



REGULATORY AGENCY ACTION

of the Board's statutes or regulations; and failure to report any act required by law to be reported.

The Board planned to publish these proposed changes in the *Notice Register* in April.

LEGISLATION:

SB 2657 (Watson) would increase the renewal fee, the examination fee, and the reexamination fee for MFCCs; the registration fee for MFCC interns; the original license fee, renewal fee, and reexamination fee for LEPs; and the original license fee and renewal fee for LCSWs. This bill is pending in the Senate Business and Professions Committee; a hearing was set for April 11.

SB 2658 (Watson) would delete an existing statutory provision authorizing social worker applicants whose application has been rejected to apply to the BBSE for reconsideration. The bill would also revise the requirements for licensure as a clinical social worker, particularly with respect to the two years of experience required for licensure eligibility. At this writing, this bill is also awaiting an April 11 hearing in the Business and Professions Committee.

SB 1552 (Kopp) would require BBSE to consider including training regarding the characteristics, methods of assessment, and treatment of acquired immune deficiency syndrome (AIDS) in specified continuing education and training requirements for its licensees. At this writing, the bill is pending in Assembly Health Committee.

AB 4617 (Lancaster), introduced February 19, concerns business names of MFCC corporations. Existing law provides that the name of a MFCC corporation and any name(s) under which it renders professional services shall contain and be restricted to the name or last name of one of more of the present, prospective, or former shareholders and shall include one or more of the words "marriage," "family," and "child," and either "counseling" or "counselor," and wording or abbreviations denoting corporate existence.

AB 4617 would instead allow MFCCs to use the words "therapy" or "therapist" instead of "counseling" and "counselor." It would also provide that a MFCC corporation and any licensed MFCC shall not use any name which is false, misleading, or deceptive, and shall inform the patient, prior to the commencement of treatment, of the name and license designation of the owner(s) of the practice or, in the case of a corpor-

ation, that the business is conducted by a MFCC corporation.

AB 4617 is pending in the Assembly Health Committee.

SB 1642 (Keene) was amended for the fifth time on March 9. Earlier versions of the bill would have required health care service plans and individual practice associations which offer mental health benefits to make reasonable efforts to make available to their members the services of psychologists, MFCCs, and LCSWs. That language has been deleted. As amended March 9, the bill would permit a licensed nonprofit hospital service plan to convert, with permission from the Insurance Commissioner, into a business corporation. *SB 1642* is pending in the Assembly Ways and Means Committee.

RECENT MEETINGS:

At its February 19 meeting, the Board heard from Deborah Carona, chair of the Ethics Committee. Ms. Carona reported on the findings of the Senate Task Force on Psychotherapy and Patient Sexual Relations (see CRLR Vol. 7, No. 3 (Summer 1987) p. 60 and Vol. 7, No. 2 (Spring 1987) p. 42 for background information). The Board decided to send Senator Watson a letter stating support for the work of the Task Force. The Board also decided to send recommendations to the Task Force. In particular, the BBSE recommends that sexual misconduct by a psychotherapist with a patient should be made a felony. At present, victims of improper psychotherapist conduct are limited to a civil action.

Also at the February 19 meeting, the BBSE heard from Genevieve Terrill, chair of the Examination Committee. Ms. Terrill outlined policy and procedure issues related to requests for special accommodations at examination sites. Special accommodations will be given to blind and deaf examinees. The Board will assign a reader for those who require one, and will add thirty minutes to the time of the examination. Ms. Terrill explained that unfamiliarity with the English language is not considered a disability, and thus no special time allowances or assistance from a reader will be permitted in such cases.

The Board heard a presentation by Lorie Rice at the February meeting regarding the Board of Pharmacy's program for impaired professionals. Ms. Rice, Executive Officer of the Board of Pharmacy, explained how that board chose from among the four or five existing model programs. She explained the

various factors which must be considered when choosing a program. These include resources and the severity of the problem in the industry. The Board stated that it will look into the various programs.

FUTURE MEETINGS:

June 24 in Los Angeles.

