



BOARD OF BARBER EXAMINERS

*Executive Officer: Lorna P. Hill
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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 schools, 6,500 shops, and 21,500 barbers.

MAJOR PROJECTS:

Student Security Trust Fund. Business and Professions Code section 6540 *et seq.* requires BBE to create a Student Security Trust Fund to "relieve or mitigate pecuniary losses suffered by any student of barbering as the result of a licensed barber college ceasing its operation as such for any reason." Each barber college currently pays into the Fund \$2 per student enrolled. Under section 204.6, Chapter 3, Title 16 of the California Code of Regulations (CCR), the Fund's total is set at a maximum of \$10,000; once this limit is reached, BBE must suspend the assessment.

Although a school closing is not a common occurrence, funds in excess of \$10,000 to reimburse students would not be available. The recent closure of Career Opportunities School in Pasadena will require the Board to pay over \$6,000 in tuition to other schools for those students who transfer. The Board intends to reimburse students who do not re-enroll in another college proportionally from the remainder of the Fund. The owner of the school offered to pay the Fund for the transferring students' tuition, but he has since filed for bankruptcy, and the Board is not expecting to be able to collect any money.

At its April meeting, BBE noted that section 6541 of the Business and Professions Code allows the Fund maximum to be \$50,000, and voted to seek a regulatory amendment to section 204.6(b). BBE subsequently published a formal notice of its intent to amend section 204.6(b) to increase the assessed sum from \$2 to \$5 per enrolled student, and to increase the Fund's maximum to the statutory ceiling of \$50,000. The Board was scheduled to conduct a formal regulatory hearing on this proposed change on July 10 in San Diego.

Clarification of Bonding Requirement. Also at the April meeting, in the wake of the closure of Career Opportunities School, the Board discussed section 6541.6 of the Business and Professions Code, which requires "a new barber college which has been licensed in this state for less than two years" to post a \$20,000 surety bond with the Board. This bonding requirement, as worded, has presented problems for BBE when considering entire or partial transfers of the ownership of a school which has been licensed for more than two years. The problem becomes even more complex when considering such a school's purchase by a person or entity that has not operated a barber school for more than two years. In 1986, Department of Consumer Affairs legal counsel opined that the surety bond would not be required upon the transfer of ownership of an existing barber college which has been licensed by the Board for more than two years (even if the transferee has not operated a barber college for two years). At the April meeting, the Board adopted a motion to seek legislation to clarify section 6541.6.

LEGISLATION:

AB 1108 (Epple) as amended May 17, would delete existing maximum limits on licensing fees charged by BBE until January 1993, and would increase the maximum fees effective January 1, 1991. (See CRLR Vol. 9, No. 2 (Spring 1989) p. 48 for background information on this bill.) The bill would also state legislative intent directing the merger of the BBE and the Board of Cosmetology. It would require those boards to submit a final report on a merger plan to the legislature by December 15, 1990. The provisions of the bill providing for fee increases would not become operative unless that final report is submitted. This bill is pending in the Assembly Ways and Means Committee.

AB 459 (Frizzelle) would eliminate the five-year cancellation provision for failure to pay renewal fees. Current law requires former licensees who have allowed their licenses to lapse for a five-year period to retake the BBE examination if they wish to be relicensed. This bill, which has become a two-year bill, would allow these individuals to be relicensed without retaking the exam, so long as all applicable fees are paid. The Board opposes this legislation.

RECENT MEETINGS:

BBE President Paul Schwager and Executive Officer Lorna Hill met with officers of the Board of Cosmetology

(BOC) in December 1988 to discuss a possible merger of the two boards. BBE has resisted any merger although the Senate Committee on Business and Professions has recommended that the two boards work together to avoid superfluous and often confusing regulation. Currently, all barber functions are distinct from cosmetology functions, even though the professions are similar. (See CRLR Vol. 7, No. 1 (Winter 1987) p. 1 for a detailed discussion of the merger issue.)

