



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 agencies, 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 Agencies. 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



REGULATORY AGENCY ACTION

debts on behalf of the medical provider. Nevertheless, consultants cannot themselves collect on delinquent debts. Instead, they must turn the debt over to an independent, licensed collection agency in order to avoid any conflict of interest.

Security Guard Training Facilities. These facilities provide necessary training for those desiring to become security guards. Training is given in legal procedures, public safety, minimum standards, and professional conduct. Firearm training is especially important for those guards who will carry a firearm on the job. Upon completion of training, guards must pass an exam before they can be registered.

Locksmiths. As of July 1987, SB 1540 became effective, resulting in the creation of a locksmith regulation program within the Bureau. (For additional information on SB 1540, see CRLR Vol. 6, No. 3 (Summer 1986) p. 25.)

The purpose of the Bureau is to protect the health, welfare and safety of those affected by these industries. To accomplish this, the Bureau regulates and reviews these industries by its licensing procedures and by the adoption and enforcement of regulations. For example, the Bureau reviews all complaints for possible violations and takes disciplinary action when violations are found. The Bureau's primary method of regulating, however, is through the granting or denial of initial/renewal license or registration applications. Education is also utilized to assist in achieving Bureau goals.

Consumers and clients may pursue civil remedies to resolve complaints and disputes currently within the regulatory authority of the Bureau. In addition, class action suits may be filed on behalf of consumers by the Attorney General's office and local district attorneys against businesses which engage in repetitive unethical business practices.

MAJOR PROJECTS:

Administrative Change. According to the Department of Consumer Affairs, former Bureau Chief Gary Kern was "relieved of his responsibilities" in late January. Deputy Chief Ernest Luzania is Acting Chief pending the Governor's appointment of a new Bureau Chief.

1988 CAAB Goals. At its January 19 meeting in Sacramento, the Collection Agency Advisory Board (CAAB) outlined the following goals for the coming year:

-The CAAB, through industry committees, will work with the Bureau to revise the qualified certificate holder

examination. (See CRLR Vol. 8, No. 1 (Winter 1988) p. 49 and Vol. 7, No. 3 (Summer 1987) pp. 65-66 for background information.)

-In conjunction with the Bureau, the CAAB will review the problems and proposals associated with unlicensed activity.

-The CAAB will continue to explore alternatives to conservatorship. (For background information on conservatorship, see CRLR Vol. 7, No. 1 (Winter 1987) p. 38 and Vol. 6, No. 4 (Fall 1986) p. 32.)

Regulations. The Office of Administrative Law (OAL) approved the package of proposed repeals affecting weapons regulations submitted to OAL in January. (See CRLR Vol. 8, No. 1 (Winter 1988) p. 49 for background information.)

In addition, the Department of Consumer Affairs (DCA) and the CAAB will make a final review of the proposed regulation regarding cash deposits in lieu of surety bonds. The proposed regulation would provide for retention of deposits offered in lieu of surety bonds for a period of four years beyond the date of license termination. (See CRLR Vol. 8, No. 1 (Winter 1988) p. 49 for a complete description of the proposed regulation.) The proposed regulation was scheduled for submission to OAL in late March.

Private Security Services Advisory Board. This recently-appointed Board held its first meeting on February 25 in Sacramento. The following Board officers were elected: John Roberts, Jr. (alarm operator representative) was selected as Board Chair; Alex Stiglitz (public member) is Vice Chair; and John Taylor (private patrol industry representative) is Secretary.

The Board began discussion of appointments and reappointments to the Alarm Company Operator and Private Security Disciplinary Review Committee. Action on the appointment of a new Review Committee was postponed, however, until new Advisory Board members could be provided with additional information. The Review Committee hears disciplinary matters, including actions to revoke or deny licenses.

Acting Bureau Chief Ernest Luzania addressed the Board regarding additional training for security guards. AB 646 (Stirling), which died in committee, would have increased the required two-hour powers of arrest training to eight hours of training. The Acting Chief also reported that a proposal by the Police Officers Standard Training (P.O.S.T.) for a Bureau study regarding increased training for security guards would be

opposed by the Bureau, and suggested that P.O.S.T. conduct the study.

Mr. Luzania counseled the Board to identify its 1988 goals and the areas in which it wishes to concentrate. The Acting Chief informed the Board that revisions to the private investigator's examination are almost complete after three years of work. He also reported that several industries within Board purview—such as private security services, alarm company operators, and protection dog operators—are the second-largest contributor of fingerprint cards to the Department of Justice. Such industries generate 53,000 cards each year. All applicants within these industries must be fingerprinted and undergo a background check.

Further Advisory Board action included approval of firearms simulator training. The simulator training may be employed instead of actual firing on a range.

LEGISLATION:

AB 3072 (Seastrand), introduced February 8, would delete the June 30, 1989 repeal date of the Collection Agency Act. This bill is pending in the Assembly Committee on Finance and Insurance.

AB 2753 (Lewis) was referred to the Assembly Committee on Public Safety on January 21, and would add section 11105.4 to the Penal Code relating to criminal records. The bill would authorize any employer or any person who is designated by an employer and who is licensed under the Private Investigator Act to request the Department of Justice to furnish conviction records regarding sex and drug crimes and crimes of violence, with respect to employees or applicants for employment.

AB 2807 (Duplisseea) was referred to the Assembly Committee on Transportation on February 1. The bill would include a "roll-back carrier" within the definition of "tow car," and would subject such carriers to existing tow car requirements. The bill would also exempt specified repossession agencies from tow car equipment provisions and permit those agencies to substitute their DCA license number in lieu of a business address on the sign required under existing law to be displayed on their tow cars.