September 2 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:

Cremation Procedures. As a result of recent litigation alleging illegal commingling of cremated remains, the industry is experiencing a great deal of uncertainty regarding the meaning of the word "commingling," as used in the Health and Safety Code. (See CRLR Vol. 8, No. 1 (Winter 1988) pp. 47-48 for further details on this issue.) In response to this increasing concern, the Board directed legal counsel Anita Scuri to prepare a legal opinion on the incidental commingling of human remains during the cremation process.

At the Board's February 24 meeting in Newport Beach, Scuri presented her written opinion in response to the following question: "Does the cremation of the remains of a person in a cremation chamber that was used previously for the cremation of the remains of another person whose cremated remains were removed prior to the new cremation violate Health and Safety Code section 7054.7(a)(1) as a result of the incidental and unavoidable residue remaining in the cremation chamber?"

Scuri's opinion reviewed existing statutes, including section 7054.7(a)(1), which currently states that "except with



the express written consent of the person entitled to control the disposition of the remains, no person shall...cremate the remains of more than one person at the same time in the same cremation chamber." Health and Safety Code section 7010 defines "cremation" as "the reduction of the body of a deceased person to cremated remains in a crematory...." "Cremated remains" are defined in section 7002 as "human remains after incineration and necessary processing under section 7054.1 in a crematory." Additionally, section 7001 defines "human remains" or "remains" as "the body of a deceased person, and includes the body in any stage of decomposition and cremated remains." Scuri's opinion states that "it is clear from the...definitions that the law is directed to the act of cremating more than one human body at the same time in the same cremation chamber. Cremation is, by definition, the act of incinerating the *body* of a deceased person." Therefore, "[t]he incineration of 'incidental and unavoidable residue' from a prior cremation does not constitute the 'cremation' of a body."

In support of her view, Scuri cited a June 12, 1987 opinion addressing the proper disposition of anatomical parts received from a hospital. The 1987 opinion concludes that "since Section 7054.7 refers to 'remains,' it applies to the body of a deceased person and does not apply where there is no deceased person." By analogy, Scuri's opinion states that "incidental and unavoidable residue" is not the body of a deceased person and the fact that such residue remains from prior cremations does not...constitute a violation of Section 7054.7(a)(1)."

Following a brief synopsis of Scuri's opinion and related background information, Executive Director John Gill reminded the Board of its authority to either accept or reject the opinion or ask the Attorney General's office for a formal opinion. He also reiterated that the Attorney General will not issue a formal opinion prior to an in-house opinion from the licensing agency. Gill opined that because Scuri's opinion serves the Board's needs, a more formalized opinion is unnecessary. He also cited the cost of an Attorney General's opinion and the time involved in obtaining one. After some discussion, the Board accepted Scuri's opinion.

Cremated Remains Particle Size Standards. The Board's February 24 agenda also provided for discussion of proposed regulations and/or legislation to establish cremated remains particle

size standards. As a result of the frequent problem of having excess cremated remains after inurnment, the profession is functioning with uncertainty as to what procedure to take should the cremated remains not entirely fit into an urn.

The issue was originally set for discussion at the Board's December 8 meeting pursuant to the written request of an attorney representing a Board licensee. The attorney appeared before the Board on December 8 to answer questions concerning his request to seek amendment of Division 7 of the Health and Safety Code to stipulate a maximum particle size. Currently, Health and Safety Code section 7054.1 states "no cremated remains shall be removed from the place of cremation, nor shall there be any charge for the cremation, unless the cremated remains have been processed so that they are suitable for inurnment...." In addition, staff counsel was present on December 8 to advise the Board whether particle size could be set by regulations or if legislation would be required. The Board, however, passed a motion to continue discussion of the issue at the Board's February 24 meeting. The Board also directed the staff to solicit written comments from Board licensees and to draft a proposed regulation setting particle size standards for cremated remains.

At the Board's direction, the staff sent a letter dated December 31 to all certificate of authority holders and all crematory licensees requesting written comments on the issue. The letter also published notice of the Board's intent to hear oral testimony on the issue at its February 24 meeting. In addition, the staff drafted a regulation which would establish a maximum particle size for cremated remains.

