



REGULATORY AGENCY ACTION

MAJOR PROJECTS:

Merger Possibility Looms Again. In spite of BBE's longstanding opposition, the legislature appears determined to merge BBE with the Board of Cosmetology (BOC). AB 1108 (Epple), the Board's fee bill which was introduced last session, was amended on May 17 to indicate the legislature's intent that the two boards be consolidated; it further directs BBE and BOC to submit a report on a merger plan to the legislature by December 1990. (See CRLR Vol. 9, No. 3 (Summer 1989) p. 41 for background information; see also Vol. 7, No. 1 (Winter 1987) p. 1 for extensive background information on the merger issue.) BBE is so opposed to the merger language that it has asked Assemblymember Epple to withdraw AB 1108. (See *infra* LEGISLATION.)

The legislature has scheduled two interim hearings which will include discussion of the BBE/BOC merger issue. The Senate Business and Professions Committee was slated to hold its oversight hearing on October 25-26, and the Assembly Committee on Governmental Efficiency and Consumer Protection was scheduled to discuss the issue on December 7-8. Assemblymember Delaine Eastin, chair of the Assembly committee, indicated that BBE members would be subpoenaed to the hearing if necessary.

Student Trust Fund Assessments Increased. At its July 10 meeting, BBE approved an amendment to section 204.6(b), Chapter 3, Title 16 of the California Code of Regulations (CCR). At present, each barber college is assessed a sum of \$2 per student enrolled, which is deposited into BBE's Student Security Trust Fund. This fund is used to refund unused tuition that a student would otherwise lose in the event of a school closure. The amendment to section 204.6(b) will increase the assessment to \$5 per student and will increase the trust fund's maximum amount to \$50,000. This change in fees and trust fund balance was prompted by the closure and bankruptcy filing of the Career Opportunities School in Pasadena. (See CRLR Vol. 9, No. 3 (Summer 1989) p. 41 for background information.)

Currently, the fund has a cap of \$10,000. The balance has been reduced to \$8,700, and claims are still awaiting settlement. The new \$50,000 cap will cover the total tuition cost of approximately fifteen students.

Proposed Removal of the Shave. James Vega, a barber from Santa Paula, recently asked BBE to consider removing the shave requirement from the registered

barber examination. In a letter to the Board, Vega stated that he has not been asked to give a shave in eight years. He later presented his views at BBE's July meeting. During the Board's discussion of his proposal, Department of Consumer Affairs (DCA) legal counsel Gus Skarakis pointed out that the law defines barbering to include shaving and requires barber colleges to teach shaving; thus, a legislative amendment would be required. The Board said it would continue to consider the matter.

Proposal to Recodify Barber Law. BBE Executive Officer Lorna Hill was scheduled to present the proposed recodified Barber Law at BBE's October meeting. Hill's intent in proposing the recodification is to simplify the statute for easier reference; add previously approved language relating to bonding of schools; add new college definitions; prepare new language on a cost recovery provision relating to administrative hearing costs; include fee language which was derailed this year; and include language relating to moral turpitude.

LEGISLATION:

SB 190 (Morgan), as amended September 12, establishes the Council for Private Postsecondary and Vocational Education, comprised of fifteen members appointed in a prescribed manner and three ex officio members; and, commencing January 1, 1991, requires the Council to be responsible for the approval of private postsecondary and vocational educational institutions, including barber schools. The bill prohibits institutions from issuing academic or honorary degrees or from offering courses of education leading to educational, professional, technological, or vocational objectives, unless they have demonstrated compliance with prescribed minimum standards and have been approved by the Council. The Council is authorized to receive and investigate complaints alleging violations of the bill's provisions and, at the conclusion of a hearing, to report its findings to the Attorney General, or to commence an action to revoke an institution's approval to operate.

Further objectives of the bill include the following: to ensure minimum standards of instructional quality and institutional stability for all students in all types of institutions; to establish minimum standards concerning quality of education, ethical and business practices, health and safety, and fiscal responsibility; to prohibit the granting of false or misleading educational credentials; and to prohibit misleading literature, adver-

tising, solicitation, or representations by private educational institutions or their agents.

