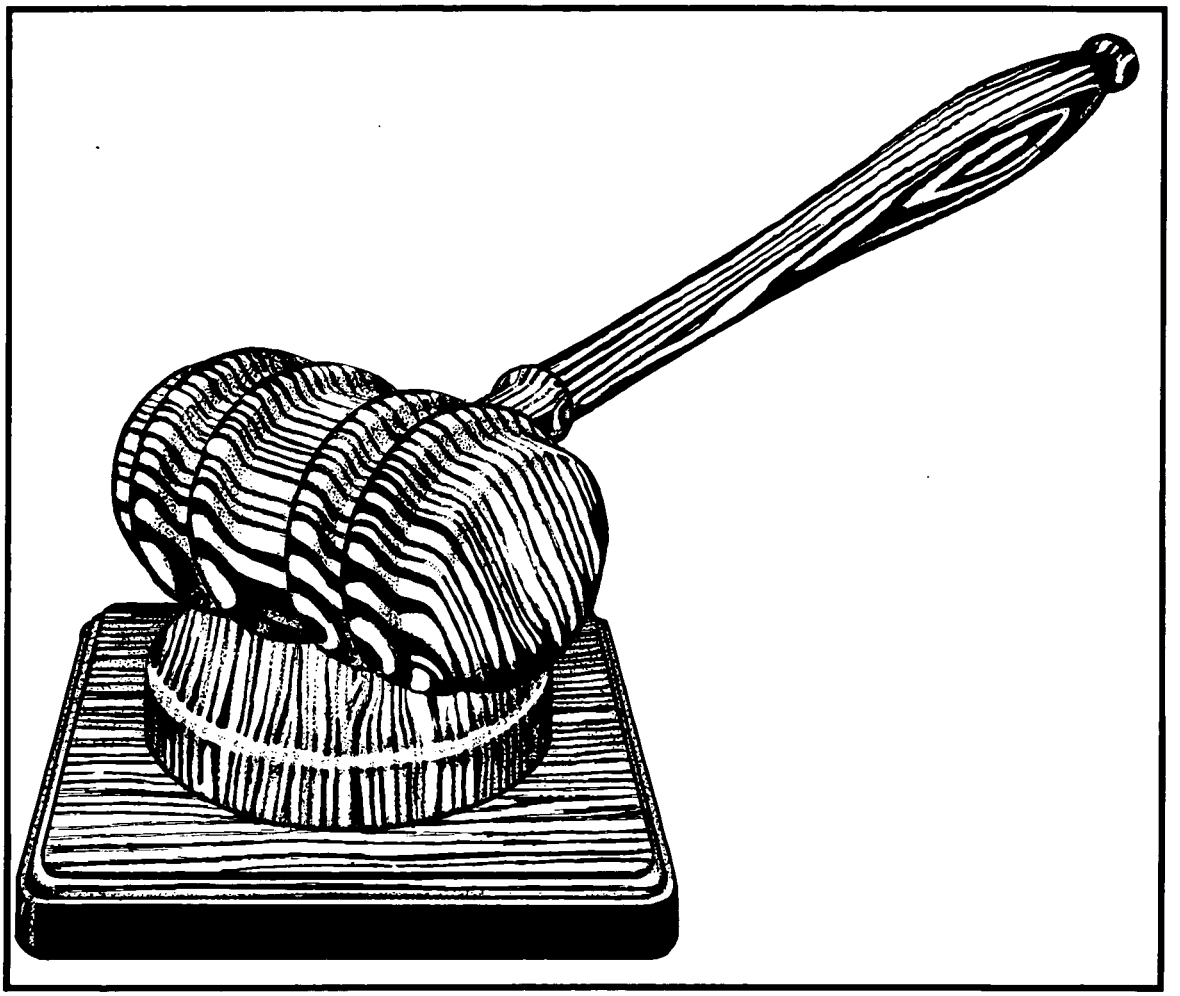
THE CALIFORNIA Regulatory Law REPORTER

VOL. I, NO. 1 SPRING 1981



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INTRODUCTION

With this first issue, the Center for Public Interest Law of the University of San Diego begins its publication of a quarterly regulatory law reporter. The first issues of this publication will be distributed to libraries, journalists, judges and legislators, among others. The reader will find in this publication commentaries and summaries of recent actions in court, prospective legislative measures, formal opinions of the Attorney General and the meeting proceedings of sixty boards and commissions of the State of California.

The sixty boards and commissions, including major subsidiary committees, selected for monitoring and reportage represent the brunt of State regulatory activity over business. Other agencies regulate consumers directly (e.g. the Department of Motor Vehicles), directly manage State resources or recommend State policies. This Reporter focuses on agencies exercising controls in the form of rate regulation, or licensing requirements, with reporting and behavioral restrictions emanating from these rate setting or entry control powers.

The growth of State government in the regulatory sphere has been remarkable. From an early PUC controlling regulatory abuse by natural monopoly utilities through maximum rate regulation, the State has become involved in protecting the public from real or imagined marketplace abuse across a wide universe of concern. The prescreening of industry and trade competitors has been commonly justified as a way to guarantee a minimum quality level and prevent consumer fraud. We now have regulation of trades ranging from embalmers to private investigators. Psychologists, landscape architects, even petroleum engineers, must qualify for licenses and subject themselves to the rules of a State Board. Several sessions ago a bill proposed that a Board of Astrology be established to license astrologers. While the State has not yet taken that step, it has required new automobile dealers, or existing dealers who want to relocate, to receive permission from a State Board if a competitor objects. We have included in our range of monitoring all of these agencies, large and small.

The Center is funded by a grant from the Weingart Foundation and operates as a part of the University of San Diego School of Law. The staff of the Center consists of a Director, a full time staff attorney in Sacramento, an assistant in San Diego, and 24 student interns who work for a full year with the Center. The students take preparatory courses, Administrative Law taught by Professor Kenneth Culp Davis or Paul Horton, Consumer Law or Regulated Industries taught by Professor Robert Fellmeth, and Trade Regulation (antitrust law) taught by Professor Ralph Folsom. The students take an additional separate course, California Administrative Law and Practice, studying the California Public Records Act, Open Meetings Act and the new Administrative Procedure Act, and the cases interpreting them. The class discusses previous critiques of the agencies.

Each student intern is assigned 2 to 3 agencies to monitor. One of the agencies monitored will be the object of a critical study and report at the conclusion of the two semester course. Students will then be given clinic credits to follow up their critiques with agency advocacy projects, testimony, agency petitions, rulemaking intervention, presentation of evidence and examination of witnesses, requests for Attorney General opinions, press releases and conferences, litigation, and drafting model legislation.

The Center began its efforts in 1980 by compiling a library of agendas, minutes and other agency records. Although formal rulemaking requires formal notice and publication, most agency activities are not widely known. There is no single place one can go for agendas or minutes. The agendas and minutes themselves vary in format and detail from the barely comprehensible to the useless. Nevertheless, the staff monitors have briefed themselves from the largest store of information available, reviewed prior regulations, budget data, the enabling statutes of their agencies, and after preliminary interviews, are now attending meetings throughout the State. For many of these agencies, the regular presence in the audience of one without a profit stake in the agency is a novel experience.

The early reports on the agencies will be necessarily brief, and will become increasingly useful as more detailed activities and more meetings are tracked. Further, the monitors will become increasingly familiar with the day to day operations of the administrative parts of these boards as they continue to interview agency staff.

The response of the agencies to the Center's monitors has varied. Some high officials have not been able to find time to talk to any of us for "about three months." One agency asked for a $1,000 deposit before it started reproducing public documents to send us (apparently due to cost concerns), and another contended at first that only two copies of the minutes were published, one going to the Governor and the other to the Department of Consumer Affairs, precluding us from receiving a copy or even from apparently seeing one. However, most of these rough spots have been smoothed, and the Center now finds itself in an unusual position. The passage of AB 1111 mandates the review by all of the agencies of rules and regulations currently extant. Supervised by the Office of Administrative Law (see *infra*), the agencies have to obtain "public input" into the comprehensive review process. The Center has been asked to assist many of the agencies in revising their rules, and has agreed to provide assistance to its capability.

The Center hopes to make this Reporter an information resource for many, opening up the often murky administrative process for wider examination. And the Center looks forward to helping agencies update and streamline the 30,000 pages of regulations which must be reviewed. Those of us at the Center for Public Interest Law at the University of San Diego respectfully solicit your ideas and participation in these ventures.

FEATURE ARTICLE

by
Gene Erbin and
Robert Fellmeth

THE OFFICE OF ADMINISTRATIVE LAW: REGULATORY REFORM OR AN AYATOLLAH FOR CALIFORNIA?

The nascent Office of Administrative Law (O.A.L.) was established on July 1, 1980 during major and unprecedented amendments (AB 1111, McCarthy) to California's Administrative Procedure Act. This Office was charged with the orderly review of existing and proposed regulations against statutory standards. The goal of the review is to "reduce the number of regulations and to improve the quality of those regulations which are adopted . . ." (Government Code § 11340).

With that baptism, OAL was given three major functions:

— Review all existing regulations against the five statutory standards of: necessity, authority, clarity, consistency and relevance (§ 11349.7).

— Review all proposed regulations against the same five statutory standards (§ 11349.1).

— Review all emergency regulations and disapprove those that are not "necessary for the immediate preservation of the public peace, health and safety, or general welfare (§ 11349.6).

Review of Existing Regulations:

The highlight of the new Act was a mandate to the agencies of State government to evaluate all existing rules and regulations for a general "housecleaning" of outmoded, conflicting and unnecessary provisions. OAL, assigned to supervise the review, started operations on July 1, 1980. The Act specified the same date as a deadline for agencies to submit their plans for their rule reviews to OAL. Hence, on July 1, 1980 OAL had received 65 agency review plans, all of them submitted without the benefit of OAL guidelines. In its first report after three months, OAL noted:

> "The vast majority of plans received by OAL were wholly inadequate in terms of ensuring compliance with Legislative intent. It was determined that uniform procedures and instructions consistent with the intent and specific mandates of AB 1111 would be required, particularly if the regulation review process was to be open and accessible to the general public, as envisioned by the Legislature.[1*]"

In response, OAL drafted legislative amendments (SB 1754, Holmdahl). The legislative amendments pushed back the deadline for submission of agency review plans to OAL until December 31, 1980 and the deadline for submission of OAL's Master Review Plan to the Governor until April 1, 1981.

At the same time OAL perceived other difficulties with the Act. According to Gene Livingston, Director of OAL and Carl Poirot, Deputy Director of OAL, the Act had two deficiencies. The Act originally prescribed a June 30, 1986 deadline to complete the review of existing regulations. OAL believed the six year review period was too long, giving agencies too much time to procrastinate, eventually ignoring OAL's presence. Wanting to counteract the natural tendency of bureaucracies to delay and, at the same time, give itself a stronger mandate, OAL proposed accelerating the completion date for review of existing regulations significantly forward. Further, it is known that Governor Brown views the comprehensive rule revision as a special legacy he hopes to be largely completed before his term ends in 1982.

Second, OAL was concerned with public perception. Livingston told us he "did not want to lose his audience" and feared that a long review period would bore both the public and the rest of government. Cognizant of the current popular demand for deregulation, OAL desired to convince the public that OAL was serious, and that government could effectively deregulate itself.

The result of the OAL initiative was Executive Order No. B72-80 signed by Governor Brown on October 9, 1980. The Order moved the completion date for review of existing regulations forward to December 31, 1980. (Extensions are permitted if "extraordinary circumstances would render completion by December 31, 1982 impossible.") The Order also states:

> "State agencies shall insure that representatives of persons who are affected by their regulations are effectively involved in the review of all existing regulations. The Office of Administrative Law shall monitor agencies to ensure public participation in the review of existing regulations."[2*]

Two weeks later, on October 24, 1980 OAL issued its "Instructions for the AB 1111 Review of Existing Regulations." In the introductory letter to the Instructions, Livingston clearly states OAL's mandate and motivation:

> "The Governor has made regulatory reform a major priority, and through Executive Order No. B72-80, has clearly expressed his determination to complete the regulatory review within the next two years. In addition, he has adopted a strong policy of public involvement and public participation in the review process itself.
>
> "Critics of government are highly skeptical that state agencies themselves have the commitment or ability to bring about regulatory reform. They advocate for greater controls over administrative policy to emanate from outside the Executive Branch. The AB 1111 review process is the test. If it fails, the critics will be vindicated, and the credibility of state agencies will suffer another serious blow.
>
> "State agency directors and executive officers have a direct stake in the outcome of this process. Properly executed and properly articulated to your respective constituent groups, this process has the potential for building and solidifying positive relationships that can become beneficial to you in achieving other goals that you have set for your agency. We urge you to consider the potential here and to take advantage of this real opportunity to build new bridges between your agency and the general public."

It is on these instructions that OAL for the first time expounded on the definitions of the five statutory standards, against which each regulation must be measured (§ 11349.1). The definitions of the five standards, as found in § 11349, accompanied by the OAL "elaboration" of October 24 include:

(a) "Necessity" means the need for a regulation as demonstrated in the record of the rulemaking proceeding.

> "The analysis of the 'necessity' of each regulation is extremely important. This analysis should be done in two steps. First, the general question of whether regulations in the particular area are needed at all should be asked. What public interest is served by governmental regulation in this area? Why must government be involved? What is lacking in the private enterprise, freemarket system that requires governmental intervention?
>
> "Secondly, is this particular regulation necessary? Is there another, less burdensome approach? Does the benefit of this regulation outweigh its costs? Has the

regulation outgrown its usefulness? Has the regulation had any adverse unintended consequences?"

(b) "Authority" means the provision of law which permits or obligates the agency to adopt, amend or repeal a regulation.

"The review for the authority must be done strictly and with a critical eye. The Legislature, in passing AB 1111, was greatly concerned with state agencies which have incorrectly moved into new regulatory areas, relying on their general authority to issue regulations. The Legislature, in many cases, did not intend to grant such authority when, often years ago, it gave the agencies their general powers.

"The proper test to apply for authority, and the test OAL will apply in its review of existing regulations, is whether the agency has been given *clear* authority by the . . ."

(c) "Clarity" means written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them.

"This standard speaks for itself. The most obvious method for remedying unclear regulations is the use of simple, direct language. Familiar, concrete words that are commonly used and understood by the persons being regulated should be used. Short, declarative sentences are more easily understood than long, complex sentences containing numerous clauses and multiple concepts. Sentences written in the active voice with clear nouns and verbs are more understandable than passive sentences full of adverbs and adjectives. Professional "jargon," "legalese," and "bureaucratese" should be eliminated. Technical language absolutely defined. Obviously, words and phrases that could be construed as offensive to persons or groups of persons must be eliminated (e.g., words that project racial or sexual stereotypes)."