For the Board's review and discussion at its February 24 meeting, the staff included its proposed regulation in the Board members' meeting package. The proposed regulation states as follows: "pursuant to Section 7054.1 of the Health and Safety Code, 'suitable for inurnment' means the reduction of cremated human remains in such a manner that the largest dimension of any remaining particle does not exceed five millimeters; provided, however, that if a person entitled to control the remains...provides written authorization that such is contrary to their religious tenets, the five millimeter dimension requirement shall not apply." For the Board's further information and review, the staff included in the Board's package a statute from the state of Washington which estab-

lishes five millimeters as the maximum size for cremated remains.

Several written comments from licensees were also provided to Board members prior to the February 24 meeting. The vice-president and general manager of a Sacramento mortuary and cemetery commented that after reviewing the Board's request with his staff, "the general consensus was that larger particles, which are clearly recognizable as bone fragments, are, in fact, offensive not only to the public, but even to certain members of our staff who are involved with the handling of the remains." Conversely, he noted that transferring pulverized remains from one container to another (such as from a plastic container to an urn) can produce a residue in the air. He also stated that bone fragments are not recognizable when remains are in a pulverized state. His resolution is "a particle size large enough to not produce the 'dust' in the air, and yet small enough as to not produce a jagged fragment."

A Mill Valley cemetery and mortuary manager noted that most states have statutes indicating the appropriate size of cremated remains particles. He stated that "California's law is ambiguous and needs clarification." He also noted that bone fragments must be reduced to a small size to ensure inurnment of the entire cremated remains. Inurnment is further complicated when suppliers sell urns which are too small. He stated that the profession's most common method for reducing bone fragments is a mechanical processor, and suggested that uniformity throughout the industry could be obtained if manufacturers of cremated remains processors were required to adhere to minimum specifications regarding the output size of cremated remains and if the Board established a minimum urn size.

A licensee from Beaumont stated that "[a]ll cremated remains should be reduced to sand particle size or to powder through the use of an industry-recognized processor. This particle size will facilitate placement of the entire remains in most standard-sized urns."

At the Board's February 24 meeting, John Gill suggested that the discussion center around the concept of proposing legislation and not regulation. Gill suggested this course of action based upon Anita Scuri's opinion that the Cemetery Act does not authorize the Board to enforce the statutes comprising Division 7 of the Health and Safety Code; thus, the Board would have no authority to administer or enforce particle size stand-



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ards adopted under those statutes.

Board Chair George Griffiths questioned the efficiency and propriety of hearing comments and testimony on proposed legislation which had not yet been drafted and which was not technically before the Board. John Gill commented that, judging from the amount of written comments received by staff and the presence of a considerable number of industry members at the meeting, the issue is an important concern of the profession. He then asked for the Board's direction regarding the presence of industry members at the meeting planning to give oral testimony on the issue. Mr. Gill stated that the Board could hear the testimony if it so chose, but the comments would only be relevant to legislation and not to regulation. Mr. Griffiths interjected that "we don't have any proposed legislation before us at this time." Board member Cuffie Joslin initially stated that she wanted to hear some testimony because the profession's concerns and suggestions would provide helpful information when drafting the legislation. However, Frank Haswell stated that the consumer and industry members would be able to give more informed opinions concerning the legislation after it is drafted, as opposed to speaking on an issue not presently before the Board.

After considerable discussion, Cuffie Joslin requested the staff to place discussion of the issue on the agenda for the next Board meeting. As a result, industry members who wish to testify will again have to make arrangements to attend the Board's next meeting.

LEGISLATION:

SB 2775 (Roberti) would authorize disciplinary action against any Board licensee or registrant for unprofessional conduct. The bill would define "unprofessional conduct" as including but not limited to the following: "(a) violating or attempting to violate...or assisting in or abetting the violation of this chapter ...or of any federal or state law or regulation governing the disposition of human remains, operation of cemeteries or crematories, the sale of cemetery property or the sale of cemetery or crematory services or commodities; (b) negligence; (c) incompetence." At this writing, the bill is pending in the Senate Business and Professions Committee.

AB 2866 (LaFollette), which is pending in the Assembly Local Government Committee, would amend sections 8250, 8580, and 8585 of the Health and Safety Code, relating to cemeteries. Existing law regulating private cemeteries ex-

empts from its provisions any cemetery organized, controlled, and operated by a religious organization. This bill would limit that exemption to a cemetery which was not previously a private cemetery.

