



is in the process of selecting new members at this writing.

At its September 8-9 meeting, the Board delegated approval of changes in employment (and also the supervising dentist) for diversion program participants who are also on Board probation to the Executive Officer.

Examination Audit Report. Under Business and Professions Code section 1633, BDE is required to conduct an analysis of exam results to determine whether candidates should repeat the entire licensing exam when they have failed some sections of the test while passing others. (See CRLR Vol. 8, No. 4 (Fall 1988) p. 52 and Vol. 8, No. 3 (Summer 1988) p. 56 for background information.) Hoffman Research Associates reviewed exam subjects, pass/fail rates, and ethnic backgrounds of candidates in formulating its conclusion and proposals. The Board is currently reviewing the proposals, some of which may require legislative changes.

LEGISLATION:

The following is a status update on bills reported in detail in CRLR Vol. 9, No. 3 (Summer 1989) at page 49:

AB 1806 (Statham), as amended July 12, would have authorized BDE to establish a system to penalize licensees for violations of the Board's statutes or regulations and would have required BDE to establish an inspection program. This bill was vetoed by the Governor on October 1.

AB 2061 (Felando), which provides that dentists must possess a license in good standing to practice dentistry in California and a valid general anesthesia permit issued by BDE in order to administer or order the administration of general anesthesia on an outpatient basis, was signed by the Governor on September 21 (Chapter 651, Statutes of 1989).

AB 1281 (Quackenbush), which provides that an expired dentist's license may be renewed at any time within five years after its expiration upon filing an application for renewal and paying all accrued renewal and delinquency fees, was signed by the Governor on September 20 (Chapter 607, Statutes of 1989).

AB 1417 (Speier), as amended August 21, prohibits, on and after January 1, 1992, any dentist from administering or ordering the administration of conscious sedation on an outpatient basis unless the dentist has a specified permit from BDE. The bill also specifies certain acts which constitute unprofessional conduct, including the failure of a dentist with patients who are undergoing conscious

sedation to have these patients continuously monitored during the dental procedure. This bill was signed by the Governor on September 19 (Chapter 526, Statutes of 1989).

AB 550 (Moore) was substantially amended on September 5 to provide that applicants who fail to pass BDE's skills examination after three attempts shall not be eligible for further examination until the applicant has completed a minimum of 50 hours of education in each subject the applicant failed to successfully pass. The bill also provides that a foreign-trained dental applicant who fails the restorative technique examination after three attempts shall not be eligible for further examination until the applicant has successfully completed at least two academic years of education at a dental school which has been approved by either the private Commission on Dental Accreditation or a comparable organization approved by BDE. AB 550 is a two-year bill pending in the Assembly Health Committee.

The following bills have become two-year bills and may be pursued when the legislature reconvenes in January: **AB 109 (Hayden)**, which, as amended September 7, would enact provisions governing the handling, storage, treatment, disposal, and transportation of medical waste; **AB 1061 (Felando)**, which would affect the examination eligibility requirements for graduates of foreign dental schools; **AB 459 (Frizzelle)**, which would provide 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; **SB 733 (Davis)**, which would increase BDE's delinquency renewal fee and the fee for a registered provider of continuing education; and **AB 1703 (Vasconcellos)**, which would limit the type of advertising prohibited as unprofessional conduct by dentists.

RECENT MEETINGS:

At BDE's July 13-14 meeting in San Diego, the Board discussed the new disease reporting requirements for health care providers issued by the Department of Health Services. The Board is awaiting clarification of the reporting requirements before taking a position on endorsement; "suspected" cases of reportable diseases were of specific concern.

Also at the July 13-14 meeting, the Board discussed pending accusations against Dr. Dennis Penn. On July 10, the San Diego County Superior Court issued a temporary restraining order pro-

hibiting Dr. Penn from practicing dentistry until the Board makes a determination in his case. A determination against Dr. Penn could result in the revocation or suspension of his license or other disciplinary action, but would not bar him from applying for reinstatement. At this writing, the Board is reviewing the matter.

FUTURE MEETINGS:

To be announced.

BUREAU OF ELECTRONIC AND APPLIANCE REPAIR

Chief: Jack Hayes
(916) 445-4751

The Bureau of Electronic and Appliance Repair (BEAR) was created by legislative act in 1963. It registers service dealers who repair major home appliance and electronic equipment.