At BBE's February meeting, BBE decided not to pursue the discussion of combining the two boards. In response, BOC President Len Steinbarth wrote to BBE urging the Board to reconsider. At its April meeting, BBE considered a motion to send a letter inquiring whether a current quorum of the BOC is still interested in negotiating a merger of the two boards. After discussion, however, the motion was withdrawn and the matter tabled.

FUTURE MEETINGS:

August 14 in San Francisco.

BOARD OF BEHAVIORAL SCIENCE EXAMINERS

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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.

MAJOR PROJECTS:

Regulatory Hearings. At its March 15 meeting, BBSE held public hearings on a number of proposed changes to its regulations, which appear in Chapter 18, Title 16 of the California Code of Regulations (CCR).

Following the hearings, the Board adopted proposed section 1805.1, which would establish processing times for applications and registrations pursuant to the Permit Reform Act of 1982. (See CRLR Vol. 8, No. 4 (Fall 1988) p. 46



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for background information.) At this writing, BBSE is preparing the rule-making file on this change for submission to the Office of Administrative Law (OAL).

BBSE also considered proposed amendments to section 1806 (to define when an application shall be deemed abandoned); section 1812 (to add a descriptive list of acts or crimes which are substantially related to the qualifications and duties of BBSE licensees, for purposes of denial, suspension, or revocation); and technical changes to sections 1832(e) and 1876. The Board adopted these changes, making minor modifications to the language of the amendments to sections 1806, 1812, and 1832(e). BBSE released this modified language for public comment until June 5, and was expected to formally adopt the changes at its July 21 meeting.

Next, BBSE considered a proposed amendment to section 1873 and the adoption of new section 1874. These changes would implement SB 2658 (Watson) (Chapter 1091, Statutes of 1988), which now requires two years of post-master's degree supervised experience as an "associate clinical social worker" in order to become a LCSW. (See CRLR Vol. 8, No. 4 (Fall 1988) p. 46 for background information on SB 2658.) The changes to sections 1873 and 1874 would clarify ways in which candidates for LCSW licenses may be credited with hours of experience gained prior to the law change, and define the types of supervision which are acceptable toward the licensure requirement. BBSE adopted these regulatory changes, and is in the process of preparing the rulemaking file for submission to OAL at this writing.

Finally, the Board considered regulatory changes to implement AB 3657 (Vasconcellos) (Chapter 1365, Statutes of 1986), which rewrote the laws governing the experience requirements for MFCC licensure. The Business and Professions Code now requires an MFCC applicant to earn 3,000 hours of supervised experience over a period of not less than 104 weeks; not less than 1,500 hours must be gained subsequent to the receipt of a qualifying graduate degree; and all experience must be gained within the six-year period immediately preceding the date the application for licensure was filed.

Changes to sections 1833(a)-(d) and the addition of sections 1833(e), 1833.1, and 1833.2 to BBSE's regulations will increase the breadth of experience required for MFCC licensure by reducing the number of hours allowed for provid-

ing certain types of therapy (such as group therapy or telephone crisis counseling); clarify the type of supervision required in various settings; require interns and trainees to maintain logs of experience gained toward licensure and specify the form to be used; and require supervisors to assume responsibility for being aware of the laws and regulations governing BBSE licensees. After the hearing, BBSE made minor modifications to these proposed changes, and released the modified language for public comment until June 5. The Board was expected to approve the modified regulatory language at its July 21 meeting.

Exam Appeal Regulation Approved. On March 27, the OAL approved BBSE's adoption of section 1815, Chapter 18, Title 16 of the CCR. The new section will provide an appeal process for applicants who fail the Board's oral examination. (See CRLR Vol. 8, No. 4 (Fall 1988) p. 46 for background information.)

LEGISLATION:

AB 2422 (Polanco) would assess a 10% surcharge on the licensing fees of a number of health professionals, including MFCCs, LCSWs, and LEPs. The money would be used to fund a financial assistance project to assist bilingual and bicultural students considering careers in the mental health professions. This bill is pending in the Assembly Ways and Means Committee.

