



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:

Investigation. On February 18 the Board questioned the owner of Chapel of the Chimes in Santa Rosa, concerning his knowledge of a former employee's forgery of a physician's signature on a death certificate. The owner initially responded to the Board's inquiry by questioning the Board's jurisdiction over the case, stating that the Board of Funeral Directors and Embalmers had previously investigated the incident. Board staff counsel Anita Scuri responded that the Board's authority derives from Penal Code section 115 and Business and Professions Code section 9727.

The Board then proceeded to investigate by inquiring into the facts surrounding the forgery. The owner explained that the employee who forged the physician's signature was hired a month prior to the incident and was fired shortly thereafter for unrelated reasons. Subsequently, another employee confronted the owner, told him about the forgery, and threatened to expose the violation to a television station if he was not promoted to manager. As a result, the owner fired the second employee. The following day, the second employee reported the forgery to a television station, which broadcast the information about the forged death certificate.

Board members questioned the owner about the existence and/or enforcement of employee conduct policies, procedural operations, rules, regulations, or guidelines at Chapel of the Chimes. Board staff members reported that they conducted an investigation at the facility by randomly sampling physicians' signatures on death certificates. Specifically, the investigators randomly selected death certificates until they found two containing the same physician's name and then compared the signatures. Because all signatures appeared to match each other, the investigators concluded the forgery was an isolated incident. The investigators, however, failed to compare the physicians' signatures on the samples with their actual signatures. Nor did the investigators check the credentials of the signing physicians. Nonetheless, four Board members passed a motion to drop the investigation with-

out a warning letter, while two members voted to drop it with a warning letter.

LEGISLATION:

SB 89 (Boatwright) would repeal the provisions of law establishing the Cemetery Board, transfer its powers and duties to the state Board of Funeral Directors and Embalmers, and increase the membership of that board by adding a member representing the cemetery industry. During the Cemetery Board's consideration of SB 89, discussion centered on the criteria used by Senator Boatwright in determining that six state boards, including the Cemetery Board, should be abolished. John Gill noted that a criterion of particular concern appears to be the number of licenses each board has revoked in the past, and that boards which revoke few licenses or engage in little disciplinary action against licensees are particularly suspect. John Gill also stated that Senator Boatwright's office has not responded to his written request to arrange a meeting to discuss the issues. On February 18 in San Diego, the Board decided to oppose SB 89.

RECENT MEETINGS:

Staff counsel Anita Scuri has drafted legislation authorizing disciplinary action against any Board licensee or registrant for unprofessional conduct, which includes, among other things, negligence and incompetence. (See CRLR Vol. 6, No. 4 (Fall 1986) p. 31 and CRLR Vol. 7, No. 1 (Winter 1987) p. 37.) At the December 3 meeting, industry members on the Board expressed criticism, arguing that a more specific definition of negligence and incompetence is needed in the proposed legislation. As a result, the Board referred the legislation to subcommittee. The Board's Legislative Subcommittee, composed of Cuffie Joslin and Frank Haswell, reported to the Board on February 18 that the Subcommittee had not met since the December 3 meeting in Los Angeles. Cuffie Joslin stated that the Subcommittee should not be the sole decisionmaker. Frank Haswell voiced similar concerns, stating he has met and spoken with industry members concerning their views on the proposed unprofessional conduct legislation. Industry members are generally opposed to the legislation, on grounds its language is too broad and also because the Business and Professions Code presently authorizes the Board to impose disciplinary sanctions by suspending or revoking an individual's license for unprofessional conduct. John Gill, how-

ever, stated that the Cemetery Act only empowers the Board to discipline specific violations. For example, if grave markers are put on the wrong grave sites, the Board has no authority under the Cemetery Act to reprimand the offender. The Board agreed that Cuffie Joslin and Frank Haswell should meet with Jim Lehy, a member of the Cemetery Association of California, and Anita Scuri to discuss the proposed unprofessional conduct legislation. This "committee" will report to the Board at the next meeting in April.