This bill was signed by the Governor on October 1 (Chapter 1307, Statutes of 1989).

The following is a status update on bills reported in detail in CRLR Vol. 9, No. 3, (Summer 1989) at page 41:

AB 1108 (Epple), which states legislative intent directing the merger of BBE and BOC, was made a two-year bill. The bill would also delete existing maximum limits on licensing fees charged by BBE until January 1993, and would increase the maximum fees effective January 1, 1991. BBE, which originally sponsored the fee bill, opposes the merger language and has asked that it be withdrawn.

AB 459 (Frizzelle), which provides that a previously licensed individual may renew his/her license at any time after license expiration upon payment of the applicable fees, and upon satisfaction of continuing education requirements, has been made a two-year bill. The Board opposes this bill.

FUTURE MEETINGS:

To be announced.

BOARD OF BEHAVIORAL SCIENCE EXAMINERS

Executive Officer: Kathleen Callanan (916) 445-4933

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:

LCSW Licensing Laws. BBSE is responsible for implementing SB 2658 (Watson), a 1988 bill which significantly changed clinical social worker licensing laws. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 41 and Vol. 8, No. 4 (Fall 1988) p. 46 for background information.) In particular, the new statute requires two years of post-master's degree supervised



experience as an "associate clinical social worker" in order to become an LCSW. With the authority to clarify SB 2658's provisions, BBSE decided at its July meeting to undertake a comprehensive review of supervisor qualifications, supervisor responsibilities, and the need for guidance to the associate in selecting well-balanced and high quality professional training opportunities within the associate's community. Toward this end, BBSE scheduled two public informational hearings and solicited oral and written expert testimony. The hearings were scheduled for September 15 in Los Angeles and September 28 in Sacramento.

Consumer Brochure on Psychotherapist Sexual Misconduct. In compliance with SB 1277 (Watson) and in response to the alarming statistics revealed in the 1986 Report of the Senate Task Force on Psychotherapist and Patients Sexual Relations, the Department of Consumer Affairs (DCA) has prepared a draft consumer brochure regarding sexual misconduct by psychotherapists. (See CRLR Vol. 7, No. 4 (Fall 1987) p. 42 and Vol. 7, No. 2 (Summer 1987) p. 60 for background information on SB 1277 and the Task Force Report.)

According to the Report, between 5-10% of California's 38,000 psychotherapists have had sex with their patients. One of the Task Force's numerous recommendations was to require any licensed psychotherapist or employer who becomes aware that his/her patient had sexual intercourse or sexual contact with a previous psychotherapist during the course of prior treatment to seek the patient's consent to file a written report and, with or without the patient's consent, to provide specified information to the appropriate licensing authority. This recommendation resulted in SB 1277, which—as introduced—would have imposed mandatory reporting requirements on such psychotherapists. The bill was considerably watered down through amendment and, as approved by the Governor in 1987, required DCA to prepare the consumer brochure for distribution by psychotherapists who believe their patients have been sexually abused by a previous therapist.

DCA has prepared a first draft of the brochure, and has circulated it to numerous experts, including several BBSE Board and staff members, for review and comment. DCA hopes to release the brochure for distribution by December.

BBSE is currently urging professional associations to assist in financing the distribution of the brochure to licensees. BBSE currently has funding for only

30,000 copies, which it believes is insufficient to meet the needs and purposes of the brochure.

Regulatory Changes. At this writing, BBSE staff is preparing the final rule-making record on four packages of regulatory changes which were adopted as far back as March 1989. Staff hoped to submit the packages to the Office of Administrative Law (OAL) by November 10.