The following is a status update on bills reported in detail in CRLR Vol. 9, No. 2 (Spring 1989) at page 49:

AB 1074 (Polanco), which would permit the Department of Health Services to grant a waiver from professional licensing requirements to MFCCs employed in publicly operated health facilities for up to three years, passed the Assembly on May 25 and is pending in the Senate Committee on Health and Human Services.

AB 1174 (Klehs), which would permit the BBSE to develop a diversion program for the rehabilitation of its licensees who are impaired due to abuse of dangerous drugs or alcohol, passed the Assembly on May 25 and is pending in the Senate Committee on Business and Professions.

AB 1266 (Tucker), which would enact the Alcohol and Drug Counselors License Law, is pending in the Assembly Health Committee.

SB 1004 (Boatwright), as amended April 26, would make it a misdemeanor or a felony offense for any psychotherapist, or any person claiming to be a psychotherapist, to commit specified acts

of sexual exploitation with a current patient or client, or with a former patient or client when the relationship was terminated primarily for the purpose of engaging in these acts, unless six months have elapsed since the termination of the relationship. This bill passed the Senate on May 18 and is pending in the Assembly Ways and Means Committee.

SB 649 (Craven), as amended on April 4, allows the Board to authorize the examination of MFCC applicants who have been licensed in another state, provided they meet certain educational requirements. This bill passed the Senate on April 20 and is pending in the Assembly Health Committee.

SB 1382 (Watson), which would require BBSE to create a file of licensees regarding criminal convictions or disciplinary matters, is pending in the Senate Appropriations Committee at this writing.

LITIGATION:

In *Marlene F. v. Affiliated Psychiatric Medical Clinic*, No. S003030 (April 10, 1989), the California Supreme Court ruled that a mother may sue a therapist for negligent infliction of emotional distress for the trauma she suffers when she learns that the therapist has been molesting her son. The narrow holding requires that both the mother and child be under the therapist's care because the molestation breaches the therapist's duty of care to the mother.

In 1980, the plaintiff went to a health clinic to seek counseling for her son. The treating therapist, believing that the problems arose from the relationship between the boy and his mother, also began treating the plaintiff. After two years of counseling, the mother believed that her son had been molested by the therapist. She confronted the health clinic, which denied any wrongful behavior. The therapist later wrote the mother stating that he would no longer treat minors, and he would undergo psychotherapy.

The mother brought suit against the clinic, its owner, its clinical director, and the treating therapist for negligent infliction of emotional distress. Writing for the majority, Justice Arguelles acknowledged that parents are not usually entitled to recovery for emotional distress stemming from their children's injuries unless they witness the injury. However, due to the patient-therapist relationship, the majority held that the therapist "clearly knew or should have known in each case that his sexual molestation of the child would directly injure and cause severe emotional distress to



his other patient, the mother, as well as to the parent-child relationship that was also under his care." Justice Arguelles also wrote a concurring opinion arguing that the mother should be able to recover for intentional infliction of emotional distress.

While recognizing that the therapist was liable for damages, a concurring opinion authored by Justice Eagleson argued that recovery should be based on professional malpractice, not on negligent infliction of emotional distress.

In *In Re Eduardo, Sheila, Maria, Catalina and Laura A., Los Angeles County Department of Children's Services v. Juan Tomas A. and Maribel C.*, No. B030790 (March 28, 1989), the Second District Court of Appeal granted a mother's motion to strike the testimony of her therapist. In 1985, five children were declared dependents of the juvenile court after it was determined that their father had sexually molested three of them. The children remained in the custody of their mother, who had been ordered by the court not to let the father visit the children. On July 15, 1987, the Department of Children's Services (DCS) filed petitions seeking removal of the children from the mother's custody because she had violated the court order and allowed the father to see the children. At the adjudication hearing, the mother's therapist was called as a witness. The lower court sustained the mother's objection to the testimony and granted her motion to strike testimony of the therapist. The petitions were denied and the DCS appealed. The appellate court affirmed and found the communication between the therapist and the mother privileged under Evidence Code section 1014. The court held that Evidence Code section 1017, which provides an exception to the psychotherapist-patient privilege where the court has ordered the therapist to examine the patient, was inapplicable because it was merely a "juvenile court referral for counseling" and not a direct court appointment. The case was remanded on another issue.