(d) "Consistency" means being in harmony with, and not in conflict with or contradictory to, existing law.

"Existing law includes federal as well as state statutes, court decisions, and regulations."

(e) "Reference" means the statute, court decision or other provision of law which the agency implements, interprets or makes specific by adopting, amending or repealing a regulation.

"Regulations may not create policies which have no foundation or basis in existing law. Every regulation must be adopted *in reference to* the particular statute being implemented, interpreted or made specific by it. In applying this standard, agencies should bear in mind the Legislature's concern that regulations frequently go beyond the intent and scope of the statute."

The October 24, 1980 Instructions also included a "Recommended Review Process." These recommendations discussed the problems of:

(1) ensuring adequate public participation;

(2) coordinating review with other agencies who share overlapping regulatory responsibilities; and

(3) adequately planning and administering the review process to ensure an even flow of activities and timely review completion.

The Instructions suggested the following approaches to the three problems:

1. *Public Participation:*
   - — The creation of advisory committees and task forces.
   - — Schedule properly noticed public meetings in appropriate state locations; the meetings should include agendas and distribution of the regulations to be discussed.
   - — Solicitation of written public comment to be retained in the rulemaking file and made available to OAL (as above, the Notice Supplement would be used to furnish public notice).
2. *Coordination of Review with other Agencies:*
   - — Efforts should be made to coordinate public notices and hearings; special effort should be made to resolve conflicting policies.
3. *Agency Work Plan:*
   - — Each agency should assign an agency coordinator for the entire OAL process.
   - — Set priorities (OAL has expressed sensitivity to this matter and is encouraging agencies to review their more difficult, complicated and controversial regulations first. Priorities are important for two reasons. Early review of controversial regulations will allow time for negotiation and further study. Secondly, delay may result in citizen petitions pursuant to § 11347, which will require immediate agency response anyway).
   - — The preparation of background issue papers that will inform the public and facilitate the review process.

The Instructions also suggest that a Review Plan provide projected completion dates for the following three items for each block of regulations to be reviewed.

- — Preliminary in-house research, including preparation of issue papers and summaries.
- — Submission of written public comment and conclusion of public hearings.
- — Date the Statement of Review Completion is to be submitted to OAL.

The Statement of Review Completion marks the end of agency review of its own regulations. The Statement must indicate which regulations have been reviewed and which are to be retained, amended or repealed. For all regulations retained, the agency must furnish OAL a Statement of Findings summarizing the facts, reasons and evidence that support its decision to retain the regulation. The Statement of Findings must also include the agency response to public comment that recommended repeal of the retained regulation.

Upon reception of the Statement of Review Completion, OAL review commences.

After release of the October 24, 1980 Instructions. OAL asked the agencies to submit new review plans by December 31, 1980 pursuant to SB 1754. The following figures were provided by OAL: By March 1, 1981 121 of the 129 agencies required to submit plans had done so. 49 plans had been approved and only a handful of plans, 3-6, had been flatly rejected. The remaining 60 plans were either under review or being negotiated. (Two agencies, CalOSHA and Health Services, who together "own" 25% of the Administrative Code, have already been granted extensions beyond the December 31, 1982 completion date, and the Franchise Tax Board has been granted a similar extension.)

Livingston and Poirot were both careful to use the word "negotiate." OAL does not wish to impose review plans on agencies, but prefers to negotiate with the agencies and persuade them to (1) review the more difficult regulations first, (2) provide for reasonable public participation, and (3) make a compact and even review schedule. Both men admitted, however, that if an agency refused to compromise, OAL would impose a review plan on an unwilling agency.

Initial Problems:

As is the case with any new organization, OAL encountered difficulties. In late February, some agencies did not "know" of OAL, and others did not know that the OAL review process applied to them. The California Arts Council was unaware that OAL review plan requirements applied to it, as late as February of 1981.

Other agencies have acted sluggishly. On January 14, 1981 the Structural Pest Control Board of the Department of Consumer Affairs submitted a review plan that did not contain:

- — "Adequate public participation," or
- — "Coordination with other agencies who share regulatory responsibilities," or
- — "Adequate planning and administration" required by OAL guidelines.

Other agencies took the opposite extreme. The Board of Vocational Nurse and Psychiatric Technician Examiners of the Department of Consumer Affairs proposed a review plan of some 50 public meetings

at a cost of $705,236, to review 56 pages of regulations. OAL responded by informing the Board that the review plan did not have to entail the "widest possible public participation" but only "reasonable public participation."[3]

Some agencies took very seriously the "necessity" requirement. They responded with lavish plans, believing that their very existence was at stake, not just the survival of some of their regulations.

The Struggle to Come:

The role of OAL in "reviewing" the regulations of agencies raises serious jurisprudential questions. No one disputes the need for "housecleaning," or for deregulation. But thoughtful critics are concerned about questions of "who" and "how." Their argument goes like this: The Legislature, and for some agencies the Constitution, has delegated certain quasi-legislative powers to independent regulatory bodies. Under broad enabling statutes, these agencies have been asked to gather facts under an Administrative Procedure Act and adopt rules to flesh out the legislative intent in specific policy areas. Each branch of government exercises specific checks over this process. The legislature checks the agencies by cancelling authority, overruling a regulation by act of law, and funding controls. The judiciary checks the agencies by reviewing through declaratory relief (§ 11359) or writs of mandate (§ 11523) to guarantee Constitutional standard compliance and procedural safeguards under three major statutes (public meetings, public records, and the notice-hearing format of the traditional Administrative Procedure Act). The executive checks through its appointment powers, choosing Board and Commission decision-makers, and through a budgetary role.

The Legislature reaffirmed its desire to maintain the policy making prerogatives of its agency creations in providing in the beginning sections of the new amendments to the Administrative Procedure Act setting up the OAL:

"It is the intent of the Legislature that neither the Office of Administrative Law nor the Court should substitute its judgment for that of the rulemaking agency as expressed in the substantive content of adopted regulations." (§ 11340.1)

The OAL, as an executive office, is not an independent regulatory body, and is directly accountable to the Governor. Further, it does not attend agency hearings or in any way assess, face-to-face, the witnesses presented there. It does not subpoena evidence. It does not develop the expertise to apply policy values. Hence, when OAL gives signals (see *infra*) that it is going to define its authority very broadly indeed, and go beyond challenging rules which exceed the statutory authority of an agency, but into the re-evaluation of what a "good" or "effective" or "needed" rule may be — serious questions are raised. Even if one grants that agency housecleaning may require some outside impetus, how should it be done? Even if one grants the beneficence of this "outside" impetus, what is the danger in giving a political body without information resources the authority to make unilateral substantive changes? Is it subject to the on-going and focussed checks and balances of the agencies?[4]

Some critics of the current OAL refer to it privately as an erstwhile "Khomeini" overseer, attempting to assert itself while in a state of inevitable ignorance. Even those sympathetic to the OAL fear the precedents it may set for successor OAL's. Politically based vetoes emanating from the office of a future Governor may preclude future deregulation.

The fears of many agency officials are not nearly as abstract as these concerns, but are more akin to the "territorial imperative" exhibited by many animals. When confronted by an intruder, breast beating conduct is not uncommon in many species. The humans peopling California's agencies, however, have been considering an ambush in lieu of open bravado. Two approaches have been privately discussed: (1) refuse to comply with the review schedule requests of OAL and when the OAL incompetently voids important rules, let the hue and cry outcome sanction them; (2) all submit the final reviews during the same several weeks, swamping OAL and making OAL objections or revisions difficult. This latter tactic is being countered by OAL as it tries to accelerate the schedules of many agencies to prevent a ballooning in 1982. Ironically, this acceleration is not directed at the plots of recalcitrant agency officials, but to honor the Governor's private instruction to complete the brunt of the reviews before he leaves office. While a time proximity with the Governor's tenure may enhance his ability to take credit for any government reductions, our review indicates that many agencies may require more time, especially given current budget constraints. The best way to prevent sabotage may be to phase more of the agencies (even those where publicity-producing deregulation is likely to benefit the Governor) somewhat later. This would stimulate orderly consideration of agency rules — whatever the OAL's proper powers — and lessen the growing impression of the OAL as a reflection of the personal political philosophy of its current Director, or as the embodiment of overreaching political ambition emanating from one of the three branches of State government.

On April 1, 1981 OAL must submit a Master Review Plan to the Governor (§ 11349.7(d)). The Master Plan will include the specific dates by which each agency must complete its review, including the previously mentioned interim goals. At that time, the public will be able to determine what early success OAL has achieved in fulfilling one of its major objectives — the orderly review of existing regulations.

Proposed Regulations:

In addition to its one-time review of all existing regulations, the OAL receives new regulations as they are adopted by respective agencies. Here is where OAL assertions of authority have created hostility which lead agencies to anticipate *ultra vires* incursions on their functions in the more comprehensive agency rule review noted *supra*.

When OAL started work in July, 1980 it was greeted with 404 pages of proposed regulations, all of which had to be scrutinized against the five standards established in § 11349.1. OAL quickly discovered that many of the regulations could not be approved because the promulgating agency had failed to comply with statutory procedural requirements. The basic procedural requirements are:

(1) Public notice of the proposed adoption, amendment or repeal must be given 45 days prior to the hearing date and published in the Notice Supplement (§ 11346.4).

(2) Notice of the proposed action must include, among other things:

- — A statement of the time, place and nature of the proposed action.
- — Reference to the authority under which the regulation is proposed.
- — An informative digest of the existing laws and regulations related to the proposed action and the effect of the proposed action on those laws and regulations.
- — The date by which written comment must be submitted.
- — The name and phone number of the agency officer to whom inquiries should be directed (§ 11346.5).

(3) Notice of the proposed action shall inform the reader that the promulgating agency has prepared a Statement of Reasons which is available to the public upon request. The Statement shall include:

- — The specific purpose of the regulation.
- — The factual basis for the determination by the agency that the regulation is reasonably necessary to carry out the purpose for which it is proposed (See § 11342.2).
- — The substantive facts and information upon which the agency is relying.

The Statement must be prepared prior to the time notice of the proposed action was published and shall be updated before final agency action. The updated Statement

must include a summary of the primary considerations raised by public comment in opposition to the proposed action and an explanation of the reasons for rejecting these considerations (§ 11346.6 and 11346.7).

(4) At the hearing any interested person must be allowed to submit written statements and give oral testimony of at least 15 days prior to the hearing the person submitted a written request to the agency to make an oral presentation (§ 11346.8).

(5) The agency must keep a file of each rulemaking which will be deemed the second for that rulemaking proceeding. The file shall include:

- — Copies of any petitions received.
- — All published notices of the proposed action.
- — All data, facts, studies, information and comments submitted to the agency.
- — Transcripts of the hearings.
- — The Statement of Reasons.
- — Any other information the agency relied on in making its decision (§ 11347.3).

After final agency action, the newly adopted or amended regulation must be submitted to OAL. (The repeal of a regulation need not be submitted to OAL (§ 11349.2)). The rulemaking file must accompany the regulation to OAL (§ 11347.3).

Once a regulation is submitted, OAL has 30 days to act. If OAL fails to act within this time, the regulation will be deemed approved and transmitted to the Secretary of State for filing. If OAL disapproves a regulation it must specify in writing the reasons for disapproval (§ 11349.3).

If an agency chooses to resubmit a previously disapproved regulation, it must renotice the proceeding unless the proposed changes are unsubstantial. In the latter instance, the agency may directly resubmit the regulation to OAL (§ 11349.4).

If OAL disapproves a regulation, the agency has 30 days from the date of disapproval to appeal to the Governor. No such appeal has yet been granted by the Governor.

Certainly, the review function that OAL performs during this 30 day period is one of its most important responsibilities. It is important to ask how OAL perceives its role during this review period. What is OAL's theoretical approach to its review authority?

Director Livingston told us that during the 30 days review period OAL is "something akin to an appellate court." OAL will permit ex parte communications to the extent those communications refer to the rulemaking file. If OAL is having problems establishing any one of the five statutory standards, it will contact the agency and ask to be referred to those portions of the file that the agency believes are persuasive.

Early Rejections and Rewriting:

OAL's approach to the application of the five statutory standards can be summarized as follows:

Necessity: The necessity standard is creating the most problems. Livingston has publicly argued that "the burden of proving necessity is on the agency." OAL must be "persuaded by clear and convincing evidence" that the regulation is necessary. In further explication Livingston has stated "there is a high burden that the agency must carry."

In private conversation Livingston amplified OAL's position in the following manner. Necessity will vary according to the costs and benefits created by a regulation. If on a scale of 1 to 1,000 a regulation imposes costs of 999, no showing of necessity will save the regulation. As the cost and benefit values approach each other the burden of demonstrating necessity becomes less onerous. As the benefits of a regulation outweigh the costs, OAL requires less and less persuasion.

Some regulations must be evaluated on the basis of importance for they impose no real costs or benefits. Livingston gave the example of a regulation that proposed changing agency meeting times from 8:30 to 9:00 A.M. A regulation of such little impact requires virtually no showing of necessity.

Livingston describes the above approach as a "type of decision-making" an "ordering of priorities" and "efficient allocation of OAL resources." Although he admits OAL exercises independent judgment he denies it is policy judgment.

Carl Poirot, Deputy Director of OAL, told us that it is impossible to formulate a rule of "general application" and that the necessity standard must be applied on an "ad hoc, case-by-case basis." Poirot admits there is "an element of subjective judgment."

Agency officials contend there is a more serious problem. The problem is not the innocent intrusion of a harmless element of subjective judgment into the rulemaking cess by OAL, but OAL usurpation of heretofore independent agency policy-making authority. The pervasive fear is that OAL will be unable to render consistently fair applications of the necessity standard because of the inevitable tendency to inject policy judgments into the decision-making process when requiring such a high burden of proof from the agencies. And it is quite clear this is what OAL is doing and intends to do. OAL's own interpretation of "necessity" involves balancing the total merits of a regulation. In its October 24, memorandum, cited *supra*, OAL describes its philosophical view, and concludes that if its function to decide if the regulation is "necessary," has the "benefits outweighed the costs," has it "outgrown its usefulness," et al. This does not suggest a limited review.

The Practical Flaws:

Quite apart from the separation of powers concern about an OAL out of control described *supra*, there are two structural-practical problems with OAL functioning as an "appeals court" in this fashion. First, OAL does not have the information or expertise to make these judgments for several agencies, let alone for over 100.

