a more comprehensive enforcement program.

BBSE submitted to the Department of Consumer Affairs a draft version of a budget change proposal, requesting an additional \$113,000 for fiscal year 1990-91 and \$232,000 for fiscal year 1991-92 to augment funding of its enforcement program. BBSE has also discussed the possibility of adopting a cost recovery program, which would allow the Board to collect its investigation costs from the disciplined licensee in specified cases. This system would help defray the expense of handling the significant growth in the number of complaints received and disciplinary actions completed.

MFCC Internship Issues. AB 3657 (Vasconcellos) (Chapter 1356, Statutes of 1986) rewrote the laws governing the educational and experience requirements for MFCC licensure after January 1, 1988. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 59 and Vol. 9, No. 3 (Summer 1989) pp. 41-42 for background information on these changes.) Among other things, amended Business and Professions Code sections 4980.43 and 4980.44 require MFCC interns to complete 3,000 hours of supervised experience within six years immediately preceding the date the application for MFCC licensure is filed with BBSE.

During 1989, the Board received a request for extension of an MFCC internship registration beyond the six-year maximum. Following deliberation, BBSE instructed its staff to inform interns requesting an extension that they could reapply for intern registration upon expiration of the six-year period, but that they would have to meet the 1988 educational requirements set forth in AB 3657. This same information was disseminated in BBSE's *Bulletin* newsletter in late 1989.

In early 1990, it came to the attention of BBSE's legal counsel that six-year interns whose registrations were expiring were being advised that they could reapply for intern registration. Based on a review of Business and Professions Code section 4980.44(c)-(e), BBSE's legal counsel concluded that current law does not allow an MFCC intern to reapply for an intern registration once the six-year timeframe has expired.

At its July 13 meeting, BBSE discussed the possibility of seeking legislation to permit MFCC interns to withdraw temporarily from the internship, under certain circumstances and based upon a written request to BBSE and the payment of an appropriate fee. At its September 14 meeting, the Board decided to refer this issue to a subcommittee, with the goal of drafting legislative language to clarify the issue. The draft legislation, which will permit MFCC interns to withdraw from the internship only if they leave the state, should be complete for presentation at BBSE's January meeting.

Also in September, BBSE discussed whether MFCC interns in non-private practice settings may pay their supervisors for the supervision. Section 4980.43(c) clearly prohibits interns in private practice settings from paying their supervisors, but the section is silent as to whether interns gaining experience in other settings may do so. BBSE staff and legal counsel interpreted regulatory section 1833(b)(4) as prohibiting interns in any setting from paying their supervisors, as that would undermine the supervisor/intern relationship. BBSE decided to develop legislative language which would clearly standardize the nonpayment policy.

In July, the Board discussed whether an MFCC intern may fulfill his/her experience requirements while serving as an independent contractor rather than an employee of the supervisor's employer. BBSE opined that Business and Professions Code section 4980.43 and regulatory section 1833.1 clearly require the intern to be an employee in order to gain qualifying experience toward licensure; thus, interns who submit experience gained as an independent contractor (and who use a 1099 tax form rather than a W-2) are being told that the experience does not count toward the 3,000-hour requirement. BBSE rejects "independent contractor" work as qualifying toward the supervised experience requirement because the intern is technically working independently, and may not necessarily be receiving the supervision contemplated by the legislature. The Board prefers the W-2 as an indicator of employee sta-

tus; if anything other than a W-2 is submitted, the burden of proof of employee status is on the MFCC intern.

Experience in Employee Assistance Programs. For several years, the Board has discussed and rejected the idea of allowing experience gained in employee assistance programs (EAPs) to qualify toward MFCC licensure. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 47 for background information.) In studying the concept, BBSE has concluded that EAPs are usually programs operated by a for-profit corporation which employs MFCCs to provide services exclusively for the corporation's own employees. The for-profit nature of the corporation, coupled with the Board's belief that most EAPs are primarily for assessment and referral (rather than for direct counselling controlled wholly by the licensee), has led the Board to conclude that experience gained in an EAP is not within the types of practice settings set forth by the legislature as qualifying toward licensure.

At its September meeting, the Board reaffirmed its position against allowing MFCC interns to gain qualifying experience in EAPs if the employer is a corporation. However, the Board agreed to recognize EAP experience in the private practice or exempt setting. BBSE further decided that experience gained in private practice and exempt setting EAPs will be evaluated using the same criteria as are applied to other qualifying experience.

LEGISLATION:

The following is a status update on bills reported in detail in CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) at pages 74-75:

SB 2222 (Watson), as amended July 9, establishes increased separate fees for the written and oral examinations for an applicant for MFCC, LEP, and LCSW licensure; increases the renewal fees for those licenses; and makes related changes. This bill was signed by the Governor (Chapter 547, Statutes of 1990).

AB 3314 (Harris), as amended August 9, requires the Board of Psychology and BBSE, with respect to any person applying for renewal of a license as a psychologist, LCSW, or MFCC, to consider adoption of continuing education requirements in the area of recognizing chemical dependency and the proper steps for early intervention. This bill was signed by the Governor (Chapter 1005, Statutes of 1990).

SB 2245 (Davis) includes the relationship between a patient and an MFCC corporation, as well as the relationship between patients and any psychothera-



pist employed by those corporations, in the definition of the relationship of a psychotherapist and patient to provide the privilege of confidential communication. This bill was signed by the Governor (Chapter 605, Statutes of 1990).