Grounds for denial or revocation of registration include false or misleading advertising, false promises likely to induce a customer to authorize repair, fraudulent or dishonest dealings, any willful departure from or disregard of accepted trade standards for good and workmanlike repair and negligent or incompetent repair. The Electronic and Appliance Repair Dealers Act also requires service dealers to provide an accurate written estimate for parts and labor, provide a claim receipt when accepting equipment for repair, return replaced parts, and furnish an itemized invoice describing all labor performed and parts installed.

The Bureau continually inspects service dealer locations to ensure compliance with the Electronic and Appliance Repair Dealers Registration Law and regulations. It also receives, investigates and resolves consumer complaints.

The Bureau is assisted by an Advisory Board comprised of two representatives of the appliance industry, two representatives of the electronic industry, and five public representatives, all appointed for four-year terms. Of the five public members, three are appointed by the Governor, one by the Speaker of the Assembly, and one by the Senate President pro Tempore.

Current Advisory Board President Armen Karagosian was recently appointed as an electronics industry member by Governor Deukmejian. Mr. Karagosian is the owner and electronic technician of a Fresno television and VCR repair shop. Advisory Board Vice President Fay S.



REGULATORY AGENCY ACTION

Wood was recently reappointed as a public member by Assembly Speaker Willie L. Brown Jr. Ms. Wood is a partner in a service bureau specializing in data processing and marketing, and resides in Rancho Palos Verdes.

MAJOR PROJECTS:

Proposed Regulations to Limit Use of Piercing Valves. At its August 25 meeting, the Advisory Board continued to discuss proposed regulations addressing the use of piercing valves in the repair of refrigerators. (See CRLR Vol. 9, No. 3 (Summer 1989) p. 50 and Vol. 9, No. 2 (Spring 1989) p. 55 for background information.) Proposed regulatory amendments drafted by BEAR Program Manager George Busman provide two alternatives for notifying consumers of the temporary repair: written notice with owner consent, or description on the invoice specifying the temporary nature of the repair. Without such notification, the technician would be required to permanently seal the entry point of the valve or to replace the clamp-on valve with a permanent valve. Furthermore, notice of the presence of a piercing valve would be required on the invoice, regardless of the valve's origin, when detected by a service dealer during repair.

Board members expressed concern about the classification of the clamp-on valve as a temporary repair, noting that few consumers are aware of the distinction between piercing valves and the temporary nature of clamp-on valves. Audience and Board members also noted that the valve is often used as a cheap way to pad the repair bill, and suggested that once the item is repaired the clamp-on valve should be removed. Following extensive discussion, the proposed amendments were sent back to committee for further study upon the suggestion of Mr. Karagosian. Ms. Wood formally requested written opinions from all concerned parties to expedite the issue.

BEAR/BAR Dual Registration Problem. At the August 25 joint meeting of the advisory boards of BEAR and the Bureau of Automotive Repair (BAR), Mr. Busman offered for joint board consideration a proposal to resolve the existing BEAR/BAR dual registration problem. (See CRLR Vol. 9, No. 3 (Summer 1989) p. 50 and Vol. 9, No. 2 (Spring 1989) p. 55 for background information.) At present, section 9801(g)(2) of the Business and Professions Code requires BEAR registration of auto radio and stereo repair dealers who service and/or install audio systems, while BAR's Registration Law also requires registration of

those dealers who install such equipment where the installation requires modification or alteration of the vehicle. Additionally, while installation of auto burglar alarm systems requires BAR registration, BEAR's Advisory Board maintains that a vast majority of such work is done by those required to be registered with BEAR under section 9801(g)(2). Mr. Busman proposed draft legislative amendments that would place repair and installation of auto burglar alarm systems within BEAR's jurisdiction, and add exemptions to both BEAR and BAR registration law such that these dealers would be required to register with either BEAR or BAR, but not both. The advisory boards of both BEAR and BAR approved Mr. Busman's proposed amendments.