At its February 18 meeting, the Board considered a number of licensing applications. Board members heard nine applications for certificates of authority, two applications for crematory licenses, and ten applications for cemetery brokers licenses.

FUTURE MEETINGS:

To be announced.

BUREAU OF COLLECTION AND INVESTIGATIVE SERVICES

Chief: Gary Kern
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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, seven other industries are regulated by the Bureau: private security services (security guards and private patrol operators), repossessors, private investigators, alarm company operators, protection dog operators, medical provider consultants and security guard training facilities.

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 ser-



vices 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.

Repossessors. 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 both 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 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.

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 issuance 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:

Regulations. The Office of Administrative Law (OAL) has approved the first of four packages of proposed changes in the Bureau's regulations, which are contained in Chapter 7, Title 16 of the California Administrative Code. Approved changes include amendments to sections 600.1, 601, 602, and 602.1, as well as the repeal of section 639. The Collection Agency Board unanimously endorsed this package at its January 9 meeting. Three additional

packages of regulatory amendments were to be submitted to OAL for formal review sometime in March. (For more information, see CRLR Vol. 7, No. 1 (Winter 1987) p. 38.)

The Bureau is now drafting amendments to its weapon regulations, with filing for notice and comment tentatively planned for April or May.

LEGISLATION:

AB 646 (Stirling), introduced February 17, would change the composition of the Advisory Board on Private Security Services. Presently, the Advisory Board consists of nine members, two of whom are private patrol operators, two of whom are alarm company operators, and five of whom are public members. AB 646 would give industry membership a majority by replacing one member of each of the above classes with a private investigator, a security trainer, and a member of a law enforcement organization or association, while maintaining the membership of the Board at nine members.

The bill would also require uniformed employees of a private patrol operator to carry a valid and current security guard registration card and an additional form of identification, as specified.

SB 646 would additionally require that security guards and patrolpersons who carry deadly weapons complete an eight-hour course in the exercise of the powers to arrest prescribed by the Department of Consumer Affairs. The bill would require the Bureau to supply instructors and guidebooks; only Bureau-certified instructors and schools could administer, test, and certify prospective licensees.

RECENT MEETINGS:

Collection Agency Advisory Board. At its January 9 meeting, the Collection Agency Advisory Board articulated its four goals for the coming year:

-The Board will continue efforts to make the Bureau's conservatorship program more efficient and cost effective;

-It will continue its work to define and resolve the problems connected with precollection and letter services;

-It will begin a review of the legislative provision for sunseting the Collection Agency Act; and

-It will work with the Bureau to amend rules and regulations affecting collection agencies.

In Chief Kern's absence, Program Analyst Lorraine Storey reported on the Bureau's study of the collector registration process. Bureau staff has been studying application forms, the process



for entering and checking information on the computer system, and the application review process. The staff has taken steps to resolve problems in the system used to track and approve registered aliases used by collection personnel.

Ms. Storey also reported that the Bureau does not wish to reinstitute its former practice of checking the criminal histories of applicants for collector registration. Board members agreed that such screening of collector applicants is the responsibility of the employing collection agencies.

Board members raised two issues for possible inclusion on future agendas. First, newly elected Chair Jerry Springer suggested the Board review the role of the qualified manager in the collection industry. In particular, he feels that collection agency managers should not be responsible for the fiscal activities of collection agencies. Second, industry member Betty Myers expressed concern about whether a creditor may increase the amount of a consumer's bill prior to assigning the account to a collection agency in order to recoup its collection costs. These matters will be discussed in more detail at the Board's next meeting.

Advisory Board on Private Security Services. The Advisory Board on Private Security Services met on January 23 in Inglewood. Board members discussed whether private security services may have rank designations on guard badges. Because there is concern that guards may be mistaken for police officers if they wear badges indicating "Captain," "Lieutenant," or "Sergeant," the Bureau is reluctant to allow such designations. The Board took no formal action on this matter.