And the OAL cannot acquire information by examining the "record" of the agency proceeding. A critical flaw in the current system is the fact that the "record" required in the Administrative Procedure Act for quasi-legislative rule making is not the same record required in quasi-adjudication judgments to grant or revoke licenses. In the rule-making area, the courts have granted wide latitude to the quasi-legislative policy judgments of agencies. The review criteria of OAL, in balancing benefits and costs, would be an improper incursion for a court. The Administrative Procedure Act has responded by traditionally requiring only a pro-forma record, showing that at least written comments were invited and received, that there was some public proceeding that the reasons for the regulation are stated, and that there was elemental fairness. Unlike the adjudicatory record in licensing decisions, where the Administrative Procedure Act requires a complete transcript, public testimony, cross examination, findings on the record, et al, the rule-making record is properly sparse. Hence, when OAL demands a complete "record" of rule-making proceedings to evaluate the rule, it does not receive under the current APA a basis for making refined judgments. What it receives is necessarily conclusory and deferential to agency policy. However appropriate OAL's balancing formula, it cannot be applied without some feeling for the empirical impact on the trade.

Second, unlike the other bases for OAL rejection of rules listed *infra*, when OAL objects on policy grounds even on a small point, a substantive change will have to be made. This means that after notice, hearing and extended consideration, typically of from 4 to 8 months, a rule is sent back to go through the same process from square one. Hence, instead of interjecting itself to reduce government activity, the OAL could become yet another layer of bureaucratic red tape superimposed over the old. Critics ask, if one wishes to have input into agency policies, should not this occur at the point of initial decision? Put in the colloquial, agency officials repeatedly ask us "We don't know if they have the authority to

reverse us or not like this, but if they disagree, why don't they come down to the hearing and tell us, and listen to the facts while they are there. As it is, we have to invite comments and inconvenience witnesses and ourselves, pass a rule, and then because of one change they want made, go through the same thing all over again while the problem we are addressing remains. And the second time around they may object again."

Authority: One of the reasons that prompted passage of AB 1111 was the belief that agencies were consistently regulating in unauthorized areas — they were over-reaching their authority. OAL has determined that the proper test is whether the agency has been given clear authority by the Legislature to regulate a certain area.

OAL has also indicated that it will refuse to publish a Notice of Proposed Action in the Notice Supplement if the agency clearly lacks the authority to promulgate the proposed regulation. Note that there is already extant provision for court review of the authority question (§ 11350). The effect of the OAL role is to hold up the regulation *until* it is reversed by the Governor or the courts rather than implementing it subject to challenge. This shifting of burden is a marked change in public policy consistent with the intent of the Act. Moreover, since objections are based more clearly on issues of law, the practical problems with the "necessity" standard should not exist. Even here, however, OAL is testing its strength. For example, the Athletic Commission, noting that pro-wrestling events begin with the introduction "And now, sanctioned by the Athletic Commission of the State of California" making the event appear to be a State sponsored fair contest, prohibited use of the "Athletic Commission" reference in this misleading context. The OAL rejected the rule on the bizarre reasoning that there was no "authority" to regulate the advertising of a licensee.

Clarity: OAL has stated that the regulation must be written so that it is understandable to both the ten-year-old and the individual most impacted by the regulation — the individual regulated. This presents the problem the widespread use of "terms of art." OAL has acknowledged this conflict, but has offered little guidance on how to solve it. However, most "clarity" disputes will be negotiable. Seldom will a regulation be disapproved purely because of a "clarity" dispute, and a "clarity" objection will not be substantive and will therefore not require renotice and rehearing.

Consistency: OAL has indicated it will substitute its independent judgment when deciding if a regulation is consistent with existing regulations, statutes, federal law and court decisions. The exercise of independent judgment includes the consideration of Constitutional arguments. The "consistency" objection raises the same issues as "authority" described above, raises no overwhelming structural problems and conforms to the thrust of the new Act.

Reference: "Reference" is the least complicated standard. OAL simply requires an unambiguous reference to the statute, court decision or provision of law which the agency is implementing, interpreting or making more specific.

In addition to the above five statutory standards OAL has employed two other reasons to disapprove proposed regulations:

(1) Failure of a proposed emergency regulation to qualify as a real emergency (to be discussed later), and

(2) Failure of an agency to adequately respond to opposing public comment.

This latter standard is troubling as an OAL extension of its review authority beyond the stated APA requirements for agency rule making (see analysis, *supra*).

How has OAL exercised its review authority in practice? A perusal of OAL's files indicates that the largest number of regulations are rejected for two reasons:

(1) Lack of necessity, and

(2) Failure to adequately respond to public comment.

The following letters are typical examples:

On September 25, 1980 OAL informed the Board of Equalization that its proposed amendments were disapproved because: "OAL cannot determine whether you considered the public comments . . . and if so, why you rejected them."

On December 15, 1980 the California Horse Racing Board was informed that its proposed amendments were rejected because: ". . . Although many specific comments in opposition were submitted, the final statement of reasons dismisses these concerns with one general statement that the Board chose to believe the testimony of its own witnesses. A blanket statement such as this one is insufficient to meet the requirements of Government Code Section 11346.7 . . . the statute requires the adopting agency to respond to each opposing consideration."

On September 12, 1980 OAL rejected the Physical Therapy Examining Committee's proposed amendments because of a lack of necessity. The letter states:

> "We have reviewed in detail the original record of the rulemaking file and the two supplements to that file which you provided upon our request. In total, that record contains no evidence that there is a need to restrict licensed California physical therapists to only one aide who provides patient therapy.
>
> "We could not find one fact in the record to indicate that there have been abuses resulting from the existing regulation, which allows a physical therapist to employ and utilize as many aides as he or she 'can adequately supervise.'
>
> "Neither Committee staff nor the member of the Committee to whom we were referred were able to provide any evidence or specific examples of problems with or abuses of the existing regulations. The need for the arbitrary restriction of one aide to one therapist has simply not been demonstrated."

OAL increasingly professes to be expert in fields ranging from horse-racing medication to budgetary analysis, to acupuncture.

For example, OAL's December 15, 1980 letter to the Horse Racing Board rejected the Board's proposed regulations controlling drug medications and testing as unnecessary. The Board's regulations were technical and complex, involving detailed testing requirements for a wide variety of drugs. OAL's rejection letter of December 15, states:

> "The rulemaking file does contain evidence concerning abuses of 'bute' and furosemide, as well as problems with testing for other substances . . ."

However, OAL rejected the proposed regulation because "the rulemaking file fails to establish . . . necessity . . ."

The implications of a rejection such as this may be substantial and may be unconsidered by OAL, and under existing law the factual basis for the reasons are properly *not* part of any "record." The Horse Racing Board must now recommence the rulemaking file, starting with a 45 day public notice. Meanwhile, the Board may be unable to control an area of pervasive abuse that is unquestionably within its authority to regulate.

OAL has also used "necessity" to review an agencies' budgetary processes, an executive review function of the Department of Finance (see discussion of recent Attorney General Opinion *infra*). On January 28, 1981 OAL rejected a proposed regulation of the Board of Pharmacy that would have raised the biennial pharmacist's license renewal fee from $60 to $75 because the file failed to demonstrate the "necessity" for the increase. The letter states:

> "The Statement of Reasons submitted to us indicates that 'it is recommended' that the Board maintain a surplus . . . However, the rulemaking file does not contain information demonstrating the need for the Board to maintain a surplus of any size. Furthermore, the file indicates that the Board will still have a surplus of approximately $103,000 at the end of fiscal year 1981-82, and that it will not actually face a deficit until the end of fiscal year 1982-83. Further, it is impossible to determine based on the figures presented why it is necessary to increase this particular fee as opposed to any other fee charged by the Board, or whether the burden of the increasing expenditures in the Board's budget is appropriately borne by fees charged only to pharmacists."

There is no provision in the law which authorizes OAL to review an agency's budget or establish an appropriate operating surplus for an agency.

OAL has also rejected an examination change by the Board of Medical Quality Assurance. The Acupuncture Committee felt the examination should reflect competence in some general clinical skills. A patient seeking acupuncture treatment might be suffering from an organic ailment requiring alternative treatment — which the acupuncturist should be able to recognize. The OAL rejection of the examination change in the spirit of "acupuncture is acupuncture, period" involves a courageous substitution of their judgment for that of the Board's.

Of course, OAL has employed the other standards of consistency, authority and reference to disapprove regulations. However, these standards have been used sparingly when compared to the frequent use of the "necessity" and "failure to reply to public comment" standards. Agency officians have expressed outrage at going through several years of study and hearings, receiving the advice of attorneys for the Department of Consumer Affairs and the Office of Attorney General, issuing notice in advance, holding a final hearing and seeing their work rejected by someone they have never seen. Sometimes the rejections are made because of an insufficient "record," when the record required by OAL is not required by law nor a part of traditional rule making. Other rules are revised by the hurried rewriting of an OAL staffer during the last few days of OAL's thirty day deadline to reject.

The results of OAL's early efforts are statistically dramatic. In January, 1981 OAL issued its "Six-Month Report, July-December 1980: Progress Toward Regulatory Reform." The statistics are impressive:

- Fifty-four (54) percent fewer regulations were added to the California Administrative Code in the six month period from ZJuly 1, 1980 to December 31, 1980 compared to the same period of 1979.
- OAL disapproved twenty-six (26) percent of the proposed regulations.
- Agencies proposed twenty-eight (28) percent fewer regulations.

Emergency Regulations:

Emergency regulations are not subject to normal OAL review (§ 11346.1). Instead, OAL must review a proposed emergency regulation within 10 days of it being filed to determine if the regulation is "necessary for the immediate preservation of the public peace, health and safety, or general welfare" (§ 11349.6). If OAL determines the emergency regulation is not so necessary it order its repeal. If an emergency regulation is approved the adopting agency must readopt the emergency regulation following normal notice and adoption procedures within 120 days (§ 11346.1(e)).

In an effort to avoid OAL review and public hearing and comment agencies initially abused the emergency regulation process. Although OAL will not use the word "abuse," in a July 25, 1980 letter to all agencies OAL stated that it "intended to end the inappropriate use of the emergency adoption process in favor of public notice and hearing." The following examples of OAL efforts to restrict the use of emergency regulations are typical.

On October 21, 1980, OAL repealed an emergency regulation filed by the New Motor Vehicle Board that raised licensing fees from $60 to $70. The grounds for repeal are obvious:

— ". . . increasing the license fee of the New Motor Vehicle Board from $60 to $70 does not rise to the level of an 'immediate threat to the preservation of the public peace, health and safety, or general welfare . . .' "

On September 26, 1980 OAL repealed an emergency regulation filed by the Certified Shorthand Reporters Board that authorized an increase in the examination fee. The Board, acting pursuant to an urgency measure, contended that because the Legislature had declared an emergency any regulation promulgated thereunder was entitled to emergency status. OAL disagreed, stating that the emergency regulation must meet the independent test specified in § 11349.6.

Lastly, OAL has established that it will repeal an emergency regulation if the agency has unreasonably delayed in adopting it. OAL has encountered and rejected "emergency" regulations adopted 14 months after passage of the authorizing statute. (See letter of November 21, 1980 to Department of Health Services.)

OAL has been very successful in preventing the expansion of "emergency" regulations to avoid OAL review. The July-December 1980 Six-Month Report states:

- 26 percent fewer emergency regulations were submitted than during the same period of 1979.
- 31 percent of those submitted were rejected by OAL because no real emergency existed.

Conclusion:

As the statistics show, OAL has reduced the number of regulations which would have been adopted without its presence. OAL's original supporters feel vindicated and new supporters are flocking to OAL's banner. However, most agency officials are either concerned or openly hostile. This hostility is unsurprising given its source, but the way OAL has exercised its review powers raises the following questions:

(1) OAL fails to issue meaningful guidelines so the agencies can predict the basis for rejections and make corrections in advance.

All too often OAL's communication with the agencies takes the form of revelation. On several occasions OAL has chosen a public forum to release for the first time its interpretation of key words or the policy it has been mysteriously employing for the past three months. There is a paucity of formal, written communications. Many agencies feel they must discern OAL policies by following Director Livingston's public speaking engagements.

There has been special confusion over the extent of public participation required in the comprehensive rule review process. On January 21, 1981, Department of Consumer Affairs Director Richard Spohn contacted OAL to complain about the conflicting advice being given the Boards and Bureaus within his Department. On that late date Spohn was still trying to ascertain OAL's official policy on the extent of public participation required in the review process. Two weeks after review plans were required to be submitted to OAL, it was unclear if OAL required the "widest possible public participation or "reasonable public participation."[5*]

The lack of communication is closely related to OAL's failure to promulgate guidelines and instructions. OAL makes policy but does not disclose it in an orderly fashion. Important concepts and standards that OAL employs daily, such as "burden of persuasion," "clear and convincing evidence" and "persuasive response to public comment," have not been recorded, interpreted or widely disseminated. For example, the Statement of Reason has risen to a preeminent position in the OAL review process. As previously stated, OAL frequently uses the "persuasive response to opposing public comments" standard to reject regulations. However, OAL has neither documented the Statement's ascendency not elaborated on its contents. It has not released model Statements.

From the agency perspective, OAL is a "bull in a china shop," making *ad hoc* decisions rule by rule as to what is to be and what is not. As a new venture, we expect this confusion to be lessened in time, although given the broad powers assumed by OAL and the almost personal basis for its review, it may be that a future OAL will not feel bound by the precedents or guidelines of this one.

(2) OAL does not understand the difference between the adjudicative and the rulemaking "record." The rulemaking record as constituted is not designed as a vehicle for policy review, since the courts for whom that record is created eschew such a role. If OAL is to assume this executive-veto role, it must either in all fairness make an initial

input at the pre-adoption stage (as the executive usually does before exercising a legislative veto) or revise the Administrative Procedure Act to require a more comprehensive "record" for the policy review sought by OAL.

(3) The expansion of OAL authority to exercise a policy-based Executive Veto over quasi legislative agencies raises serious jurisprudential and practical problems. Further, the "veto" being exercised is often in the form of substantive rewriting of regulations and their rejection and return until the revised version or some acceptable alternative is accepted by the agency. The jurisprudential problem concerns the principle of accountability. Ironically, while OAL often rejects rules for lack of adequate public participation, there is no public participation in its own procedures. To be sure, there is a need for an outside force to break the bureaucratic quagmires addressed by the reforms of AB 1111, but the OAL would advisably go in one of two directions. On the one hand, it could confine itself to a narrow review, defining "necessity" narrowly enough to give vitality to agency prerogative,[6*] or remove "necessity" as a basis for review. Or, on the other hand it could admit what is happening; there is an agency superimposing its policy judgments on the many agencies of California. If this latter tack is to be continued, the statute should be adjusted to reflect that role by (a) strengthening legislative ties to the OAL since it is then functioning in a strong quasi-legislative role and should have appropriate independence from Executive control; (b) amend the statute to provide for OAL input to agency rulemaking at the preadoption stage; (c) as a supplement or alternative to the above, amend the Administrative Procedure Act to require a more complete policy and factual record for review; (d) increase OAL staff to make a competent review possible.