Included in the regulatory changes are new provisions to implement the Permit Reform Act of 1982; provisions to implement SB 2658 (Watson) (Chapter 1091, Statutes of 1988), which has substantially changed the licensing requirements for LCSWs; provisions to implement AB 3657 (Vasconcellos) (Chapter 1365, Statutes of 1986), which rewrote the laws governing the experience requirements for MFCC licensure; and amendments to several existing regulations regarding abandonment of applications and conduct substantially related to the qualifications and duties of BBSE licensees for purposes of license denial, revocation, or suspension. (See CRLR Vol. 9, No. 3 (Summer 1989) pp. 41-42 and Vol. 8, No. 4 (Fall 1988) p. 46 for extensive background information on these regulatory changes.)

Employee Assistance Programs. At its July and September meetings, BBSE discussed "employee assistance programs" (EAPs) owned and managed by general business corporations, and specifically, whether counseling experience gained in such programs should be credited toward MFCC licensure requirements. According to a presentation made to BBSE, the theory behind EAPs originated before World War II and was limited to occupational programs focusing on alcohol treatment in large corporations. The EAP traditionally provided resource and referral assistance and tried to identify a "helper" for dysfunctional employees. In the 1980s, the need for these programs has exploded. Short-term EAP programs often expand beyond the traditional job performance formula and reach family interaction and outside relationships. Today, more firms are hiring external EAP contractors rather than providing internal routing. The Board referred the EAP issue to its Legislative Committee, instructing the Committee to identify and define EAPs and to recommend whether an EAP is an appropriate setting in which to allow prospective BBSE licensees to gain experience toward licensure.

LEGISLATION:

The following is a status update on bills reported in detail in CRLR Vol. 9,

No. 3 (Summer 1989) at page 42:

SB 1004 (Boatwright), as amended July 5, makes 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 the psychotherapist has referred the patient or client to an independent psychotherapist, as defined. This bill was signed by the Governor on September 25 (Chapter 795, Statutes of 1989).

AB 1074 (Polanco), as amended August 21, permits the Department of Health Services to grant a waiver from professional licensing requirements for up to three years for an MFCC employed in a publicly operated health facility, if the MFCC is gaining qualifying work experience for licensure in their field. This bill was signed by the Governor on September 20 (Chapter 561, Statutes of 1989).

SB 649 (Craven), as amended July 17, 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 was signed by the Governor on September 24 (Chapter 772, Statutes of 1989).

SB 1382 (Watson), which requires BBSE to create a file of licensees regarding criminal convictions or disciplinary matters, was signed by the Governor on September 12 (Chapter 398, Statutes of 1989).

The following bills were made two-year bills and may be pursued when the legislature reconvenes in January: **AB 1266 (Tucker)**, concerning the licensing of alcohol and drug counselors; **AB 1174 (Klehs)**, which would permit BBSE to develop a diversion program for the rehabilitation of its licensees who are impaired due to abuse of drugs or alcohol; and **AB 2422 (Polanco)**, which would assess a 10% surcharge on the licensing fees of a number of health professions, including MFCCs, LCSWs, and LEPS.

RECENT MEETINGS:

Due to the high failure rate on the MFCC oral examination, BBSE adopted a subcommittee recommendation at its July meeting, calling for a reevaluation of the examination in conjunction with DCA's Central Testing Unit. The Board will review both the content and method of administering the examination. Train-



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ing and evaluation of oral examination commissioners will also be evaluated. The Board also decided to initiate a comprehensive review of the LCSW oral examination, which will begin in January 1990.

At its July and September meetings, BBSE considered and approved several additional advertising formats which are acceptable as alternatives to the ones set forth in the Board's advertising guidelines. The professional disciplines regulated by BBSE are prohibited from misrepresenting the type of license they hold, and from using any advertising which is false, misleading, or deceptive. Licensure status must be shown either by including the complete name of the license, or by including the initials of the license and the license number. The Board permits licensees to include academic credentials (such as M.A. or Ph.D.), so long as the degree is earned and relevant to the license.

FUTURE MEETINGS:

January 26 in Oxnard.
April 20 in San Francisco.
July 13 in San Diego.