Existing law requires that property dedicated to cemetery purposes be held and used exclusively for cemetery purposes, unless and until the dedication is removed from all or any part of it by an order and decree of the superior court of the county in which the property is situated. This bill would require the notice of removal of dedication to be published in a newspaper of general circulation in the county in which the cemetery is located, and would additionally require the notice to be given to all organizations and individuals who have previously requested the notice.

Existing law requires that whenever ownership of any cemetery authority is proposed to be transferred, the cemetery authority must notify the Cemetery Board and also publish a notice of the change of ownership in a newspaper of general circulation in the county in which the cemetery is located. This bill would require the notice to be given to all organizations and individuals who have previously requested the notice and also to be given to owners of plots.

AB 4233 (Hannigan), which is pending in the Assembly Health Committee, would require the Board to inspect the books, records, and premises of crematories; failure to allow that inspection would be grounds for the immediate license suspension.

Existing law makes it unlawful for any person to remove any part of any human remains from any place where it has been interred or deposited awaiting interment with intent to sell it or dissect it without authority. This bill would include dental gold or silver, before or after cremation, within that prohibition; and would delete the intent to sell or dissect the part from that prohibition.

Existing law makes it unlawful to cremate the remains of more than one person at the same time in the same chamber. This bill would provide that the unintentional commingling of remains with the incidental and unavoidable residue remaining in the chamber is not a violation of law. (See *supra* MAJOR PROJECTS and CRLR Vol. 8, No. 1 (Winter 1988) pp. 47-48.)

SB 89 (Boatwright), which would have repealed the statutes creating the Cemetery Board, transferred the Board's powers and duties to the Board of Funeral Directors and Embalmers, and increased the membership of the Funeral

Board by adding a cemetery industry representative, has been dropped by its author. (See CRLR Vol. 7, No. 3 (Summer 1987) p. 62 and Vol. 7, No. 2 (Spring 1987) p. 43 for further discussion of this bill.)

RECENT MEETINGS:

At the Board's February 24 meeting, Board member Frank Haswell and Executive Officer John Gill reported on their recent attendance at a meeting with Board of Funeral Directors and Embalmers President Randall Stricklin and Executive Officer James Allen. Mr. Haswell addressed the boards' most recent attempt to mutually approve a proposal which sets forth types of permissible advertising and/or arranging of cremation services by funeral directors who do not hold a cemetery broker's or crematory license. An earlier proposal, jointly drafted by the Cemetery Board's Subcommittee on Brokerage Requirements and the Licensing and Enforcement Committee of the Board of Funeral Directors and Embalmers, was previously disapproved by both boards. (See CRLR Vol. 7, No. 4 (Fall 1987) p. 43; Vol. 7, No. 3 (Summer 1987) pp. 62-63; Vol. 7, No. 2 (Spring 1987) pp. 50-51; Vol. 7, No. 1 (Winter 1987) p. 44; and Vol. 6, No. 2 (Spring 1986) p. 42 for details on this issue.)

Mr. Haswell discussed the group's inability to formulate an acceptable revision of the proposal. He informed the Board that "we agreed basically to disagree. We could not agree on wording." If the proposal had been approved by both the Cemetery and Funeral Directors Boards, it would be issued to licensees of both boards to guide those licensees who advertise cemetery and/or cremation services, and to assist the Cemetery Board in enforcing statutes establishing cemetery brokerage requirements. After considerable discussion, the Board directed Mr. Haswell to draft a letter from the Cemetery Board for distribution to its licensees, and possibly licensees of the Funeral Directors Board, and to present it at the Board's next meeting.

Also on February 24, John Gill presented for review the finalized draft of the Board's proposed addition of section 9719, chapter 19 of the Business and Professions Code, and amendments to sections 7051 and 7054.7, Chapter 12 of the Health and Safety Code, introduced as AB 4233 (Hannigan) (*see supra* LEGISLATION).

Legal counsel Anita Scuri commented that inclusion of the words "shall be



grounds for the immediate suspension of the license" in section 9719 could cause due process problems unless provisions for a later hearing are also included. After discussion of alternative remedial action, the Board suggested working with the author to develop some corrective language for section 9719.

