



## 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 regulatory 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-



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tion, upon payment of the applicable fees and satisfaction of continuing education requirements; *SB 722 (Stirling)*, regarding the issuance of permits for the disposition of human remains; and *AB 2271 (Farr)*, which would permit a trustor in a preneed funeral trust to elect, for any reason, that the trust is irrevocable.

## LITIGATION:

In *Quesada v. Oak Hill Improvement Co.*, No. F010595 (Aug. 28, 1989), the Fifth District Court of Appeal held that entities responsible for handling a corpse owe a duty of care to the deceased's close family members because it is foreseeable that mishandling may result in severe emotional distress.

In the case, the body of Lupe Quesada was delivered to the Santa Clara County Coroner's Office for an autopsy. Quesada's widow made funeral arrangements with Oak Hill Memorial Park. Two days later the family members visited the funeral home. They were shown the body of a stranger that the funeral home insisted was Quesada's. Over strong family objections that the funeral home had the wrong body, Oak Hill conducted the funeral ceremony and burial. Five days later the stranger's body was exhumed and replaced with the body of Quesada.

Plaintiffs in the case, Quesada's sister and niece, brought a suit for negligent infliction of emotional distress. The trial court held that no cause of action existed since plaintiffs were not a party to the funeral contract with Oak Hill. The appellate court reversed, holding that liability may be established irrespective of the contractual relationship and is determined by the extent to which the defendant could foresee that emotional harm would result to the plaintiffs. As a result of the ruling, entities owe a duty of care to the deceased's close family members in the handling of corpses. Whether a party is a "close family member" is a question of fact to be determined by a judge or jury.

## RECENT MEETINGS:

At the Board's August 3 meeting, the Publications Committee presented a draft of the proposed consumer information guide. The Board was favorably impressed with the draft and approved it as submitted. The Board instructed the Committee to seek further comments from consumer and industry groups. The Publications Committee was scheduled to report back to the Board at the November 30 meeting regarding any comments received.

## FUTURE MEETINGS:

To be announced.

## BOARD OF REGISTRATION FOR GEOLOGISTS AND GEOPHYSICISTS

*Executive Officer: John E. Wolfe*  
(916) 445-1920

The Board of Registration for Geologists and Geophysicists (BRGG) was created by statute in 1969. This eight-member Board licenses geologists and geophysicists and certifies engineering geologists. In addition to successfully passing the Board's written examination, an applicant must have fulfilled specified educational requirements and have the equivalent of seven years of professional experience in his/her field. This requirement may be satisfied with a combination of education from a school with a Board-approved program in geology or geophysical science, and qualifying field experience.

The Board has the power to discipline licensees who act in violation of the Board's licensing statutes. The Board may issue a citation to licensees or unlicensed persons for violations of Board rules. These citations may be accompanied by an administrative fine of up to \$2,500.

The Board is composed of five public members and three professional members. BRGG's staff consists of two full-time employees (Executive Officer John Wolfe and his secretary) and two part-time personnel. The Board's committees include the Professional Practices, Legislative, and Examination Committees. BRGG is funded by the fees it generates.

The Governor recently appointed Karen L. Melikian to the Board as a public member. Ms. Melikian received her undergraduate degree in education from Fresno State University and completed her master's degree at the University of Southern California. She is currently employed by the Fresno Unified School District. Governor Deukmejian also reappointed Board members Tom Slaven, Howard Spellman, and Wayne Bartholomew to a second four-year term.

## MAJOR PROJECTS:

*Examinations.* Over the summer and early fall, Board staff processed applications for the September 15 examination. Candidates with deficiencies in their applications were notified in time to remedy these defects before the application process was closed, pursuant to the Board's new Application Notification Program. The Board recently developed a new postcard system to notify each candidate whether his/her application packet is complete. (See CRLR Vol. 9, No. 3 (Summer 1989) p. 52 for

background information.)

*Budget.* The Board recently filed a number of budget change proposals, all of which are still pending at this writing. If granted, the additional funds will be used to alleviate BRGG's understaffing problem and to publish information pamphlets and guidelines for groundwater investigations, engineering geologic reports, geophysical studies, and geological reports.

## LEGISLATION:

The following is a status update on bills reported in detail in CRLR Vol. 9, No. 3 (Summer 1989) at page 52:

*AB 469 (Harvey)*, which would increase the ceiling on the fees the Board is permitted to charge its licensees, is a two-year bill pending in the Assembly Committee on Governmental Efficiency and Consumer Protection.

*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, is a two-year bill pending in the Assembly Committee on Governmental Efficiency and Consumer Protection.

## RECENT MEETINGS:

At its July 18 meeting in Los Angeles, the board elected its 1989-90 officers. James Weddle was unanimously elected President and Wayne Bartholomew was reelected Vice-President.

## FUTURE MEETINGS:

To be announced.

## BOARD OF GUIDE DOGS FOR THE BLIND

*Executive Officer: Manuel Urena*  
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The Board of Guide Dogs for the Blind has three primary functions. The Board protects the blind guide dog user by licensing instructors and schools to ensure that they possess certain minimum qualifications. The Board also enforces standards of performance and conduct of these licensees as established by law. Finally, the Board polices unlicensed practice.

There are three guide dog schools in California. These schools train the blind in the use of guide dogs. Each school also trains its own dogs. Each blind person is then matched with a dog using factors such as size and temperament.