If the activist OAL role is to be openly accepted, it might also include the chance for OAL review of an agency's refusal to act. For example, under § 11347 any interested person may petition an agency to adopt, amend or repeal a regulation. The agency then has 30 days under § 11347.1 to deny the petition or schedule the matter for hearing, or grant part of it. But should a group of small businesses petition for the removal of a regulation as unjustified, or a group of consumers petition for the removal of anticompetitive red tape, and the petition is denied, it is not reviewable by OAL. To be sure, OAL reversal of a decision not to act may place it in the posture of compelling an agency to act. Although such a role would extend the OAL even beyond the "veto" powers it now claims, it could be granted in the narrow circumstance where an agency denies a petition to repeal or remove an existing rule. Certainly the limitation of gratuitous rules is a motivating force behind AB 1111. And OAL is assuming general review powers for the purpose of deleting large numbers of rules in the comprehensive review process mandated by AB 1111. To give it the continuing power to compel rule removal upon the application of an interested party under § 11347 would appear consonant with underlying legislative intent.

(4) If OAL is to engage in a systematic "housecleaning" which will last beyond its press releases, and genuinely streamline government, it must take the time to do the job with systematic care. A long series of revisions, to be shortly reversed by practical need or court reversal, will make the OAL but another layer of bureaucratic red tape itself. Hence, it must phase its reviews agency by agency in an orderly fashion in accord with its resources. It must not accelerate the review of most of over 30,000 pages of rules into an 18 month period, forcing the summary review and approval of many dubious rules or the disapproval of needed ones in the early stages because of self imposed time constraints. Where the time constraints are politically motivated, e.g., designed to coincide with the end of the Brown administration, they merely add to the separation of powers concerns of scholars. It took more than fifty years to create the 30,000 pages of California's regulations, it might take six or seven to eliminate many of them and update the others.

Most important, the job of OAL must be done right: pursuant to legal authority, with a defined record for review, and adequate OAL staff resources. This perhaps singular chance to limit government growth may be lost by court reversals, or worse yet, become its own layer of politically sensitive red tape superimposed over the rest, and adding only the dubious attribute of uninformed arbitrariness.

*1. *OAL Quarterly Report, July-September, 1980.*
*2. *Executive Order No. B72-80.*
*3. *February 17, 1981 letter from Livingston to Richard Spohn, Director of Department of Consumer Affairs.*
*4. *Note that the unitary nature of OAL precludes focussed legal, budget or appointive checks where abuses occur in specific areas. E.g., it may be possible to direct a counterbalance to the Contractor's State Licensing Board over an abusive rule, but where a single executive department can control policy across the entire spectrum of government and make a grievous error as to any given part, corrective pressure is more difficult.*
*5. *See letter of January 21, 1981 from Spohn to OAL.*
*6. *E.g., a regulation could be "unnecessary" if another rule or law covered the matter and if the proposed regulation duplicated its effect.*

PUBLIC INTEREST ORGANIZATION ACTION

Introduction:

Each regulatory agency of California government hears from those trades or industries it respectively affects. Usually organized through various trade associations, professional lobbyists regularly formulate positions, draft legislation and proposed rules, and provide information as part of an ongoing agency relationship. These groups usually focus on the particular agency overseeing a major aspect of their business. The current activities of these groups are discussed as a part of the Summary discussion of each agency, *infra*.

There are, in addition, a number of organizations who do not represent a profit-stake interest in regulatory policies. These organizations advocate more diffuse interests — the taxpayer, small businessman, consumer, environment, future. The growth of regulatory government has led some of these latter groups to become advocates before the regulatory agencies of California — often before more than one agency, and usually on a sporadic basis.

Public interest organizations vary in ideology from the Pacific Legal Foundation to the Campaign for Economic Democracy. What follows are brief descriptions of the current projects of these separate and diverse groups. The staff of the Center for Public Interest Law has surveyed approximately 200 such groups in California, directly contacting most of them. The following brief descriptions are only intended to summarize their activities and plans with respect to the various regulatory agencies in California.

AMERICAN LUNG ASSOCIATION OF CALIFORNIA

(213)484-9300

The American Lung Association of California is concerned with the prevention and control of lung disease and associated impacts of air pollution. The Association regularly attends Air Resources Board (ARB) meetings as an observer and as an expert witness.

For the past two years the Association has worked with the ARB on the adoption of a State implementation plan. The plan will be the guidepost for the implementation of air quality standards set by the ARB. The EPA has reviewed the plan and has found it unacceptable. The EPA's major objection is that the plan does not contain a motor vehicles inspection and maintenance program. California is seeking an extension on the 1982 deadline for compliance with set air quality standards. In order to receive this extension the Legislature must enact a vehicle inspection program. The Lung Association and the ARB support the creation of such a program.

A future project for the Association will be the 1982 revision and update of the State implementation plan. The Association will actively participate in local and State planning.

CALIFORNIA CONSUMER AFFAIRS ASSOCIATION

(213)736-2103

The CCAA is an affiliation of those local governments which have consumer affairs programs. The Consumer Affairs representatives from each participating city or county meet as an association to exchange information and decide what issues they will address. The associations' three most current issues are item pricing, small claims court reform, and a "lemon bill." The lemon bill may have some relevance to the Bureau of Automotive Repair.

The "lemon bill" supported by CCAA is to be sponsored by Assembly Woman Sally Tanner (Los Angeles). The bill would give consumers the right to return to the dealer automobiles which continue to breakdown after repeated repair attempts. The proposed "lemon bill" would require the dealer to replace the automobile with a new one.

The CCAA has also expressed some concern over AB 1111. The multitude of agencies involved in the review are requesting input from broad-based organizations such as the CCAA. The CCAA is unable to respond to every agency's request for input.

CALIFORNIA RURAL LEGAL ASSISTANCE

(916)446-7901

CRLA represents the legal interests of California's rural poor from twenty offices around the State. CRLA handles litigation as well as legislative and regulatory advocacy in areas as diverse as pesticide exposure, adequate housing and senior citizen interests.

CRLA's current major projects focus on non-regulatory areas, e.g. maintaining cost-of-living increases for social security recipients, delaying high school proficiency examinations until a concurrent change in rural high school educational programs is affected, et al.

CALIFORNIA PUBLIC INTEREST RESEARCH GROUP OF SAN DIEGO

(714)236-1508

CalPIRG is a non-profit and non-partisan organization funded and staffed by students from San Diego's three largest universities. Among its various projects, CalPIRG is relatively active in representing consumers interests before some regulatory agencies in California.

This Spring a nursing home study will analyze the public citation records of local nursing homes to determine what health and safety violations have occurred. The purpose of this study is to inform consumers and to influence legislation in support of the rights of the institutionalized elderly. (Note the related jurisdiction of the Nursing Home Administrators Board).

CalPIRG will be appearing at the upcoming San Diego Gas and Electric rate hike hearings.

David Durkin, CalPIRG's attorney, is currently supervising legal research for consumer representation at State Public Utilities Commission hearings. CalPIRG has represented the interests of low and moderate income residents at each of the last two San Diego Gas and Electric general rate hike hearings, arguing for a strict interpretation of allowable expenses and of rate base additions.

CALIFORNIANS AGAINST WASTE

(916)443-5422

Californians Against Waste have been actively lobbying since 1977 for a "bottle bill" before the State Legislature. The bill would require that a deposit be placed on all beverage containers.

Senator Raines has introduced SB 4, a "bottle bill," into the present legislative session. SB 4 is not expected to pass this year. The bill lacks support from the Solid Waste Management Board and must face intense lobbying from the beverage industry, among others. To meet these barriers CAW will seek a voters' initiative on the November, 1982 ballot.

CAW alleges that much of the Great California Resource Rally, an anti-litter, recycling campaign sponsored by the Solid Waste Management Board, is financed by the beverage industry. Hence, CAW believes the Board is not in a position to promote SB 4 at this time. CAW believes that the beverage industry is buying publicity through its support of the Rally, so that it can successfully persuade voters to vote against the "bottle initiative" in 1982.

Aside from the bottle bill, CAW has had some success before the Solid Waste Management Board. CAW is increasingly active in "recycling" issues advocacy before the Board.

CAMPAIGN FOR ECONOMIC DEMOCRACY
(213)393-3701

CED is presently concerned with toxic waste control, energy, housing and support of candidates for local offices.

The CED Cancer Project is the umbrella organization which oversees all CED environmental health projects. CED sponsored the recent California Citizen Conference on Toxic Substance Control held in Los Angeles on March 14, 1981.

On energy issues, CED policy favors renewable resources and opposes nuclear power. At the State level, CED founder Tom Hayden is Chairman of the SolarCal Council and at the local level CED is also working to promote solar implementation.

The primary CED focus is on local rent and condo control issues, sponsorship of local political candidates through the Democratic Party, community organizing, and Sacramento legislation. CED has not yet engaged in extensive regulatory advocacy, but expects to intervene in future solar-nuclear energy issues at the PUC or Energy Commission forums.

CITIZEN'S ACTION LEAGUE
(415)543-4101

The Citizen's Action League (CAL) is a membership organization operated and controlled by its members. The organization seeks to unite people and motivate them to become involved in government.

Major projects of the CAL include lowering Pacific Gas and Electric utility rates and automobile insurance reform. PG&E purchases natural gas from Canada instead of from local suppliers (PG&E owns the pipeline running from Canada into the United States). The CAL claims that it would cost the utility one-half as much to purchase the gas locally. The CAL feels that PG&E, and not the consumer, should have to absorb the additional costs from PG&E's use of its own costly pipeline. The CAL campaign against these practices is active in Contra Costa and San Francisco counties. The organization plans to extend the effort to include the San Diego area.

CAL is seeking to introduce legislation which would require automobile insurance companies to disclose information to the public about their investment and rate-setting practices. The CAL contends that it is very difficult to obtain any meaningful information from insurance companies or the State Department of Insurance. The Department does conduct an annual audit of insurance rate-setting practices; however, the results of this audit are not available for public inspection.

CAL contends that its proposed disclosure requirements would put an end to "red lining." The proposed bill will require each company to disclose the amount of money paid out by geographic area, as well as the premium rates charged.

In addition to rate-setting disclosure requirements, the proposed bill would require insurance companies to reveal information about their investment practices. CAL contends that as interest rates rise so does the cost of insurance premiums. CAL contends that such investment profits belong to the policy holder and that premium rates should be lowered to reflect such profits.

COMMON CAUSE
(213)387-2017

Common Cause is entering its second decade in pursuit of its stated goal of obtaining a "more open, accountable and responsive government." Current major projects are non-regulatory and include reapportionment (last year futile efforts were made to establish an independent commission to decide legislative district boundaries) and campaign finance reform through partial public financing and individual contribution limits.

In Sacramento, CC is working on a stronger independent Commission for Judicial Appointments and is monitoring "special interest" legislation. CC is not involved in regulatory advocacy, but does intend to take positions on many bills introduced in Sacramento, including regulatory change legislation. CC intends to research and publicize which state politicians are accepting contributions from special interest groups correlating with the legislation. CC is currently publishing a major study of the top twenty contributors to State legislative campaigns.

CONSUMER FEDERATION OF CALIFORNIA
(213)388-7676

The Consumer Federation of California (CFC) is comprised of 60 non-profit State and local organizations and of private individuals. The CFC strives to educate the consumer in areas such as food, credit, insurance, nutrition, housing, health care, energy, utilities, and transportation. The organization sometimes serves as a consumer advocate before State and local regulatory agencies and legislative bodies. A newsletter, *California Consumer*, is published quarterly by the CFC.

Presently, the CFC is working to reform food labeling practices. The organization hopes to amend existing law so that food labels provide more complete information. The new law would require labels to state the quantity of each substance contained in any food product for sale. The law, as it stands today, requires that each label merely state what is contained in the product.

The CFC expects to oppose anticipated Sacramento bills to discourage products liability suits, while supporting the automobile "lemon" bill to be introduced again in 1981.

CONSUMERS UNION (CU)
(415)431-6747

The CU is the largest consumer organization in the nation. It publishes "Consumer Reports" and finances consumer advocacy across a wide range of free-enterprise issues in both federal and local forums. In California, CU entered litigation as *amicus curiae* to eliminate retail price-fixing in the sale of alcoholic beverages, which had been countenanced by California's regulatory system on alcoholic beverages (see *infra*).

Current CU projects include bringing about substantial reforms in government regulation of the orange and dairy industries. The CU is attempting to eliminate the federal regulatory program which enables producers to keep the supply of oranges low by artificial agreement, and thereby inflate prices. CU contends that only one-half of the navel oranges grown in California and Arizona are allowed to reach consumers.

It is presently the policy of the federal government to purchase any excess dairy products produced by the industry. The consumer may be paying excessive prices for dairy products as well as subsidizing the industry with tax dollars by milk purchases. CU hopes to end government supply controls and subsidies.

The CU is creating a legislative agenda to tackle various issues. Included in this agenda is a lobbying effort against certain home mortgage lending bills proposed by savings and loan institutions throughout the state.

Recently, the West Coast Regional Office of CU published *Getting Action: How to Petition State Government. Getting Action* is a handbook which "shows how individuals and organizations in every state may solve major public problems through effective use of the administrative petitioning process." The handbook is available through the Consumers Union, 1535 Mission, San Francisco, California for $7.50 plus mailing costs, or by telephoning (415) 431-6747.

THE NATIONAL AUDUBON SOCIETY
(916)481-5332

The National Audubon Society is a major national organization whose main goals are to conserve wildlife, help establish and protect wildlife refuges, wilderness areas, and wild and scenic rivers. The Society supports measures for the abatement and prevention of all forms of environmental pollution. The Society is currently active before the State Water Resources Control Board, the Coastal Commission, and the Forestry Board.

The Water Resources Control Board (WRCB) has permit authority over all water developments and therefore it controls the use of streams leading into Mono Lake. The Society has been working with the Board to continue to direct stream water into Mono Lake rather than allow the Los Angeles Department of Water and Power to appropriate the water for its use. Because the Society's efforts in this regard have proved unsuccessful, it has filed a lawsuit against the Department of Water and Power.

