



## RECENT MEETINGS:

At the November 13 meeting, Board member Jack Thomas reported on his recent attendance at the California Consumer Affairs Conference. Thomas felt that the conference was very beneficial and encouraged other Board members to attend the conference in the future.

A public information update was given by Joe Valencia which included presentation of a video entitled *Write it Right*, which has been prepared by the Bureau to provide information to mechanics and consumers on the requirements of the Auto Repair Act. The video is available from the Bureau for a nominal fee.

Valencia also updated the Board on the status of Smog Check Program implementation in San Joaquin County. (See CRLR Vol. 7, No. 4 (Fall 1987) p. 40.) The Bureau is in the process of accepting bids from public relations firms to make public awareness presentations; beginning in March, residents of San Joaquin will be notified of the new program.

## FUTURE MEETINGS:

To be announced.

## BOARD OF BARBER EXAMINERS

*Executive Officer: Lorna P. Hill*  
(916) 445-7008

In 1927, the California legislature created the Board of Barber Examiners (BBE) to control the spread of disease in hair salons for men. The Board, which consists of three public and two industry representatives, regulates and licenses barber schools, instructors, barbers, and shops. It sets training requirements and examines applicants, inspects barber shops, and disciplines violators with licensing sanctions. The Board licenses approximately 22 schools, 6,500 shops, and 21,500 barbers.

## MAJOR PROJECTS:

*Regulatory Changes.* The Board was scheduled to conduct a hearing on January 25 in Sacramento on proposed changes to Chapter 3, Title 16 of the California Administrative Code. Some of the proposed changes are technical in nature and correct specific statutory citations in the text and/or accompanying authority and reference notes of various provisions. Other technical changes involve the renumbering of some regulations to facilitate the creation of a new Article 3.5, pertaining to examinations.

The substantive changes proposed by BBE include amendment of existing sections 203.2 (examination appeal), 213 (uniforms during college hours), 213.1 (labels on bottles and containers), 214 (attendance), 214.1 (transfers), 216.1 (records), 217.1 (new course of instruction), 219.2 (barber students: 400-hour courses), 219.3 (instructor training program), 224 (display of shop license and certificates), 224.1 (premises for practice of barbering), 224.3 (leasing and rental agreements), and 236.1 (charge for dishonored checks).

Also proposed are amendments to sections 242 (seminars), 246.3 (attendance: changes in employment), 247 (approval of apprentice training: training requirements), and 300 (administrative fines), as well as repeal of all regulations currently contained in Article 4.5 (educable mentally retarded program). The Board has noted that since the enactment of Article 4.5 in 1971, no mentally retarded person has made an application through the provisions of that article.

Finally, BBE proposes the addition of a number of new regulations, including section 203.3 (conditional credit on examination), 203.5 (abandonment of applications), 204.2 (student enrollments), 229 (model standards), and 242.1 (inactive instructor license).

## LEGISLATION:

*SB 1388 (Montoya)* and *SB 1179 (Maddy)*, each offering a different approach to merger of the barber and cosmetology licensing programs, were discussed at an interim hearing before the Senate Business and Professions Committee in Palm Springs on December 8. BBE presented testimony at the hearing on SB 1179. (For background information on these measures and the issues they address, see CRLR Vol. 7, No. 3 (Summer 1987) p. 68; Vol. 7, No. 2 (Spring 1987) pp. 40-41; and Vol. 7, No. 1 (Winter 1987) p. 1.)

*SB 1234 (Montoya)* was incorrectly reported in the previous issue of the *Reporter* (CRLR Vol. 7, No. 4 (Fall 1987) at p. 41) as affecting BBE's Student Security Fund. In fact, all language in the measure which pertained to BBE or the Fund was amended out of the bill. As chaptered, SB 1234 related only to the Board of Cosmetology. We apologize for the error.

## 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:

*Exam Appeal Regulations.* The Board continues to discuss the need for exam appeal regulations. (See CRLR Vol. 7, No. 4 (Fall 1987) p. 42 for background information.) As of this writing, the Exam Committee has not yet drafted any specific language for the regulations, which were scheduled for further discussion at the Board's February 19 meeting.

*Regulatory Determination Decision.* On December 4, the Office of Administrative Law (OAL) issued a regulatory determination concerning a challenged BBSE rule. The subject of the determination was a letter mailed to all MFCCs and LCSWs on January 6, 1987, which contained "Proposed Regulations for Completed Coursework or Training in Child Abuse Assessment and Reporting." The letter stated that as a prerequisite to renewal of their licenses, MFCCs and LCSWs would have to comply with section 28 of the Business and Professions Code and section 1807.2, Title 16 of the California Administrative Code, both of which address required training in child abuse assessment and reporting.

The legislature added section 28 to the Business and Professions Code, effective January 1, 1986 (Chapter 844, Statutes of 1986). Specifically, the law requires training in the area of child abuse assessment and reporting for all persons applying after January 1, 1987 for an original license or renewal of a license as an MFCC or LCSW.