CEMETERY BOARD

Executive Officer: John Gill
(916) 920-6078

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 September 6 meeting in San Francisco, the Board again discussed proposed changes to its regulations regarding crematory recordkeeping. (See CRLR Vol. 9, No. 3 (Summer 1989) p. 43 for background information.) The regulations in question appear in Chapter 23, Title 16 of the California Code of Regulations. Existing section 2340(a) would

be amended to require that a holder of a cemetery certificate of authority who operates a crematory maintain specified records. Currently, only crematory licensees are required to maintain such records.

The Board also discussed a proposed change to section 2340(a)(8), which requires licensees to keep records regarding the exact date, time, place, and type of disposition of cremated remains. The proposed change would add the option of recording only the name of the person or entity disposing of the remains. The stated reason for this proposed change is that often the licensees do not know the information required by existing section 2340(a)(8).

The Board also discussed the proposed addition of a subsection (c) to section 2340, to 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 cremation."

The Board planned to hold a public hearing on these proposed regulatory changes at its December meeting.

Endowment Care Fund Rates. The Board's Endowment Care Fund Subcommittee consisting of Frank Haswell and Karen McGagin met on July 28 to discuss whether to increase the minimum endowment care fund contributions for cemetery space. The Subcommittee agreed with the staff that the minimum contributions should be increased to at least the following: grave space from the current \$1.75 per square foot to \$2 per square foot; crypts (first) from the current \$75 each to \$100 each; crypts (additional) from the current \$40 each to \$50 each; and niches from the current \$25 each to \$30 each. The stated justification for the proposed increases is to keep up with inflation. At the Board's September 6 meeting, Mr. Haswell proposed that these increases be the first step in a three-step increase resulting in contributions of \$2.50 per square foot for grave space, with corresponding increases for crypts and niches. These increases would start in 1991, with additional increases in 1992 and 1993. This issue was referred to the Board's Legislative Committee, and a proposal is scheduled for presentation at the December Board meeting.

Salesperson Licensing. The Board discussed the issue of salesperson licensing at its September 6 meeting. Executive Office John Gill reported that the temporary licensing fee of \$20 and the licensing exam fee of \$10 could be combined into a one-time \$30 fee. This change would require legislative action. In conjunction

with this change, the Board would offer two exams per month rather than one. Also, instead of requiring potential licensees to sign up for a particular exam, they would be issued a ticket that they could use at any exam within the 90- or 120-day temporary period. These changes in exam procedure would reduce paperwork and could be accomplished administratively, according to Mr. Gill. This matter was continued until the December meeting when the Board will be able to consider proposed legislation.

LEGISLATION:

SB 698 (Petrus), extending the Board's annual report requirement to all cemetery authorities, and 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), was signed by the Governor on July 27 (Chapter 225, Statutes of 1989).

RECENT MEETINGS:

At its September 6 meeting, the Board considered a number of licensing applications. Board members heard two applications for certificates of authority, three applications for crematory licenses, six applications for corporate cemetery broker licenses, and one application for an individual cemetery broker license.

The Board also considered a complaint against Oakwood Cemetery Association of Los Angeles in Chatsworth. The Board received a complaint from a consumer stating that the finish was coming off the marker she had placed on her husband's grave. Although Oakwood believed that the damage was caused by normal wear and tear, it arranged for the manufacturer to refinish the marker at no cost to the consumer. In investigating the complaint and examining Oakwood's rules and regulations, the Board discovered a violation of section 8302(b) of the Cemetery Act. Oakwood's regulations stipulate that no cremains will be interred in the ground without Oakwood's copper urn. This is a violation of section 8302(b), which provides that no cemetery authority shall require, as a condition to the erection of a marker, monument, or other structure within the cemetery, that the marker, monument, or other structure be purchased from or through the cemetery authority. The Board voted 4-0 to require Oakwood to change its regulations to conform with section 8302(b).

FUTURE MEETINGS:

December 5 in Los Angeles.