The Audubon Society is concerned with preserving the Coastal Commission into the 1980's. The local chapters of the Society will work against any legislation which threatens the Commission's existence. Local chapters are also working with planners on the development of local coastal plans.

An advisory committee to the Forestry Board consists of volunteer workers from the Audubon Society. The Committee advises the Board on matters concerning the preservation of wildlife habitat and water sheds in the State's forests and rural areas. Presently, the Committee is working on the creation of a chapparel management plan.

NATURAL RESOURCES DEFENSE COUNCIL
(415)421-6561

The NRDC is a major national organization with an "established role in the formation of environmental policies and a commitment to conserve and improve the quality of our human and natural environment." The NRDC San Francisco office works on Western environmental issues, including energy, coastal zone management, forestry, and public lands.

The NRDC recently published an alternative energy scenario for California which advocates decreasing the use of nuclear power plants. The Council is actively seeking to have the policies in the publication implemented by the State Energy Commission and the PUC.

The NRDC was instrumental in persuading the PUC to issue a solar finance order to utilities. As a result, the PUC now requires all utilities to financially assist individual residence owners in the installation of solar devices. On January 28, 1981, the PUC approved a conservation financing program for Pacific Gas and Electric. PG&E will provide "zero interest loans" to residence owners who wish to upgrade and retrofit their existing home energy systems. The January decision authorized 10 million dollars for the loan program. The plan is presently a pilot program with PG&E. The NRDC expects to advocate expansion of the program to all utilities.

Every two years the PUC conducts rate and increase hearings for utilities operating within the State. PG&E proceedings are scheduled to occur in the near future. The NRDC plans to review PG&E efforts to promote energy conservation and participate in the proceedings before the PUC.

The Energy Commission is presently in the process of establishing energy efficient standards to be met in the construction of new residential dwellings. These conformance standards will be adopted by the Commission in May. The NRDC has participated in the hearings on these standards and will work to make them applicable to commercial structures as well as to residential dwellings.

The NRDC has been active in the development of local coastal programs which are required by the Coastal Act. The Council has worked with local planners to ensure the inclusion of adequate agricultural provisions and sensible development plans in these local coastal programs. The NRDC ill appear before the Coastal Commission in support of various programs at the appropriate time.

PACIFIC LEGAL FOUNDATION
(916)444-0154

The Pacific Legal Foundation (PLF) was founded to represent the public interest by speaking out for free enterprise, private property rights and individual freedom. PLF devotes most of its resources to litigation. Suits are brought anywhere in the United States. Included below are those recent cases brought in California having regulatory impact.

PLF v. *Costle*: PLF has appealed to the U.S. Supreme Court the question of whether the EPA can withhold highway and sewage funds from California until the state legislature enacts an annual vehicle inspection law.

Metromedia, Inc. v. *City of San Diego*: PLF has filed an amicus curiae brief with the U.S. Supreme Court in support of Metromedia, Inc. In its brief, PLF argues that the city's ordinance banning billboards on private property violates the First Amendment, is an invalid use of the police power and constitutes a taking of property without just compensation.

Stone, et al v. *California*: PLF is representing taxpayers and residents of the recinded Route 2 freeway corridor in Los Angeles in an effort to prevent a CalTrans project aimed at providing low-income housing. CalTrans intends to use highway funds to subsidize sales of surplus residential property to present tenants at prices allegedly below fair market value. Highway funds may be used to mitigate the environmental impacts of highway construction and operation. CalTrans interprets the loss of low-income housing and displacement of tenants as an environmental impact which can be mitigated by the sales in question. In challenging that interpretation, PLF has obtained a temporary restraining order stopping the sales and is seeking a permanent injunction.

PLANNING AND CONSERVATION LEAGUE
(916)444-8726

PCL is a public interest lobby group aimed at conserving and protecting California's natural resources. PCL monitors all bills that affect the environment and targets and lobbies key issues.

The key issues targeted by PCL this session are toxic waste, the coast and pesticides.

PCL is supporting a comprehensive toxic waste bill being offered by Sally Tanner, Chairwoman of the Assembly Consumer Protection and Toxic Materials Committee. The bills would establish a hazardous waste site council, require the use of "best available technology" to reduce wastes by 10% and create a fund to clean-up abandoned waste sites. In addition, the bill may include strict liability provision to force companies to clean-up wastes and pay compensation to affected persons.

Among the coastal issues before the legislature this year, Senator Ellis (SB 260) has proposed the repeal of the Coastal Act. The PCL feels the repeal effort will be serious and intends to oppose it.

Another coastal issue involves the provision in the Coastal Act requiring 25% of new building projects to be dedicated to affordable housing. There are currently six bills aimed at weakening or deleting this provision. The PCL will support retention of the requirement.

Assemblyman Norm Waters has introduced a bill (AB 77) attempting to exempt pesticides from the coverage of the California Environmental Quality Act (CEQA). PCL is lobbying against this bill and others which it feels would weaken Department of Food and Agriculture registration requirements for pesticides.

PUBLIC ADVOCATES
(415)431-7430

Public Advocates is currently focusing on 3 issues: infant formulas, hazardous dumping in third world countries, and food provision in inner cities. These projects involve national and international advocacy. Public Advocates will not be appearing before California Regulatory agencies except on tangential issues arising from these concerns.

PUBLIC INTEREST CLEARING HOUSE
2(415)557-4014

The Public Interest Clearinghouse publishes a bimonthly public interest digest, summarizing the activities of public interest organizations, focusing especially on the San Francisco Bay area. The Digest also summarizes major legislation and lawsuits throughout California in areas of civil rights, tenants rights, and consumer welfare.

Along with its function as a reporter of current public interest issues, the San Francisco based Clearinghouse also coordinates seminars, conferences and courses on relevant public interest subjects.

The Clearinghouse offers public interest law courses to students in five Bay Area law schools, for which the schools have offered course credit. A related intern program makes students available to the Clearinghouse for special legal projects. The Clearinghouse is now considering, together with the University of San Diego Center for Public Interest Law, organized public input, through law student interns, into the AB 1111 review process of all existing regulations of California's regulatory agencies.

SIERRA CLUB
(415)981-8634

The Sierra Club is addressing Coastal regulation, the Peripheral Canal, and Air Quality Control in 1981.

Technically, the State's Coast Regional Commissions (local commissions) are scheduled to go out of existence in July of this year. This timetable was based on the expectation that the local coastal programs (LCP's) would be completed by this Summer and control of coastal development would be assumed by affected cities and counties. Since only one-third of the affected local governments have kept on schedule and the federal government is threatening fund cutoffs, the completion of the LCP process is in serious doubt. At upcoming legislative oversight hearings, the Sierra Club will support an extension of the Regional Commissions.

The Sierra Club has not taken an official position on the Peripheral Canal at the time of this writing. The Sierra Club, however, has taken a firm position in favor of protecting the delta. At this time the Sierra Club's water policy and priority is to establish ground water management plans for all State water basins and to seek enforcement of the Water Reclamation Act of 1902.

The Sierra Club is also supporting the establishment of an annual vehicle inspecn law for California and the reauthorization of the federal Clean Air Act.

REGULATORY AGENCY ACTION

State & Consumer Services Agency
(Department of Consumer Affairs)

BOARD OF ACCOUNTANCY
Executive Officer: Della Bousquet
(916)920-7121

The Board of Accountancy regulates, licenses, and disciplines Public Accountants and Certified Public Accountants (PA's and CPA's). One of the major functions of the Board staff is to administer and process the nationally standardized CPA exam to those seeking CPA licenses; roughly 7,000 applications are processed each year with about two thirds of them found to be qualified to take the exam and three to four thousand licensed.

Major Projects:

The Board's current major project is a review of all its regulations as required by AB 1111. The Board plans to complete its review by the end of this year, scheduling receipt and review of public comment and appointment of task force committee members by June, task force meetings from June to September, and informational hearings with specific amendments or repeal of regulations proposed on October 2, 1981.

The Board is also working to initiate an affirmative action plan for the state's larger accounting firms, and to encourage minority members to enter the profession. The Board's other ongoing project is to set up a program to provide accounting services free to low income California residents. The program would be financed by the Board out of licensing fees, if approved by the Legislature.

Recent Meetings:

The Board recently settled a class action suit in which its CPA qualifications standards were alleged to be impermissably discriminating against Filipino accountants who moved to California and applied, or would have applied but for the standards. The complaint also charged the Board with discrimination against Filipinos in CPA exam waiver decisions. As part of a settlement agreement the Board is reviewing these applications.

The California professional association of CPA's points to the "Filipino case" and a regulation adopted at the Board's January 30, 1981 meeting as evidence of a politization of the Board. The adopted regulation prohibits any licensee or registrant to "engage in any conduct or practice which shall deny any person an opportunity or benefit of employment within the accounting profession based on race, color, religious creed, national origin, ancestry, physical handicap, medical condition, marital status, sexual orientation or age." The CPA professional association argues that this regulation has nothing to do with the Board's legislative mission to protect the public from possible professional abuses.

The Board also adopted at its January 30, 1981 meeting a regulation permitting CPA's and PA's to use their licensed designations as part of their corporate name, and reappointed all of the Board's standing committees.

Although no legislation dealing with the Board is now pending, the CPA professional association is considering a deregulation bill to reduce Board authority.

Future Meeting:

The next Board meeting will be May 8, 1981 in Oakland.

BOARD OF ARCHITECTURAL EXAMINERS
Executive Secretary: Vacant
(916)445-3393

The Board of Architectural Examiners (BAE) licenses and regulates architects and building designers. Architects are individuals who can legally perform any aspect of building planning and design. Building designers are members of a closed class of licensed professional designers whose projects are restricted by specific height and span limitations. BAE is a nine member special fund board composed of five public members, three architects and one building designer.

Major Projects:

The major projects before the Board include a plan to conduct the review required by AB 1111, and an effort to create a new licensing examination. The latter involves negotiations with the National Council of Architectural Registration Boards (NCARB) aimed at maintaining reciprocity. Additional projects include a plan for filling the currently vacant position of executive secretary and consideration of plans to (a) reopen the building designer class; and (b) establish a waivers program for current building designers wishing to become licensed architects.

The Board's plan to satisfy the mandate of AB 1111 provides for six public hearings to solicit comments from public and private sources. The hearings will be divided between northern and southern California with two scheduled in 1980-81, and four in 1981-82. The estimated cost of the plan is $26,770.

In conformance with a memorandum of understanding that was signed by BAE after Governor Brown ordered the Board "phased out," the Board has been striving to create a new examination process. Studies performed for the Department of Consumer Affairs found the exam to be discriminatory, not uniformly graded or administered and not job related. Though this test is approved by NCARB, the Educational Testing Service (ETS) that administers the examination has stated in its report to BAE that none of the four sections of the test reflect a desired measure of reliability. The Board is considering changes such as abolition of the multiple choice sections, reduction of overall length and inclusion of questions which more accurately reflect the present priorities of BAE.

Currently, an intensive review of the exam is underway by both California and NCARB. BAE is much further along in this process than NCARB, and is negotiating with NCARB to prevent a major split between the two.

Current negotiations between BAE and NCARB include not only the issue of a new exam but also the current BAE examination appeal process and decisions determining where future regional examination grading sessions will be held.

The grading process in California provides for the deletion of certain questions determined by BAE to be ambiguous. This process results in the successful completion of the exam for a few borderline individuals. However, as a result of this "score adjustment" those particular examinees affected will not be certified by NCARB as eligible for reciprocity in other states.

BAE is also opposed to NCARB plans to move the regional grading process out of California. A unique situation exists because a California statute requires BAE to grade its own exams. Since NCARB contracts with BAE to administer the exams NCARB underwrites the grading process. In recent years the grading has taken place in California, but NCARB has proposed holding future sessions in other western states to facilitate sightseeing. BAE opposes this move because the additional cost of moving the California contingent would be approximately $23,000, which would be reflected in the cost of

the examination to California applicants.

Another major BAE concern is the recruitment of a new executive secretary. The previous executive secretary was recruited by the California Council of the American Institute of Architects (CCAIA).

The other major issue the Board is facing is of special importance to licensed and unlicensed building designers throughout the State. Since citizens in California are allowed to design their own one and two story homes, there are a large number of unlicensed individuals who moonlight as professional architects, helping to design these houses for owners. In 1963, the California Legislature opened up a licensing class for some of these people, known today as building designers. This class was closed ten years later and the American Institute of Building Designers (AIBD) is lobbying to get it reopened. The building designers also seek to establish a waivers program to allow currently licensed building designers to waive certain written portions of the architectural examination. It is the position of Beverly Wills, the building design representative of BAE, that many highly qualified people are denied architectural licenses because of the highly academic orientation of the current exam.

Recent Meetings:

The Board's most recent meeting was held on February 2, 1981, in San Diego. Opening the meeting was a proposal to allocate $5,000 to a joint research project on "Indoor Environmental Quality" sponsored by the Board of Medical Quality Assurance and the various design and construction Boards. The project will inventory existing programs that seek to protect people from exposure to toxic chemicals in modern indoor environments. It will also seek alternative building materials, determine interim actions and educate consumers. The Board voted unanimously to approve the funding, with Hal Levin abstaining.

A discussion followed the request by the CCAIA representative Tom Moon for specific guidelines for architects regarding fire safety. In light of the recent Las Vegas hotel fires a suggestion for an ad hoc committee or public hearing was referred to the licensing review Committee.

An amendment was passed reducing from eight to five the number of years a person has to be a licensed architect to be eligible to be selected as an industry member of the Board. The purpose of the amendment is to increase the number of minorities and women eligible to be appointed. Dene Oliver and Judith Crutcher opposed the motion.

The first of two scheduled agenda items was the plea of a building designer for a waiver of certain examination sections that he has been unable to pass. Since the Board does not have waiver powers, a motion was unanimously passed to consider proposing legislation to provide for an oral examination for building designers.

The second scheduled agenda item included two amendments to BAE regulations. The first removed the exemptions previously given to licensure candidates with professional degrees in architecture from taking certain portions of the written examination. This amendment passed unanimously. The second amendment reduced from ten to three the number of years of foreign licensing required to be considered for exemption from the California exam. The amendment passed with Beverly Wills voting against.

A lively discussion arose over the issue of relations with NCARB. The alternative of dropping out of NCARB was suggested despite the prospect of losing national reciprocity for California architects. The Board moved unanimously to allow President Dan Wooldridge to act independently between Board meetings to facilitate NCARB negotiations.