The objectives and structure of the Bureau's Disciplinary Review Committee were also discussed at the January meeting. Disciplinary Review Committee members are appointed to the Advisory Board and represent both the industry and the public. The Board clarified that when a guard is disciplined, he/she is afforded an opportunity to appeal the order to the Disciplinary Review Committee. Review by the Committee costs approximately \$60 per case, and if the case can be resolved at that level, saves the Bureau \$2,500-\$3,000 which it would otherwise spend to defend a guard's appeal before the Office of Administrative Hearings.

FUTURE MEETINGS:

July 17 in Orange County (Private Security Services Advisory Board).

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 meets every other month. The Board maintains four committees: legislative, which monitors legislation affecting the Board; enforcement, which oversees enforcement of existing rules and regulations, including licensing requirements; licensing, which oversees the Board's licensing procedures; and administration/public information/liason, which oversees the Board's operations and public contact. Committees meet monthly, making recommendations to the full Board for requested action.

MAJOR PROJECTS:

Hazardous Substance Removal Examination. The Board's Examination Services Unit is preparing to request Board approval to develop an examination for hazardous substance removal certification as mandated by SB 2575 (McCorquodale). (See CRLR Vol. 6, No. 4 (Fall 1986) p. 33.)

Amnesty Program. The implementation of SB 2389 (Doolittle) (see CRLR Vol. 7, No. 1 (Winter 1987) p. 39 for background information) has generated numerous inquiries and a large number of applications. SB 2389 allows unlicensed contractors to substitute experience gained prior to December 31, 1986 for the experience and knowledge requirements of section 7068 of the Business and Professions Code. Staff has responded by coordinating two one-day sessions to discuss the implementation of SB 2389 with contractor schools and consultants.

LITIGATION:

In *Parker v. Contractors State License Board*, 187 Cal. App. 3d 205 (October 29, 1986), the First District Court of Appeal reversed a trial judge's issuance of a writ of mandate directing CSLB's Registrar to set aside the agency's decision to suspend the license of California Parker Electric, Inc. (Parker). On the administrative level, Parker and related corporate entities were charged with failing to submit employee benefit contributions withheld from employees' wages to the union,

and fraudulently representing to its employees that it had done so. The administrative law judge determined that although the amounts owed to the union trust fund had been discharged in bankruptcy, the fraud involved in the failure to forward the "withheld" sums to the union (rather than the company's failure to pay the debt) was the basis for discipline. Thus, the disciplinary action did not violate federal bankruptcy law which prohibits revocation of a license solely for failure to pay a debt discharged in bankruptcy.

On petition for writ of mandate, the trial court held that the Registrar's decision to suspend violated the federal bankruptcy law because it was imposed primarily for the collection of a debt and because suspension of Parker's license would force the close of his businesses and deprive him of the "fresh start" contemplated by the Bankruptcy Code; the trial court, however, failed to make specific findings of fact on wilfulness and fraud. The appellate court reversed and remanded to the trial court with directions to make findings on those issues, because "if [Parker] committed fraud in violation of the relevant statutes, and [CSLB] decided to discipline them for such unlawful conduct,...[the bankruptcy law] does not bar such action simply because the debt arising from the fraud is subsequently discharged in bankruptcy." 187 Cal. App. 3d at 211.

LEGISLATION:

AB 394 (Waters) was introduced in the Assembly on January 27 as an urgency matter to appropriate \$377,000 from the Contractors' License Fund to reimburse the Department of Consumer Affairs for costs incurred by the Board in the 1985-86 fiscal year.

AB 188 (Bradley) would create a pilot project in up to six counties, under which a local building inspector, when checking for building or construction permits or for compliance with building laws, may issue a citation to those contracting without a contractors license.

AB 699 (Cortese), introduced February 18, would change current law regarding payments by a general contractor to specialty contractors. Existing law requires a prime building contractor to pay any specialty contractor within ten days of receipt of each progress payment, unless otherwise agreed in writing. Existing law also provides that the deliberate failure by a licensed contractor to pay money when due when he/she has the capacity to pay or has received sufficient funds is a cause for