AB 4007 (Lancaster), introduced February 18, is the DCA's omnibus bill. With regard to the Bureau, AB 4007 would amend existing law which defines an alarm company operator for purposes of licensing and regulation, and exempts from that definition a telephone answer-



ing service which does not engage in specified activities performed by an alarm company operator. This bill would include in the prohibited activities of an exempt answering service the maintenance and alteration of alarm systems. AB 4007 is pending in the Assembly Committee on Governmental Efficiency and Consumer Protection.

SB 1955 (Beverly) was introduced February 8 and would amend section 7539 of the Business and Professions Code relating to private investigators, by deleting the provision prohibiting any licensee, officer, director, partner, manager, or employee of a private investigator from knowingly and directly soliciting employment from any injured person, as specified. This bill is pending in the Senate Business and Professions Committee.

SB 2054 (Davis), introduced February 11, would require a security guard or patrolperson to file a written report with the Director of the DCA describing the circumstances surrounding any incident involving the discharge of any firearm in which he/she was involved while acting within the course and scope of his/her employment, within seven days after the incident. The bill would authorize the Director to assess a specified administrative fine for the violation of this provision. AB 2054 is pending in the Senate Business and Professions Committee.

AB 646 (Stirling) and *AB 1247 (Lewis)*, which were discussed in CRLR Vol. 7, No. 3 (Summer 1987) p. 65, died in committee.

AB 1072 (Floyd), which would exempt licensed private investigators from statutes prohibiting the carrying of concealed weapons under specified circumstances, is pending in the Assembly Judiciary Committee. (See CRLR Vol. 8, No. 1 (Winter 1988) p. 49 for details.)

AB 2527 (Peace), which would prohibit the wearing of a badge by a private patrol licensee, failed passage in the Senate Business and Professions Committee, but reconsideration was granted.

RECENT MEETINGS:

At the CAAB's January 19 meeting, which was held in conjunction with the California Association of Collectors' Mid-Winter Conference in Sacramento, Bureau representatives Lorraine Storey and Chris Rury delivered an informative presentation regarding the Bureau's goals and procedures, as well as its enforcement program.

Lorraine Storey identified the Bureau's primary goal as the deterrence

and prevention of unfair or illegal business practices, and suggested the increased use of administrative, civil, and criminal actions to accomplish this end. The Bureau's responsibilities are heightened because of the complex nature of the laws regulating collection agencies.

Ms. Storey presented a statistical review of Bureau activity covering 1983-84 through the first half of 1987-88. Her report included information relating to the number of agencies and registered employees, inquiries and complaints received, and resulting enforcement actions. Ms. Storey noted reluctance among administrative law judges to suspend licenses and a trend favoring probationary periods which could run up to five years.

Chris Rury, the new Collection Agency Program analyst whose background is in criminal investigation, presented an overview of current enforcement concerns. He identified as significant problems an increasing number of out of trust collection agencies, and a rise in the incidence of agencies ceasing business without proper notification to clients or the Bureau. In addition, Mr. Rury reviewed two chronological timelines to illustrate the intricacies and tremendous amount of time inherent in the conservatorship process. He cited several instances where agencies denied the Bureau's auditor access to agency records.

Mr. Rury reported that the Bureau's proposed compliance plan includes the pending approval and implementation of a new complaint form; the addition of two new consumer services representatives and one graduate student; a revised information pamphlet; further public education and publicity; reorganization of the Debt Collection Manual; revision of the qualified certificate holder examination; and the increased use of legal opinions. The Bureau would also like to increase the use of the DCA's Division of Investigation and expand the recruitment of persons who want to be conservators.

Gary Kern reported that positions for two, two-year, limited-term consumer services representatives were approved for appointment in April or May. One graduate student assistant position has also been approved. This position will focus on the conservatorship program and in researching and responding to the complex legal issues.

Unlicensed agency activity continues to be a problem for the Bureau. At the January 19 meeting, Kern cited statistics compiled by the Bureau which indicated

the receipt of 127 complaints alleging unlicensed activity during the 1985-86 fiscal year. Less than 3% of those complaints were received from agency clients. During fiscal year 1986-87, 112 complaints were received, and in the first half of fiscal year 1987-88, 65 complaints were received. Kern suggested that in instances of suspected unlicensed activity, the District Attorney might be more responsive to a constituent's complaint—that is, a complaint from a licensed collection agency—than to a complaint filed by the Bureau. Kern further suggested the use of injunctions or temporary restraining orders as provided by Business and Professions Code section 6872, and application of section 7592.5 of the Alarm Company Act, which prevents any agent from bringing or maintaining a court action for collection or compensation for the performance of any act or agreement, without providing proof of licensure during the performance of the act or agreement.

The Board also discussed collection agency industry concern over certain agency sales pamphlets which advertise collection of the agency's commission in addition to collecting delinquent accounts. This practice creates unfair competition for those collection agencies which refuse to do so, as well as frequent inquiries from licensees who wish to know whether they may do the same. Gary Kern cited *Bondanza v. Peninsula Hospital and Medical Center*, 23 Cal.3d 260 (1979), in which the California Supreme Court held that such a practice is unlawful.

The CAAB re-elected Jerry Springer as Chair, Esther Winston as Vice Chair, and Bette Myers as Secretary.

FUTURE MEETINGS:

Collection Agency Advisory Board: May 20 in San Francisco; September 23 in San Diego.

Private Security Services Advisory Board: To be announced.

CONTRACTORS STATE LICENSE BOARD

Registrar: John Maloney
(916) 366-5153

The Contractors State License Board (CSLB) licenses contractors to work in California, handles consumer complaints, and enforces existing laws pertaining to contractors.

The thirteen-member Board, consisting of seven public members, five contractors and one labor member, generally