After discussing proposed changes to the current examination format a heated discussion broke out between Board members over certification of the December 1980 examination results. The Board's testing consultant found that the exam was not desirably reliable. Public member Hal Levin moved that before any decision to accept the test results be made that the Board hire additional consultants to specify what the unreliable aspects of the exam are. Mr. Levin argued that it would be an abrogation of the Board's public duty to issue certificates to passing examinees before the reliability of the exam is ensured.

Mr. Weisbach noted that the Board suspected that the exam was unreliable before it was given and therefore the Board should be bound by the results. Levin argued that since the Board now has evidence that the exam is unreliable it must take precautions to protect the public. Mr. Oliver pointed out that a line must be drawn and that if this exam is unreliable then all previous exams have been unreliable and one more won't hurt. Levin's motion was amended to ensure the certification of all successful examinees regardless of any negative findings. The motion was passed with Mr. Levin voting against.

Finally, the Board discussed available alternatives for responding to the differences between NCARB and BAE over inappropriate exam questions. The Board approved a motion to appeal to NCARB to allow ETS to regrade the California answer sheets, eliminating questions identified by BAE. The modified exam would then be equated with the National exam in an effort to maintain reciprocity rights for effected candidates. The appeal is to be accompanied by a letter expressing BAE's extreme displeasure with NCARB's handling of the matter.

A short Board meeting was held March 6, 1981 at the San Francisco Airport Hilton. The meeting was held to reconsider the Board's February 2 decision asking NCARB to modify its grading procedures for the December 1980 exam. Research performed for the Board revealed that the December candidates did as well on the questions the Board wanted eliminated as they did on the corresponding exam sections as a whole. In view of this fact, the Board nullified its earlier decision to appeal and chose to accept NCARB's grading procedure.

After the vote the Board discussed Senate Bill 165 authored by Senator Ellis of San Diego. The Bill would replace two public members of the Board with licensed architects. The bill was to be taken up in the Senate Business and Professions Committee on March 9, 1981, but was taken off calendar to be amended.

The CCAIA is in support of the bill's basic concept and was in the process of writing a similar one. It is likely that the two bills will be consolidated. The earliest the bill will be considered will be at the April 27, 1981 meeting of the Business and Professions Committee.

Next Meeting:

The next Board meeting is scheduled for April 27, 1981 in Los Angeles.

ATHLETIC COMMISSION

Executive officer: Javier Ponce
(916)445-7898

The Athletic Commission regulates wrestling, karate and amateur and professional boxing. Virtually all participants are individually licensed, events and matches are all preapproved.

Major Projects:

The major projects of the 5 member Commission include a pension disability plan for boxers and a comprehensive rule change package designed to deregulate professional wrestling and boxing.

The pension-disability plan is the world's first comprehensive system of its kind to protect boxers. The Commission was required by the Legislature to formulate such a plan in 1974. The previous Commission did not act in the area, believing a plan to be unworkable. The current Commission has conducted actuarial studies, and has drafted a plan allowing benefits from promoter, manager and boxer contribution, based on the number of scheduled rounds for each boxer. Several years of continuous boxing are required for the pension part of the system to "vest." The proposal was enacted in late 1980 and is to take effect in July of 1981. Two problems remain. First, the Office of Administrative Law red pencilled the plan with numerous changes based on a review of the text. The Commission considered the Office's subsequent rejection of the proposal to be *ultra vires* and wrote a blunt letter to that effect.

The deregulation proposal is part of a comprehensive review of rules begun by the Commission one year before the rule review required of all agencies by AB 1111. The Commission hired a California Institute of Technology economist, Dr. Roger Noll, to conduct a comprehensive economic study of the trade regulated and of the impact of regulation. Based on this study and subsequent hearings, the Commission has scheduled final consideration of a rule change packet for professional wrestling and boxing. The changes involve ending the licensing of announcers, ticket-takers, ushers, and other ancillary employees and the policing of these functions by simply holding the licensed promoter who employs these persons responsible for their performance. Promoters would be relieved of the requirement to use licensed ticket-printers, and would not be licensed by "arena" or territory, but would be free to promote anywhere in the state.

Since wrestling exhibitions are "fixed" and injuries are rare, some have argued that its regulation be ended. The strongest argument in favor of continued regulation has been the somewhat cynical observation that it generates revenues for the Commission to take to the Legislature to justify the appropriations needed to regulate the more dangerous sport of boxing. The current rule proposal deregulates wrestling to some extent, but does not end its regulation.

New enabling legislation is needed to enact the deregulation proposal, since some of the licensing is mandated. A bill to accomplish this has been drafted but does not yet have a sponsor. It also includes a gate tax reduction provision (lowering the gate tax from 5% to 2%) so that the approximately 3% assessment of purses needed for the pension-disability program will not price California out of the international "big match" market.

The Commission is confronted with the following additional delimmas:

1. The question of female boxing — many females feel that they are ready for 10 to 15 round matches, the Commission contends that males with comparable experience to the females currently boxing are limited to 4, 6 or 8 rounds. The Commission is gradually increasing the rounds.

2. The Commission will be reviewing amateur boxing. Currently, amateur boxing is exempt from regulation if it is non-profit. It is non-profit if the revenues go only for boxing related expenses. Hence, the San Francisco Examiner annual tournament which contributes excess funds to charity is regulated, while other amateur events are not. Since the basis for regulation is to protect health and safety and to prevent fraud, these goals would appear irrelevant to the disposition of funds. Hence, the Commission will be considering revising the statutes and rules covering amateur boxing and has solicited comments by letter from affected licensees.

3. The Commission is in serious trouble because of its budget. The Legislature cut $30,000 from its budget last year and an increase in matches to be covered has resulted in a major shortfall. Efforts to make do have resulted in an end to wrestling regulation, and more seriously, an end to amateur boxing regulation. Staff investigators are doing clerical work, the Executive Officer is typing the minutes. There is one secretary and two file clerks covering three offices. Files allegedly are approaching a shambles. Investigative activity has ceased. State cars have been taken from the chief inspectors. Observors believe that the agency will have to entirely cease operations in May. An effort is being made for an emergency appropriation but its success is doubtful.

Recent Meetings:

In addition to general discussion of the pension plan, deregulation rules and the three "dilemmas," the Commission considered in its January and February meetings a typical agenda of 4 to 8 licensee fines for rule violations (unlike most other agencies, the Commission may impose immediate fines and sanctions, including suspension, pending appeal). In addition 2 to 4 new promoters were licensed at each meeting. Finally, the Commission considered 3 to 5 contract disputes which it is empowered to arbitrate but generally ends up considering in lengthy proceedings before the whole Commission.

It should be noted that unlike many regulated trades, the members of this trade know each other and deal with each other regularly. Hence, emotions regularly run high and the meetings are often long and informal. Spontaneous outbursts and even speeches from the audience are common.

One of the five Commission positions has been unfilled for over two years. Commissioner DeLeon has submitted a letter of resignation, effective when he is replaced. The letter was written in 1979. With four Commissioners, three must be present for a quorum and three votes are needed to approve motions — sometimes this therefore requires unanimity for action. The Commissioners, unlike some other agencies (see below), work together without acrimony.

Future Agenda Items:

The future agenda is problematical since the budget may not be able to afford any meetings after March. However, the May meeting will include the proposed rule change package described above, action on the budget problem discussed above, and the Muhammad Ali Promotion embezzlement allegations may be discussed. The amateur boxing rule and law revision matters will not be considered until June or July should the Commission be operating then.

Future Meeting:

May 8, 1981, San Diego.

REGULATORY AGENCY ACTION

BUREAU OF AUTOMOTIVE REPAIR

Chief: Robert Wiens
(916)366-5050

The Bureau of Automotive Repair regulates repair facilities throughout California. Automobile Repair facilities are required to be licensed, pay a registration fee (which is paid to the State Treasury to the credit of the Automotive Repair Fund), and display a large sign in the facility which identifies them as an approved repair dealership, and advises the consumer where to direct complaints if he/she is not satisfied with the quality of service. Thereafter, the Bureau is supposed to enforce the provisions of the Automotive Repair Act, sanctioning member dealerships who do not live up to its standards.

The Bureau is assisted by an "Advisory Board" of 9 members, 5 from the general public, and 4 from the industry. There is one vacancy at present.

Major Projects:

The Bureau has several major projects. They are seeking a sponsor for a bill to increase registration fees charged to repair facilities. They also hope to introduce a proposed Voluntary Shop Certification program bill (seeking $2½ million to fund the program through the first three years, if passed). And the Bureau is considering holding public meetings at various times and places throughout the state on the subject of collision repair, including gaps in insurance coverage.

Of great import to the Board is increasing technical specialization of shops to match the wide variety of automobiles available today. The Bureau plans to issue warnings to repair facilities guilty of improper repair procedures that could cause serious damage to late model automobiles (such as spin-balancing the tires on front-wheel drive vehicles).

Recent Meetings:

The Board is following the progress of two bills related to a proposed annual smog inspection of vehicles: SB-87, which calls for such a program to be undertaken by private licensed garages, and SB-33 which gives the individual Air Quality Management Districts the option of implementing such a program. The Bureau's Advisory Board decided on February 3, 1981 that it should be better informed on the relative merits of each of these bills before taking a position. The failure of the California Legislature to act on auto smog device inspections is an issue relevant to the Bureau, whose licensees may conduct these repairs. The federal government, after five years of urging such inspections, is now threatening federal highway fund cutoffs.

Recent litigation has centered around the discontinuance of the program that required automobiles changing hands in certain control areas (such as the South Coast Air Basin) to be equipped with devices limiting emissions of nitrogen oxides (No Retrofit Program). The Air Resources Board ruled at their last meeting that the program should be discontinued, but a lawsuit was filed in Los Angeles Superior Court contesting that ruling, and requesting a temporary stay order to keep the program intact until the court could rule on the merits of the case. The case has been given a continuance, but the plaintiffs were denied a new stay.

Also of note are 4 "sunset" bills, 3 before the Assembly, and 1 before the Senate, calling for the automatic termination of certain regulatory agencies in the executive branch. These were explained by Bureau Chief Robert Wiens at the February meeting of the Board. These bills (now in Committee) are all very similar, requiring an evaluation by a Joint Legislative Audit Committee staff to determine if the stated agencies have accomplished their goals and objectives, are serving their original statutory mandate, and how efficiently and effectively they are being managed (see discussion of Legislation *infra*).

Further Meetings:

The next meeting of the Advisory Board will be Tuesday, May 5, 1981, in Sacramento, unless the Board elects to hold its meeting in conjunction with the California Autobody Association trade show in Anaheim, July 31-August 2, 1981. A special meeting could be held to coincide with legislative hearings on the two smog inspection bills, but a date for these hearings has not been set.

BOARD OF BARBER EXAMINERS

Executive Secretary: James D. Knauss
(916)445-7008

The Board of Barber Examiners exists: 1. to establish professional standards for teaching, examining and licensing barbers; 2. to inspect barber shops; and 3. to otherwise insure that the public receives competent barber services in a sanitary environment. The Board meets bi-monthly.

There are currently four vacancies on the five member board. Consequently, the Board has been unable to form the quorum necessary for it to act and there is no noteworthy Board activity to report.

THE BOARD OF BEHAVIORAL SCIENCE EXAMINERS

Executive Secretary: Samuel Levin
(916)445-4933

The Board of Behavioral Science Examiners is responsible for the licensing of Licensed Clinical Social Workers; Marriage, Family and Child Counselors; Educational Psychologists. The Board defines the scope of services which may be provided by each category of licensee, establishes education and experience requirements, administers examinations, sets licensing fees, conducts disciplinary hearings and suspends and revokes licenses. The Board membership consists of eleven appointees, six of whom are public members. Presently, two of the public membership appointments are vacant.

Major Projects:

The issue of consumer education has been of major concern for the BBSE for the last two years. The Board has argued that the task of informing consumers of their rights depends ultimately on the difficult question of what makes a good therapist. As a part of this on-going inquiry, the Board adopted new regulations in November, 1979 adding "sexual misconduct" as grounds for license suspension or revocation.

The existence of the "Registered Social Program" has been in controversy since 1975. The Board has been attempting for some six years to review the program since its statutory base was considered inadequate to protect or serve the public. In late 1980 the Board helped secure the passage of AB 2712, which mandates the elimination of the RSW program by January 1, 1983.

Recent Meetings:

The Board's more recent proposal to stimulate consumer education has generated controversy.

Regulations were proposed at the September 13, 1980 meeting to require each licensee to prepare a full "disclosure statement." The proposed statement would have required information as to fees, graduate degrees, supervised therapy experience, areas of therapeutic specialty, and any license suspensions or revocations within the past seven years. Public meetings on the proposal were held in Los Angeles and Millbrae on November 21. Based on the unanimous opposition to the proposed regulations voiced both at these meetings and in writing, the BBSE decided, on November 22, not to adopt them. It was decided that public service announcements and consumer education brochures will be relied upon to inform the consumer about the licensing professions of the Board. A task force was appointed to determine how best to achieve these goals.

In September, the Board proposed regulations to reduce the two-year renewal fees for the Educational Psychologist and Marriage, Family and Child Counselor licenses to $20.00 for the December 31, 1981 birthdate renewals, and $20.00 for the March 30, 1982 Licensed Clinical Social Worker birthdate renewals.

Two pending bills of special interest to the BBSE were discussed at the January meeting. AB 173 (Young) would specify that the county Short-Doyle plan include the participation of Marriage, Family and Child Counselors as required. AB 174 (Young) would prohibit health care service plans, disability insurance, welfare benefit plans from excluding the services of Marriage, Family and Child Counselors, if referred by a physician or surgeon.

The comprehensive review of regulations by July, 1982 mandated by AB 1111 has been started. A draft of the BBSE's regulation review plan was submitted to the Office of Administrative Law in December, 1980 and was amended after correspondence from the OAL. This document is not the review of agency regulations, but a plan for the review of the regulations. The amended plan was adopted by the Board at its January 24, 1981 meeting and was subsequently approved by the OAL. It provides for "public" involvement in the review through direct mailings to the more than 21,000 licensees, registrants and applicants of the Board. In addition, special mailing lists will be used to notify organizations with a special interest in consumer's rights.

Advisory Committees will be established for each of the three disciplines licensed by the Board. Members will be recruited from professional organizations and will include as well individuals interested in consumer rights. The Board will be holding information meetings on each of its licensing programs with final voting meetings following within approximately six months. The first information meeting was held in March; the first voting meeting will be in November, 1981.