In its review of the proposed amendment to section 7051, the Board discussed the possibility of disciplinary action against a Cemetery Board licensee whose crematory employee is either found in possession of dental gold pieces which have been removed from cremated remains or is charged by local law enforcement officials for selling dental gold. John Gill stated that during the past two years, law enforcement officials have investigated three different cases involving the removal and/or sale of dental gold. However, because the district attorney has the burden of proving that the specific removal was made "without authority of law," the burden of proving a violation of section 7051 under existing law is difficult. (See CRLR Vol. 8, No. 1 (Winter 1988) p. 47 for further details.)

Additionally, Gill noted that in those situations investigated, no action was taken against the Board's licensee because the employee was determined to be acting independently of management. In each case, the employee in question was either reassigned to noncrematory duties or fired. After lengthy discussion of the Board's authority to discipline the corporation which hired the employee, the Board directed the staff to document situations on a case-by-case basis in an effort to detect patterns and gather substantial evidence which would warrant disciplinary action against the corporation.

During the Board's examination of the proposed amendment to section 7054.7(a)(1), Anita Scuri expressed her concern that inclusion of the word "unintentional" is unnecessary. As amended, section 7054.7(a)(1) would provide that "the unintentional commingling of the remains with the incidental and unavoidable residue remaining in the cremation chamber,...from prior cremations is not a violation of this Code." (See *supra* LEGISLATION.) Under the amended language, local authorities charging a violation of section 7054.7(a)(1) would have the burden of proving intentional commingling beyond a reasonable doubt. Scuri noted that by eliminating the word "unintentional," the district attorney's burden would be easier to carry.

The Board also heard comments from one member of its legislative subcommittee concerning the proposed amendment to section 7054.7(a)(1). The member stated that the legislative intent was to avoid punishing the innocent operator who performs some commingling because of the incidental, unavoidable residue left in the retort, but does not commingle as a matter of course. (See *supra* MAJOR PROJECTS and CRLR Vol. 8, No. 1 (Winter 1988) pp. 47-48 for further information.) After considerable discussion, the Board directed Anita Scuri to draft some remedial language for the proposed amendment.

FUTURE MEETINGS:

To be announced.

BUREAU OF COLLECTION AND INVESTIGATIVE SERVICES

*Acting Chief: Ernest Luzania
(916) 739-3028*

The Bureau of Collection and Investigative Services is one of over forty separate regulatory agencies within the Department of Consumer Affairs. 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), repossession, 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 required to register with the Bureau as a security guard. Any security guard who carries a firearm on the job

must possess a firearm permit issued by the Bureau. The Bureau operates to protect consumers from guards who unlawfully detain, conduct illegal searches, exert undue force, and use their authority to intimidate and harass.

Repossession. Repossession agencies repossess personal property on behalf of a credit grantor when a consumer defaults on a conditional sales contract which contains a repossession clause. The Bureau functions to protect consumers from unethical methods of repossessing personal property, such as physical abuse resulting in bodily harm, threats of violence, illegal entry onto private property, and misrepresentation in order to obtain property or information about property.

Private Investigators. Private investigators conduct investigations for private individuals, businesses, attorneys, insurance companies, and public agencies. The scope of their job generally falls within the areas of civil, criminal, and domestic investigations. The Bureau oversees private investigators to protect consumers and clients against investigators who misrepresent, impersonate, or make threats in order to obtain desired information; perform inadequate or incompetent investigations; fail to substantiate charges or charge more than the amount agreed upon; and alter, falsify, or create evidence.

Alarm Industry. Alarm company operators install, service, maintain, monitor, and respond to burglar alarms. These services are provided to private individuals, businesses, and public entities. The Bureau regulates this industry in order to protect clients from potential theft or burglary, invasion of privacy or misrepresentation by alarm companies, and failure on their part to render service as agreed.

Protection Dog Operators. Protection dog operators train, lease, and sell dogs for personal and/or property protection. They also provide patrol services using trained dogs. These services are employed by private individuals, business entities and law enforcement agencies. The Bureau serves to protect against possible violations in this industry, such as inadequately trained or physically abused dogs, overcharges for services, invasions of privacy, or potential theft or burglary of property.

Medical Provider Consultants. Medical provider consultants are contract collectors who provide in-house collection services to medical facilities. They contact insurance companies and/or patients to try to collect on medical