Registration and Certification of Electronic and Appliance Technicians. At its July meeting, BEAR's Executive Committee was presented with a proposed voluntary certification and test program developed by the Appliance Task Force to address the problem of poor field technicians. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 46 and Vol. 8, No. 4 (Fall 1988) p. 54 for background information.) The Appliance Task Force, a group of industry members and educators, requested BEAR's support for the certification, stating such backing is necessary for the program to be of value. After discussion, the Committee submitted a memorandum requesting that Department of Consumer Affairs (DCA) legal counsel Donald Chang assess the feasibility of having BEAR register technicians who pass the test, thus extending BEAR jurisdiction to the certified technicians. At BEAR's August meeting, Mr. Chang stated that in his opinion, BEAR could not register the technicians. Any state registration program must be established by the state, not by private interests. To establish a BEAR certification and registration program, legislation would be required. The Board tabled the matter for further consideration.

Return of Warranty Parts Containing Toxic Waste Materials. At the July meeting of BEAR's Executive Committee, Assistant Chief Gordon Boranian noted that some parts returned to the consumer following repairs contain toxic materials. The return of these parts is required pursuant to section 9843 of the Business and Professions Code. Mr. Boranian stated that the U.S. Environmental Protection Agency and other federal agencies have regulations controlling the manufacture of these parts, but no applicable law governing their disposal. Mr. Boranian noted that these parts present a

potential danger to the safety of the consumer, who is not only unaware of the potential danger, but also uneducated as to the proper method of disposal of such parts. The issue was referred to Mr. Chang for a legal opinion on how to address this issue. Mr. Chang stated that under section 9843, all parts must be returned to the consumer absent an express exemption from the statute by regulation or a contractual requirement between the manufacturer and the service dealer that such parts be held ninety days for possible return to the manufacturer. The issue could be addressed by amending section 2765 of BEAR's regulations, which governs parts exempt from section 9843's return requirement. At BEAR's August meeting, Advisory Board President Armen Karagosian stated he will appoint a committee to further investigate this issue.

Return of Parts Replaced Under Service Contract. At the Board's August meeting, Don Chang presented his legal opinion regarding the conflict between service contracts which require service dealers to retain warranty parts and Business and Professions Code section 9843, which requires all parts to be returned to the consumer following repairs. (See CRLR Vol. 9, No. 3 (Summer 1989) p. 50 for background information.) According to Chang, warranty parts should be returned to the consumer unless the service contract expressly states that parts must be retained by the dealer for possible return to the manufacturer.

LEGISLATION:

AB 2532 (Vasconcellos) would, on and after January 1, 1991, require the use of refrigerant recycling equipment approved by the Bureau of Automotive Repair in the servicing of vehicle air conditioners having chlorofluorocarbon (CFC) refrigerants. This bill was referred for interim study.

The following is a status update on bills discussed in CRLR Vol. 9, No. 3 (Summer 1989) at page 50:

SB 352 (Presley) was amended on September 13 to eliminate language providing that BEAR field investigators would be classified as peace officers. This bill was vetoed by the Governor on September 30.

SB 116 (Rosenthal), as amended September 12, would have required persons who install, replace, or service refrigeration systems containing CFCs to reuse or recycle the CFC. This bill was vetoed by the Governor on October 2.



RECENT MEETINGS:

At BEAR's August meeting, Pacific Bell representative Bobbye Copeland addressed the Board regarding BEAR's desire to provide notice to yellow pages readers of BEAR's existence, jurisdiction, and registration requirements. Ms. Copeland discussed PacBell's rejection of Mr. Busman's proposal to include a single-line reference to the consumer pages under each subheading where BEAR registration is required. (See CRLR Vol. 9, No. 3 (Summer 1989) p.50 for background information.) Pacific Bell found that implementation of such a proposal would be prohibitively expensive. Mr. Busman proposed alternatively that free filler spaces throughout the book be used to state BEAR licensing requirements and refer readers to the "Smart Shopper" consumer pages in the front of the directory, which would carry further information about BEAR. This proposal was taken under advisement by Ms. Copeland, who encouraged all further suggestions. Finally, it was proposed that Pacific Bell require all potential advertisers to be licensed before allowing them to advertise. Pacific Bell rejected this proposal, stating that its legal department has determined the law currently does not require those who advertise to be licensed; only those who actually provide the services must be licensed.

FUTURE MEETINGS:

To be announced.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

*Executive Officer: James B. Allen
(916) 445-2413*

The five-member Board of Funeral Directors and Embalmers licenses funeral establishments and embalmers and approves changes of business name or location. It registers apprentice embalmers, approves funeral establishments for apprenticeship training, annually accredits embalming schools and administers the licensing examinations. The Board inspects the physical and sanitary conditions in a funeral establishment, enforces price disclosure laws and audits preneed funeral trust accounts maintained by its licensees. (A Board audit of a licensed funeral firm's preneed trust funds is statutorily mandated prior to transfer or cancellation of the license.) In addition, the Board investigates and resolves consumer complaints.