The BBSE has requested $90,000 from OAL to carry out the AB 1111 mandate. As of the March, 1981 Board meeting, however, no AB 1111 funds had been received and the Board's AB 1111 expenses, up to that date, had been paid for out of the general budget. Due to the shortage of funds, notice of the March, 1981 regulation information meeting was mailed only to the Board's limited mailing list and not to the 21,000 licensees as provided for in the regulation review plan. The Board decided at the March, 1981 meeting to cancel the April, 1981 information meeting and the May, 1981 regulation hearing until after July 1, 1981 the start of the new fiscal year.

Executive Secretary Samuel Levin informed the Board at the March, 1981 meeting that it was facing a $6,000 budget deficit. He warned the Board that unless AB 1111 funds were shortly forthcoming it would have to move to cut enforcement activities. The Board decided, as a cost-saving measure, to curtail public appearances by the Executive Secretary until after July 1, 1981.

Antionette Ziegler has been elected the new chairperson, and George Anderson as vice-chairperson.

Future Meetings:

The next meeting of the BBSE will be held May 9, 1981 in Los Angeles.

CEMETERY BOARD

Executive Secretary: John Gill
(916)920-6078

The Cemetery Board consists of 6 appointees of the Governor, four public members and two from the industry. The current chairperson is Betty Kapiloff of San Diego. The Board licenses cemetery brokers and salespeople and cemeteries themselves. Religious, public cemeteries and cemeteries under 10 acres in size existing prior to 1932 are exempt from regulation. Because this exemption is broad, the Board has only 185 total licensees, mostly brokers and salespersons.

The Board exercises its powers through standard licensing authority. Persons may not sell cemetery plots unless licensed. Board rules are imposed as a condition of continued licensure. License revocations and suspensions are imposed under the guidelines of the Administrative Procedure Act.

Current Projects/Recent Meetings:

This Board is not enormously active. it meets four times a year. Its major on-going project is the auditing of approximately $185 million in reportable trust funds. Many consumers who purchase cemetery services do so before the need arises. The money must be managed and preserved to provide the promised service while the consumer lives. One important issue currently before the Board concerns the 10 to 25% of this $185 million which concerns not cemetery plots but pre-need funeral expenses. It is alleged by the Board of Funeral Directors that many sales efforts are now taking trust fund monies for funerals and hiding them in the cemetery trust fund accounts. Commercial firms choose Cemetery Board jurisdiction since trust fund regulation by the Cemetery Board is not as strict as with the trust funds regulated by the Board of Funeral Directors. The latter limit trust management fees strictly and require detailed accounting of trust fund disposition.

BUREAU OF COLLECTIONS AND INVESTIGATIVE SERVICES

Chief: James Cathcart
(916)920-6424

The Bureau of Collections and Investigative Services oversees the regulation of six industries: collection agencies, repossessions, private investigators, private patrol operators, alarm services and insurance adjusters. The Bureau regulates by licensing and formulating regulations. However, decisions are made by one person, rather than by a majority of Board members. The individual vested with this executive power is Chief of the Bureau, James Cathcart. The Chief is appointed by the Governor, subject to confirmation by the Senate.

Decision-making is delegated to the Chief by the Director of the Department of Consumer Affairs. This delegation gives the Chief unusual authority in issuing licenses and proposing regulations. With regard to licensing, the Chief receives the license application and other paperwork directly from the applicant. He then evaluates these materials and decides whether the license should be granted.

The Bureau does have one advisory Board under its jurisdiction. The Collection Agencies Advisory Committee makes recommendations to the Chief regarding the regulation of collection agencies. The Committee is not a decision-making body, however, and does not directly regulate. Because of the heavy regulation in the collection industry, though, it does function as a consultant to the Chief.

The Bureau only has public meetings when proposing regulations, as required by the Administrative Procedure Act. Since it is not a multi-member Board, the Open Meetings Act does not apply. There are no hearings regarding licenses, with all decisions made administratively by the Chief. The Collection Agencies Advisory Committee does have regular public hearings.

Major Projects:

In each of the Bureau's six major industries there are ongoing projects peculiar to that industry. Each industry has its own regulations and legislation which affects it. The major project common to all six industries, however is compliance with AB 1111.

While many regulatory entities are trying to circumvent the law, Chief Cathcart believes that the public interest will best be served by cooperating with the OAL in complying with AB 1111. The Bureau has, therefore, submitted a schedule of meetings when regulations and rules will be reviewed. The OAL has not yet approved this timetable.

The Bureau is currently implementing legislation requiring repossessor's employees to register with the State. This statute allows the Director of the Department of Consumer Affairs, after a hearing, to refuse to register as a repossessor's employee any person who has committed an act which would result in the denial of a license to a repossessor. The Director may also suspend a registered employee for enumerated infractions.

The Bureau is also implementing legislation which relates to private patrol operators. This legislation requires that employers of private patrol operators (security guards), who carry firearms, must pass a Bureau approved firearms instruction course. The licensee is also required to keep records of its on-duty employees who carry firearms. The Bureau is authorized to audit the licensee's records to ensure compliance, and can levy various fines when violations are found.

With regard to Collection Agencies, the Bureau has compiled three informational pamphlets for industry, consumer and Bureau use. These pamphlets provide answers to common problems which arise in the process of debt collection. The Bureau authored these pamphlets in response to questions frequently asked by consumers. It is believed that the pamphlets will help inform consumers of their rights and obligations upon contact by a debt collection agency. The pamphlets will also serve to assist licensees and their employees in understanding the specific areas of consumer uncertainty. Finally, the pamphlets will be used to assist Bureau employees in answering common consumer questions.

As of July 1, 1981, insurance adjusters will fall under the jurisdiction of the Department of Insurance. The Bureau is presently working with the Department to ensure an orderly transition.

Recent Meetings:

The Collection Agency Advisory Board had a public meeting in Sacramento on March 13, 1981. Only 2 members were present, 2 short of the 4 necessary for a quorum. There are currently 3 vacancies on the 7 member Board (2 public and 1 industry member) with some seats being vacant for over a year. Since the Governor has yet to fill these vacancies, the Board's function could continue to be undermined by the lack of a quorum.

Because the Board lacked a quorum, no official business could be transacted or recommendations made. Bureau Chief James Cathcart was present, and he discussed various agenda matters with Board members and the audience. Cathcart also fielded questions from members of the audience, who were mostly industry representatives.

Cathcart first outlined the pamphlet program referred to above and accepted suggestions from the audience for changes in the wording of some answers. Cathcart also disclosed the monetary expenditure on the pamphlet project as $35,000.

Cathcart also discussed the printing of a reference digest integrating state laws and regulations as to debt collections. This digest would be distributed to individual collectors (collection agency employees) to be used as a quick reference while on the job. It is hoped that by having the digest close by, collectors will better understand and adhere to the law.

The Board also discussed at their March meeting the imposition of fines for violations of the Collection Agency Act. There is currently no enforcement mechanism for the Bureau to directly impose fines on licensees. The proposed enforcement policies would allow fines to be imposed against either licensees or individual collectors. A fine could only be imposed against those individuals who willfully and knowingly violated the law. Therefore, an individual collector would be fined for violating the law, but, if the licensee (e.g. collection agency) had no "knowledge" of such violations, no fine would be levied against it. Any employee or licensee fined by the Bureau could appeal through the administrative hearing process.

The use of new forms for financial statements, called Trust Reconcilliation Statements, was discussed at the March meeting. The Bureau currently has the power to audit a licensee and requires a semi-annual financial statement. The Trust Reconcilliation Statement is a new financial statement form. Complaints were raised about the excessive "intrusiveness" of the form. Many industry representatives felt that answers to certain questions about operating accounts could create a false picture of the financial stability of the licensee. Many licensees have low operating accounts because they put excess money in high yield savings accounts. Therefore, if only operating accounts are focused on, the licensee seems to have a cash flow problem.

Finally, the Board discussed the possibility of licensing out-of-state collection agencies, with offices in California, so they too can be regulated by the Bureau.

Future Meetings:

May or June, 1981 — to be announced.

CONTRACTORS' STATE LICENSING BOARD

Registrar: John Maloney
(916)445-4797

The Contractors' State Licensing Board licenses contractors to practice in California, sets forth regulations to handle consumer complaints about contractors already licensed, and mandates performance requirements.

The thirteen member Board, which consists of eight contractors and three public members, all appointed by the Governor, meets approximately every two months. There are two vacancies at present. The Board regularly discusses amendments to the existing rules and regulations, and proposes improvements in the contractors' licensing procedures, including examination questions about which they have received complaints.

The Board now has three Committees: an Operations Committee overseeing budget and management, an Enforcement Committee on field work and investigations, and a Consumer, Industry and Labor Relations Committee on policy problems. There is also a six person Management Liaison Committee functioning as an Executive Committee. The Committees gather information and do not require a quorum.

Major Projects:

One of the major projects of the Board is drawing up guidelines for penalties to be assessed for rule violations. Presently, when a complaint is received, there is a hearing before an administrative law judge. The Registrar of the Board is the sole arbiter in such proceedings — the Registrar may adopt the Judge's decision — but is not bound by it. There is some potential for inconsistency. However, with the passage of AB 1363, effective July 1, 1980, the

Board now has a "citation" process. Board rules now being adopted will implement this citation system by defining citable violations and giving specific penalties for each narrowly defined abuse. The citation system will be implemented by rule changes subject to review by the Office of Administrative Law.

The Contractors' Licensing Board is in the process of drawing up an acceptable schedule which would best accomplish a review of their 97 rules, as required by AB 1111. Their first schedule, submitted in early February, was turned down and they are working hard to get a new schedule submitted. Their deadline is July 1, 1982.

The staff is in the process of revising and printing the *Contractors' License Law and Reference Book*, which contains the enabling legislation and rules and regulations pertaining to the Board. This handbook should be available by May.

Recent Meetings:

The Board has been working to set up rules and regulations which would set "workmanship standards" for all licensed contractors. Until now, the Board has avoided involving itself in this aspect of regulation, and the work performed is in its preliminary stages. However, the Board is in the process of gathering information from other Western states dealing with their standards in order to establish a basis on which to construct their own set of rules.

In January 1980, the Legislature increased the bond requirement from $2,500 to $5,000 for contractors. Swimming pool contractors must have a $10,000 bond. The Board plans to suspend about 10,000 of the State's 155,000 licensed contractors during the last week of March. John Maloney, Registrar of contractors, said this action will be taken because 10,000 contractors have failed to increase their bonds. The contractors can halt this suspension simply by filing bonds in the correct amount.

Legislation:

AB 178, introduced by Assemblyman Lockyer, is an Act to abolish the Board on June 30, 1982, unless the Legislature, prior to that date, enacts a bill continuing the Board in existence. This Bill would require the Board to submit a statement to the Legislature on its purpose, organization, and performance and would require the Legislature to conduct a review to consider whether the Board should continue. It is unclear how much support this single agency "Sunset" Bill has at this early stage.

Future Meetings:

The next meeting of the Board will be held April 23-24, 1981, at the Picadilly Inn, 5115 E. McKinley, Fresno, California. Some of the agenda items will include a further discussion of AB 1111, and proposed citation rules. In addition, the Board will be discussing their Notice to Owner requirement. As it stands now, any licensed contractor who undertakes a job which will cost over $200 must give notice to the owner of all the rights and responsibilities of both the contractor and the owner, explaining in detail the lien laws of California. The Board is considering changing this requirement for Home Improvement projects, to a higher minimum of $500. Under the current rule, virtually every home improvement project is affected.

BOARD OF COSMETOLOGY

Executive Secretary:
Russel Salazar
(916)445-7061

The Board of Cosmetology is a counterpart to the Barber Board, both regulating the "beauty" industry. Like the Barber Board, the primary responsibilities of the Board of Cosmetology include teaching, examining and licensing. The Board meets bi-monthly, changing the location from meeting to meeting.

The Board's current concern is complying with AB 1111, which requires self evaluation of existing rules by that agency. The Board's plan for meeting these requirements has been submitted to the Office of Administrative Law. The Board will publicize its plan upon approval from the OAL.

Recent Meetings:

Recently, the Board has considered a number of topics. At the January 18, 1981 meeting the Board discussed whether or not California should give reciprocity to other states. Currently, California is one of only six states which offer no reciprocity whatsoever. At the meeting, representatives of the California State Association of Barbers and Beauty Culturists and the California Association of Schools of Cosmetology voiced strong opposition to reciprocity. Reciprocity would ease entry in California of barbers and cosmetologists licensed in other states with comparable quality standards in return for their licensing of California licensees who move there. Since more people are moving into California than out of it, this would mean more competitors here. The Board decided to take no further action on reciprocity at this time.

At a March 16 meeting the Board voted down a proposal which would allow the use of satellite classrooms.

The Administrative Committee voted to continue the application process for the position of Executive Secretary of the Board. The Board is divided as to whether or not the current Executive Secretary Russell Salazar should be retained; 3 board members wish him to remain and 3 wish him replaced. Several of the members who wish him to continue as Executive Secretary expressed extreme annoyance with the Administrative Committee which is continuing the application process. They see the search as both a waste of time and money, and as unfair to the applicants, since the Board lacks the support of the requisite number of members to discharge Mr. Salazar.

The Board decided in March to take no action with regard to its surplus funds, rejecting both the lowering of licensing fees and the extension of the licensing period to reduce the excess.

Future Meetings:

Topics for the May agenda include whether or not the occupation of manicurist should be considered a specialty and thus require a special license.

BOARD OF DENTAL EXAMINERS

Executive Secretary: David Hamrock
(916)445-6407

The Board of Dental Examiners issues licenses to practice dentistry in this State to those applicants who successfully pass the examination offered by the Board. Dental auxiliaries are also regulated by the Board. The Board is charged with enforcing the provisions of the Dental Practices Act using various disciplinary measures. The Board consists of three public members and eight practicing dentists.

Major Projects:

The projects of the Board include the consideration of numerous foreign applicants for the dental examination; the hiring of investigators to be used solely by the Board; the implementation of AB 1111.

The Board receives applications from all over the world from dentists who wish to take the California examination and become a practitioner within this State. The Board must determine whether or not the applicant has received the level of training which qualifies him or her to take the State exam. To date, the only organized international exchange system existing is between the U.S. and Canada.

The Board has received funding to hire their own group of investigators. This would eliminate the need to use investigators provided by the Department of

Consumer Affairs (DCA). An investigator working only for the Board of Dental Examiners will theoretically develop expertise in the field. The DCA prefers the Boards to use department investigators, contending that more objective investigators will better serve the consumer. The Board of Dental Examiners will lose its funding for this project if they do not act by May 15, 1981. Further, there is no office space in which any newly hired employees can work. Finally, the Board has not set any policies to guide their own investigators. The Board is in the process of trying to overcome these problems.