FUTURE MEETINGS:

September 28-29 in Sacramento.

CEMETERY BOARD

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In addition to cemeteries, the Cemetery Board licenses cemetery brokers, salespersons and crematories. Religious cemeteries, public cemeteries and private cemeteries established before 1939 which

are less than ten acres in size are all exempt from Board regulation.

Because of these broad exemptions, the Cemetery Board licenses only about 185 cemeteries. It also licenses approximately 25 crematories and 1,400 brokers and salespersons. A license as a broker or salesperson is issued if the candidate passes an examination testing knowledge of the English language and elementary arithmetic, and demonstrates a fair understanding of the cemetery business.

MAJOR PROJECTS:

Proposed Regulatory Changes. At its May 24 meeting in Sacramento, the Cemetery Board held a public hearing on a proposed change to its regulations, which appear in Chapter 23, Title 16 of the California Code of Regulations. Existing section 2340 requires crematory licensees to maintain specified records. The regulation does not specify that the holder of a cemetery certificate of authority who operates a crematory (but is not a crematory licensee) must also maintain such records. The proposed amendment would add such a requirement, thereby establishing uniform recordkeeping requirements for all licensees operating crematories.

A lengthy discussion centered on section 2340(a)(8), which requires licensees to keep records regarding the exact date, time, place, and type of disposition of cremated remains. Before the proposed change to section 2340 is approved, many licensees want to redraft the language of section 2340(a)(8) because the information required by that section is often not known to the crematory. The crematory cannot definitely verify that the disposer of the remains actually disposed of them as reported to the crematory, nor is it always aware of the exact location of scatterings at sea.

The Board also discussed the possible addition of a new subsection (c) to section 2340. Subsection (c) would read as follows: "This section shall not be interpreted to require the holder of a certificate of authority to maintain a separate set of records pertaining to cremations." However, this change was not included in the formal notice of proposed regulations, and the Board will have to publish the proposed change before adopting it.

The amendments to section 2340 will be discussed further at the Board's next meeting.

LEGISLATION:

SB 698 (Petris), which would extend the Board's annual report requirement to all cemetery authorities, requiring the

report to be filed on or before June 1, or within five months after the close of the fiscal year with approval of the Board, passed the Senate on May 4 and is pending in the Assembly Committee on Governmental Efficiency and Consumer Protection. (See CRLR Vol. 9, No. 2 (Spring 1989) for background information on this bill.)

RECENT MEETINGS:

At its May 24 meeting in Sacramento, the Board considered a number of licensing applications. Board members heard two applications for certificates of authority, three applications for crematory licenses, three applications for corporate cemetery broker licenses, and twelve applications for individual cemetery broker licenses.

FUTURE MEETINGS:

September 6 in San Francisco.

BUREAU OF COLLECTION AND INVESTIGATIVE SERVICES

Chief: Alonzo Hall
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The Bureau of Collection and Investigative Services (BCIS) is one of over forty separate regulatory agencies within the Department of Consumer Affairs (DCA). The Chief of the Bureau is directly responsible to the director of the Department.

The Bureau regulates the practices of collection agencies in California. Collection agencies are businesses that collect debts owed to others. The responsibility of the Bureau in regulating collection agencies is two-fold: (1) to protect the consumer/debtor from false, deceptive, and abusive practices and (2) to protect businesses which refer accounts for collection from financial loss.

In addition, eight other industries are regulated by the Bureau, including private security services (security guards and private patrol operators), repossessioners, private investigators, alarm company operators, protection dog operators, medical provider consultants, security guard training facilities, and locksmiths.

Private Security Services. Private security services encompass those who provide protection for persons and/or property in accordance with a contractual agreement. The types of services provided include private street patrols, security guards, watchpeople, body guards, store detectives, and escort services. Any individual employed for these services is