MAJOR PROJECTS:

Proposed Regulatory Changes. On June 15, the Board adopted proposed amendments to sections 1265 and 1275, Chapter 12, Title 16 of the California Code of Regulations (CCR), relating to the use of income from a preneed trust. (See CRLR Vol. 9, No. 3 (Summer 1989) p. 51; Vol. 9, No. 2 (Spring 1989) p. 56; and Vol. 8, No. 4 (Fall 1988) p. 55 for background information on these changes.) The proposed change to section 1265 would establish an annual fee for administering a trust of not more than 4% of the year-end trust balance, and eliminate an existing restriction on the use of income for actual trust expenses. Amended section 1275 would expand and clarify existing designation and disclosure requirements for guaranteed and nonguaranteed preneed trust agreements or contracts. Prior to submitting the rule-making file on these preneed trust regulation changes to the Office of Administrative Law (OAL), the Board was scheduled to consider further modifications to the proposed regulatory language at its September 28 meeting.

Also at its June meeting, the Board approved the repeal of section 1258, Chapter 12, Title 16 of the CCR, which requires prominent display of a notice on all caskets having or represented as having a sealing device regarding the lack of evidence of any preservative effect of a sealer casket on human remains. (See CRLR Vol. 9, No. 3 (Summer 1989) p. 51 and Vol. 9, No. 2 (Spring 1989) p. 56 for background information.) At this writing, the rulemaking file on this regulatory change is still being prepared for submission to OAL.

Constructive Delivery of Merchandise. At its August 3 meeting, the Board approved draft regulatory language concerning the practice of constructive delivery of merchandise. When a consumer purchases a preneed contract, the money collected covers both services to be rendered and merchandise to be purchased. Currently, payments for future services are placed in a preneed trust. Payments for merchandise to be used in the future are collected by the funeral establishment and the merchandise is warehoused. The consumer is given a warehouse receipt and is considered the owner of the warehoused merchandise. The proposed regulatory action would add section 1262 to Chapter 12, Title 16 of the CCR, to require that any payments received for merchandise, where actual delivery of the merchandise is delayed, shall be held in a preneed trust until the merchandise is actually and

personally delivered to the purchaser. Also, the delivery of a warehouse receipt would not constitute personal delivery of warehoused merchandise.

At this writing, the Board is in the process of developing its Initial Statement of Reasons for the upcoming rule-making proceeding.

Approval of Embalming Schools. At the Board's August 3 meeting, the Embalmer Licensing and Enforcement Committee reported on the process of approving embalming schools. Currently, the Board does not independently certify embalming schools; instead, it approves schools which are certified by the American Board of Funeral Service Education (ABFSE). The Board has expressed a desire to establish its own embalming school certification process so reliance on a national accreditation system is not necessary. However, the Board indicated that any regulations establishing criteria for embalming schools should reflect the current criteria used by ABFSE. The Committee was directed to develop draft regulations establishing independent criteria for the Board's approval of embalming schools.

Restructuring of Apprenticeship Program. At the August 3 meeting, the Embalmer Licensing and Enforcement Committee reported on the Board's apprenticeship program. The Committee indicated that there are weaknesses in the apprenticeship program as it currently exists. The major areas of concern are the lack of structure, excessive length of the term of apprenticeship, and an apparent lack of specific practice requirements. The Board instructed the Committee to perform an extensive review of the apprenticeship program and to report back to the Board with suggestions at a future meeting.

LEGISLATION:

SB 26 (Lockyer) would, among other things, amend section 7739 of the Business and Professions Code to provide that a person who willfully violates the laws regarding preneed trusts is guilty of a Class E felony, punishable by no more than six months in county jail or no more than a \$500 fine, or both. This bill is a two-year bill pending in the Assembly Committee on Public Safety.

The following bills, which were discussed in detail in CRLR Vol. 9, No. 3 (Summer 1989) at page 51, are two-year bills and may be pursued when the legislature reconvenes in January: *AB 459 (Frizzelle)*, which would allow a previously licensed individual to renew his/her license at any time after license expira-