The basis of the challenge, as contained in a request for determination initiated in March 1987 by Ruth H. Gordon, MFCC, was that the language cited as "section 1807.2" in the BBSE letter had not been formally adopted by the Board or approved by OAL as of



the date the letter was issued. Before a regulation may be enforced as law, it must be promulgated in accordance with specific rulemaking requirements contained in the state's Administrative Procedure Act (APA).

On October 28, the Board filed a response to Gordon's challenge. In that response, the BBSE declared that prior to May 7, 1987 (when a revised version of section 1807.2 was approved by OAL and filed with the Secretary of State), it was enforcing section 28 of the Business and Professions Code. The Board claimed that the rule which it had cited in the January 6 letter simply restated section 28.

When OAL receives a request for determination, it must determine whether the challenged rule is a "regulation" within the meaning of the APA, and if so, whether it was promulgated according to APA requirements. In the case of section 1807.2, OAL found that the rule was (1) of general applicability, in that it applied to all MFCCs and LCSWs seeking renewal and all new applicants seeking licensure; and (2) intended to implement, interpret, or make more specific a statute (section 28). Thus OAL concluded that section 1807.2, as presented in the challenged BBSE letter, was a "regulation" within the meaning of the APA.

Because BBSE had not satisfied APA rulemaking requirements with regard to section 1807.2, OAL further determined that the rule was invalid and unenforceable until adopted by the Board in accordance with the APA. As previously reported, a revised version of section 1807.2 was adopted by BBSE and approved by OAL late last spring. (See CRLR Vol. 7, No. 4 (Fall 1987) pp. 41-42.) However, not contained in the approved regulation was some of the original section 1807.2 language published in the challenged letter, which addressed documentation of training and exemption from the rule's purview. Therefore, OAL's December 4 regulatory determination found that the provisions of the letter containing that language were invalid and unenforceable, notwithstanding the formal approval of revised section 1807.2.

#### LEGISLATION:

*AB 2300 (Roos)* would have required the boards regulating psychologists, LCSWs, and MFCCs to impose continuing education requirements as a condition of relicensure after July 1, 1988. Continuing education would have been defined as "the variety of educational

activities and learning experiences including but not limited to, lectures, seminars, and conferences relevant to the practice of the profession." The bill has been dropped by its author.

*SB 683 (Rosenthal)* would have added psychotherapy to the schedule of outpatient services covered by the Medi-Cal program, and would have limited outpatient psychotherapy services provided by a LCSW or MFCC to those provided pursuant to a written referral by a physician or surgeon licensed to practice medicine in California. The bill would also have limited these services to the extent that federal matching funds are provided. The bill was killed on the Senate floor on January 28.

*SB 1642 (Keene)*, in its original form, would have required all specialized health care service plans which offer mental health benefits to give reasonable consideration to licensed psychologists, MFCCs and LCSWs as providers of mental health or psychological services.

Under this bill as originally written, no plan would be allowed to prohibit a member from selecting a licensed psychologist, MFCC, or LCSW so long as such a professional is directly affiliated with, or under contract to, the health care service plan to which the member belongs.

*SB 1642* was amended in the Assembly on August 26, 1987 and no longer contains this language. As amended, the bill would delete provisions in existing law authorizing a disability insurance policy or a health care service plan to provide for coverage of, or for payment for, professional mental health services. As of this writing, Senator Keene's office is planning extensive further amendments to the measure. The bill remains in the Assembly Ways and Means Committee.

#### LITIGATION:

In *Krikorian v. Barry*, No. B024603 (Dec. 10, 1987), the Second District Court of Appeal held that a psychologist who reports instances of child abuse to a child protective agency cannot be sued by the individuals allegedly involved in the incidents, even if the report is false or recklessly made.

The Child Abuse Reporting Act requires child care custodians and medical and non-medical practitioners to report suspected instances of child abuse to a child protective agency; failure to report is a misdemeanor. The appellate court held that individuals subject to the Act are absolutely immune from liability in connection with required reporting.

The case arose from a suit by nine students against two preschools, Peninsula Montessori School No. 1 and Peninsula Montessori School No. 2. The students claimed they had been sexually molested by the schools' owner, Claudia Krikorian. Krikorian cross-complained against Dr. Helena Barry, a clinical psychologist hired by the parents to counsel their children and investigate their abuse claims.

Krikorian alleged that Barry had been professionally negligent in her methods and also that Barry had conspired with the Lomita Sheriff's Department, California Department of Social Services, and the Harbor-UCLA Medical Center by fabricating evidence of the abuse.

Barry asked the Los Angeles Superior Court to dismiss the cross-claim, arguing that her actions were absolutely privileged under state law. Judge H. Walter Croskey agreed and Krikorian appealed. On appeal, Krikorian argued that since the Act requires reporting only when the individual making the report "knows or reasonably suspects" that child abuse has occurred, only reports where the reporter actually knew of or reasonably suspected abuse should be protected. The appellate court disagreed, finding that the legislature intended to absolutely immunize from lawsuits individuals who are required to report child abuse.

#### FUTURE MEETINGS:

April 29 in San Francisco.  
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.