AB 3229 (Polanco), as amended July 27, extends the waiver of licensure requirements for clinical social workers employed in publicly operated health facilities and gaining qualifying experience toward licensure to five years. This bill was signed by the Governor (Chapter 962, Statutes of 1990).

SB 2214 (Boatwright), as amended August 22, deletes the existing statutory provision authorizing MFCCs to use hypnosis in the course of performing marriage, family, and child counseling. This bill also prohibits BBSE from denying an applicant, whose application is complete, admission to the required licensure examinations if the applicant meets the required educational and experience requirements and has not committed any acts or engaged in any conduct which would constitute grounds to deny licensure.

This bill also authorizes BBSE to deny an applicant, who has previously failed either the written or oral examination, permission to retake the failed examination pending completion of investigation of any complaints against the applicant. SB 2214 was signed by the Governor (Chapter 1086, Statutes of 1990).

AB 2574 (Lancaster). Existing law provides that the name of an LCSW corporation shall, among other things, be restricted to the name or the last name of one or more of the present, prospective, or former shareholders. As amended June 12, this bill would delete that requirement, and would restrict an LCSW corporation operating under a fictitious business name from using any false, misleading, or deceptive name, as specified. This bill was signed by the Governor (Chapter 334, Statutes of 1990).

AB 3328 (Bates) was amended on August 27 and now requires the Department of Mental Health to maintain an existing five-year youth suicide prevention program and directs that, if the youth program is proven to be satisfactory, the program be expanded to address the needs of California's adult population in need of suicide intervention. This bill was signed by the Governor (Chapter 1028, Statutes of 1990).

LITIGATION:

In *Alicia T. v. County of Los Angeles*, No. B042169 (Second District Court of Appeal) (July 23, 1990), the court held

that county social workers investigating child abuse allegations and instigating dependency proceedings have absolute immunity from liability for alleged civil rights violations. The court chose one of two conflicting federal court views on the issue in finding that county social workers, like prosecutors, must be free from liability if they are to perform their jobs effectively.

The case arose when Alicia, who was nearly four years old, was examined in a hospital emergency room for a vaginal infection. Hospital doctors, suspecting that Alicia had been sexually molested, notified the county sheriff's department. Upon an erroneous diagnosis of sexual molestation, the county removed Alicia from her home and placed her in a foster home for nearly eight weeks.

Alicia's family contended that the county negligently removed Alicia from the custody of her parents in reliance upon the misdiagnosis of two unqualified physicians, and unreasonably held her in protective custody without expert evidence proving she had been abused. In defense, the county claimed absolute and qualified immunity on behalf of both the county and its social workers.

Since the U.S. Supreme Court has not addressed whether social workers have the absolute immunity of prosecutors or the qualified immunity of police officers, the court was free to adopt one of the divergent lines of authority. In finding that social workers require absolute protection because they perform a "quasi-prosecutorial" function, the court noted that without absolute immunity, "we would indirectly eliminate the protection afforded to children. The state's interest in preventing child abuse will be diminished due to fear of retaliatory suits."

RECENT MEETINGS:

At its July 13 meeting, the Board discussed the 1990 examination statistics. For the MFCC examination, the passage rate was 83% for the written exam and 48% for the oral exam. For the LCSW examination, the passage rate was 69% for the written exam and 73% for the oral exam. Finally, for the LEP examination, the passage rate was 70% for the written exam and 76% for the oral exam.

Also at BBSE's July 13 meeting, the Board discussed possible policies regarding the sale of applicant lists. Pursuant to the Information Practices Act (Civil Code section 1798.61(b)), "[n]othing in this chapter shall prohibit the release of only names and addresses of persons applying for licenses to engage in professional occupations for the sole purpose of providing those persons with informational materials relat-

ing to available professional educational materials or courses." It is within the discretion of BBSE to determine whether a seminar or training program relates to professional educational materials or courses pertinent to applicants for the MFCC, LCSW, or LEP licenses. Thus, when BBSE staff receives requests for the names and addresses of applicants, its current practice is to request and review the seminar brochure, if any, to determine its educational value to persons pursuing a license from BBSE. If it is determined that the seminar or training is consistent with section 1798.61(b), the request is approved and the order is filled.

However, BBSE has no way of assuring that the information provided will be used for the purpose stated. As a result, BBSE agreed that a written declaration requirement regarding the use of the information be implemented to negate any liability by BBSE if information is utilized for a purpose other than that allowed by statute. Further, BBSE directed its staff to include in its next bulletin information identifying how an applicant may remove his/her name from such lists.

Finally, BBSE discussed the rejection letter from the Office of Administrative Law regarding BBSE's proposed amendments to section 1812 of the CCR, regarding acts or crimes substantially related to the duties or qualification for licensure. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 74 for background information.) After reviewing applicable law, the Enforcement Committee reported that the current disciplinary statutes are very clear and regulatory clarification is not needed at this time.

At BBSE's September 14 meeting, the Board discussed its policy regarding the evaluation of out-of-state experience for MFCC applicants. It has been staff policy to compare an out-of-state applicant's qualifications for licensure with the standards applied to individuals who are residents of California applying for licensure, and using a "substantially equivalent" standard for the out-of-state experience. Therefore, staff evaluates the out-of-state experience for substantial equivalence to 3,000 hours of supervised experience in the six years prior to licensure application under the supervision of a substantially equivalent licensed supervisor. The Board agreed that the use of this standard for evaluating out-of-state applicants for licensure in California is appropriate.

FUTURE MEETINGS:

January 18 in Los Angeles.

April 12 (location to be announced).