The implementation of AB 1111 will be a tremendous task for this Board. Despite some uncertainty by the Executive Secretary, the Board has managed to set up a time frame for completion of the reviews. The actual review process is not substantially underway. Dan Wooldridge, the assistant to the director of the DCA, has informed the Board that there is funding available to assist the Board in completing its review of all current regulations as required by AB 1111. The Board will not get these funds unless it asks for them. The DCA assistant director claims that the Board of Dental Examiners is the only Board which has not submitted a request. The Executive Secretary denies this claim.

Recent Meetings:

A major concern for the Board for the past two months has been the election of its officers. The Board is highly factionalized, with the 6 "consumer" or "public" members opposing the majority of the 5 "trade" members. Helyn Luechauer was nominated February 13, 1981 for President and was accused (as part of the "public" faction) of favoring the DCA in its attempt to "control" the Board. Dr. Luechauer gave a nominating address and 5 Board members (the "trade" faction) walked out, leaving the 5 women members and Dr. Howard Stein. Since seven is a quorum, the election was stopped. Further business proceeded conditioned on later "ratification". Almost immediately, however, the five walkouts returned, threatening to leave again should the election be held. The Board held that Dr. Luechauer had been elected since the entire contingent had not left the premises (perhaps the heel of the last departing walk out) when the election occurred.

The Board is confronted with the following additional delimmas: It must decide whether or not to dismiss Executive Secretary David Hamrock. Certain Board members feel that he has been ineffective and that more agressive management is needed. Those opposing the dismissal are in the "trade" faction. David Hamrock claims he will resign by June of this year.

The election issue and the clique division of the Board results in a great deal of gratuitous posturing and positional speeches by members off the issues. The Board members seemed unprepared on many of the agenda items. Despite these problems, the Board manages to handle in some respect most items on its agendas.

On January 12, 1981 Senator Keene introduced SB 122. In 1979 a new law was enacted requiring dentists to obtain a special permit from the Board in order to use "general anesthesia." Dentists using general anesthesia before the effective date of the new law (1/1/80) have until 1/1/81 to get their permit to continue anesthesia. SB 122 would extend this deadline another year, to 1/1/82 as an urgency measure. Many dentists do not have permits and use anesthesia. Moreover, the bill itself notes in explaining its urgency status: "Regulation specifying the requirements for the use of anesthesia by licensed dentists have not been adopted."

Routine Business:

Dental auxiliaries from other States are constantly applying to take the California exams. The Board is in the process of reviewing, on an *ad hoc* basis, courses which are offered in out-of-state schools. The Board must determine, based on this review, which applicants are sufficiently qualified to take the California exam.

The Board is continuously enforcing the Dental Practices Act, using the disciplinary means available to it. At its February meeting the Board decided which cases it would hear and which cases it would refer to an administrative law judge. The Board considered the following factors in deciding which course of action to take: budget and time constraints; the level of expertise necessary to properly decide the case; and the fact that most of the issues requiring expert judgment had already been decided by the Board in earlier cases.

One of the major issues facing the Board in the future is the role of dental auxiliaries in dentistry. At its February meeting, the Board directed the Committee on Dental Auxiliaries to develop a program to train registered dental assistants in the use of the cavitron (a device used to remove cement).

This narrow issue crystallizes a more general conflict. The "trade" faction contends that there should be direct supervision of most ancillary services, and required training. The DCA, supported by some of the "public" faction, argue that auxiliaries and dental hygienists should be allowed to do more without having to have a "dental practice" license, and that unnecessary "barriers" should not be imposed by dentists.

Future Meetings:

The Board must determine what to do about AG Opinion #80-321 (see AB Opinion discussion *infra*), which holds that the DCA does not have the power to review or approve (or deny) the budget of the Dental Board or any Board except insofar as it affects the general fund appropriations of the DCA itself. However, the Department of Finance does have such approval authority. The Department of Finance, in the current scheme, gives great weight to the views of the DCA. Several members of the Board, although the Board requested the Opinion, are generally upset by the result, and would prefer that its budget be a matter between the Board and the Legislature. The Board might possibly retract its request if it could.

Future meetings in the Spring of 1981 should also consider the problem of dental corporations. Many licensed dentists now work for professional dental corporations. At present, the Board has authority over each licensee for the practice of that licensee. The Board would like, in addition, to hold the corporation licensee responsible for the practice of the licensees working for it. A bill is in formulation to make this change.

BUREAU OF ELECTRONIC AND APPLIANCE REPAIR

Chief: Jack Hayes
(916)445-4751

The Bureau of Electronic and Appliance Repair regulates service dealers who repair major home appliances and electronic equipment. Service dealers are required to (1) return replaced parts to the customer, (2) provide a written estimate for labor and parts, if the customer so requests (charging an amount in excess of any written or oral estimate without prior authorization is forbidden), (3) furnish an itemized invoice describing all labor performed and parts installed, (4) provide a claim receipt when they accept a customer's equipment for repair, and (5) perform repairs in a good and workmanlike manner. False or misleading advertising, false promises likely to induce a customer to authorize repair, fraudulent or dishonest dealings, any willful departure from or disregard of accepted trade standards for good and workmanlike repair, and negligent or incompetent repairs are prohibited.

Major Projects:

On March 6, 1981, the Bureau held its first of three Regulation Informational Hearings, pursuant to AB 1111, at which time it reviewed the general, routine regula-

tions contained in Articles I, II, and VI. The Bureau hopes to complete its review within 12 to 14 months.

The Bureau is continuing its attempts to obtain specifications on the calibration and accuracy of high voltage probes, studying hardships caused service dealers when their rate contracts with manufacturers on in-warranty repairs are less than the dealer's actual repair cost, and investigating parts availability and the delay dealers experience in obtaining parts from manufacturers.

The Bureau's budget for fiscal year 1980-81 is $751,801.00. Projections indicate that under current fee provisions, the Bureau will experience a deficit in fiscal year 1982-83. The Bureau has therefore amended its regulations to increase current registration and renewal fees, and proposed SB 317, introduced on February 18, 1981, by Senator Petris, which would increase the maximum statutory fee.

Recent Meetings:

The Advisory Board to the Bureau meets quarterly. The Board consists of 9 members — 5 public representatives, 2 representatives of the appliance industry, and 2 representatives of the electronics industry. There are currently 2 public vacancies on the Board.

At recent meetings, the Board approved regulations which would limit a dealer's ability to use a fictitious business name confusingly similar to that of another business, a government agency, or a trade association, and regulations which clarify the items which must be included in the quotation of a service call charge.

Legislation sponsored by the Bureau, which was signed by the Governor and effective January 1, 1981, prohibits an unregistered dealer from suing on a contract for repairs.

The Bureau adopted regulations establishing a complaint disclosure system. Upon request, the Bureau will provide a consumer with information concerning the number of consumer complaints found to contain a probable violation of the Bureau's registration law or regulations received against a service dealer within the previous 18 months. A consumer may also obtain the disciplinary history of all current registration holders.

Regulations adopted by the Bureau, effective December 10, 1980, set specific standards of workmanship which require appliance repairs to be made in accordance with the original manufacturer's specifications. Minimum standards for the quality of replacement parts were also established.

Routine Business:

To ensure compliance with the Electronic and Appliance Repair Dealer Registration Law and regulations adopted thereunder, the Bureau continually inspects service dealer locations, and receives, processes, and investigates consumer complaints (sixty-four percent of its 1980-81 budget has been allocated for enforcement). During the 1979-80 fiscal year, the Bureau registered 997 new applicants (total registrations are 8,543); inspected 655 service shops; issued 50 notices of violations; issued 1,517 warnings with 6 reprimands; received 2,262 complaints; mediated 2,307 complaints; made 308 informal adjustments; filed 14 accusations; placed 1 registrant on probation; suspended 10 registrants; and revoked 7 registrations. Cases are referred to the Attorney General for administrative action against the service dealer's registration, and to the District Attorney where the Bureau's investigation indicates the dealer has violated other statutes.

Future Meetings:

The next Board meeting is scheduled for May 22, 1981, in San Francisco, to coincide with the California State Electronic Association Convention.

BUREAU OF EMPLOYMENT AGENCIES

Chief: Portia S. Siplin
(916)920-6311

Created by the Employment Agency Act, the Board of Employment Agencies is a 7 member Board consisting of three representatives of the employment agency industry and four public members. All members are appointed by the Governor for a term of four years, and a quorum of four is required by the statute.

The Employment Agency Act empowers the Board to inquire into the needs of the employment agency industry. In so doing, it is charged by statute with the duty of focussing its concern on promoting the public welfare. Based on that inquiry, the Board sets its policies. At its most fundamental level, the Board operates as an advisory board to the Chief of the Employment Agency Bureau.

The Chief prepares examinations for all candidates and ensures they are examined in accordance with designated rules and regulations established by the Chief. No employment agency may operate without a license; no license is issued unless an examination has been satisfactorily completed. A license entitles the licensee to engage in the business of finding all types of employment for others and charge a fee for the service.

An employment agency deposits with the Bureau, prior to licensing, a bond of $3,000 payable to the State of California for any damages caused by the licensee. The Bureau adopts rules and regulations that define "good business practices" within the trade, and it is charged with establishing guidelines for violations of these rules as well as assessing penalties for violations that occur and are discovered.

Presently, the advisory Board has only 3 of the 7 positions filled. Hence, there is no quorum. Nevertheless, since the Board is purely advisory, the Bureau's ability to take action has not been impeded. In any event, the Chief makes many of the decisions unilaterally, usually asking for advice only on important matters.

Major Projects:

Currently the Bureau's greatest concern is a Bill proposed by Assemblyman Roos that would take away the agency's law enforcement powers. Although the Bureau would still have authority to set rules and regulations, the Bill's passage would render the Bureau powerless to enforce them. Last year the same Bill passed both the Assembly and the Senate but was vetoed by the Governor. The Bureau feels it would be devastating to the consumers — and wasteful for taxpayers — to have a Bureau in Sacramento charged with setting policies and licensing agencies that is at the same time powerless to enforce the rules it promulgates.

On the other hand, the Bureau is seeking legislation that would give it greater control over unauthorized practice. The Bureau has complained about the existence of a great deal of unlicensed activity, and therefore believes that legislation giving the Bureau more "watchdog" enforcement authority is necessary.

Recent Actions:

In recent action, the Chief outlined the circumstances in which agencies would be allowed to operate out of residences; he established guidelines, and defined limitations on such operations. At present, for example, agencies may not see clients in residences. A number of other rule changes are in the formative stages.

One regulation currently being discussed would prohibit the selling of installment contracts to finance companies without first giving notice to the affected clients. Another proposed regulation would require employment agencies to put their license numbers on all advertisements. Its purpose is to help zero in on all non-licensed activity. The Employment Agency industry is generally opposed to both of these regulations.

Another important regulation change under consideration would require "just cause" for terminating a job within 90 days of employment. If a job is terminated within 90 days of an applicant's employment without just cause, the applicant would be entitled to a pro rata refund on the fee paid to the employment agency. Predictably, the Employment Agency industry strongly opposes this rule change.

BOARD OF FABRIC CARE

Executive Secretary:
William Peterson
(916)445-7686

The Board of Fabric Care is a seven member Board consisting of four public and three industry members. The Board Licenses, regulates and disciplines the dry cleaning industry. It has statutory authority over all dry cleaning plants, shops and persons who go into homes and clean draperies.

Major Projects:

The Board is interested in regulating the level and use of toxic chamicals by companies cleaning inside the homes. The Board has now been involved in a two year project to gain authority over rug cleaners who clean in the home. At present, the Board can only regulate the cleaning of draperies in the home and has not yet established tests and guidelines for the level of chemicals used for in-home cleaning.

The Board is also attempting to contract with the U.S.D.A. to develope a device to measure the amount of fatty acids which remain in the clothing after dry cleaning. Devices developed by the industry only measure the level of detergents used in the cleaning machines. The device measuring fatty acids will give inspectors the ability to test how much chemicals and dirt remain in the clothes after the dry cleaning process.

The Board will also continue its development of consumer education seminars dealing with current problems in fabric care.

Current Meetings:

The Board of Fabric Care met on January 30, 1981 in Los Angeles. All members of the Board were present. The A.G. representative, a reporter for a fabric magazine, one member of the public and the Center monitor. The following items were discussed.

1. *Fairclaims Guide:*

The Board moved and unanimously approved the expenditure of $17,000 to enter into a contract with U.C. Davis to research, interview, and evaluate data to update their Fair Claims Guide. The Guide is a booklet used by judges to evaluate the worth of a garment which has been wholly or partially destroyed by a dry cleaner. The Guide is not legally binding on the judges. The research is to be completed by October 1981, and the printing scheduled for 1982.

2. *Toxic Chamical Tests:*

Executive Secretary William Peterson discussed the use of potential toxic chemicals in dry cleaning solvents used by cleaners who go into homes or businesses to clean carpets or rugs. A study by the A.M.A. concerning the effects of certain chemicals used in cleaning solutions was dismissed as being overly inclusive. The A.M.A. study concerned a linkage of targeted chemicals to cancer, but did not deal specifically with dry cleaning solutions.

The Board has had the Bureau of Home Furnishings conduct 2 informal tests concerning the use of toxic chemicals and Executive Secretary Peterson felt there was a legitimate concern and that more tests should be undertaken and a report issued.

3. *Review of Rules and Regulations:*

On July of 1981 the Rules and Regulations Committee will meet to review and update the entire Code of Rules and Regulations for the dry cleaning industry. Preparatory meetings of lay, professional and Board members will take place prior to the formative July 1981 hearing.

4. *Informational Seminars:*

The Board proposed dates for seminars for dry cleaners in March, May and September for various California cities. The topic of the seminars are recent problems in cleaning and caring for curtain fabrics. Consumer alert bulletins to identify current problems will be issued.

Posters concerning lien laws will be sent and posted in all dry cleaning shops.

5. *Licensing, Testing and Investigation:*

The Board presented and approved reports on all disciplinary actions and certifications of new licenses. They discussed a better method of tracking changes of ownership and unlicensed activities through real estate sales book put out by the Title companies. The Board recommended looking into this method.

6. *Legislation:*

On December 19, 1980 Senate Resolution No. 7 was introduced by Senator Alex Garcia to force the Director of the Department of Consumer Affairs to comply with Attorney General Opinion 80-321. The opinion concerning the Budget of the Board of Dental Examiners concerns the authority of the Boards such as the Fabric Care Board to withdraw funds from the State Fabric Fund. No action was taken.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Executive Secretary:
Kathleen Callanan
(916)445-2413

The Board of Funeral Directors and Embalmers licenses funeral directors, funeral establishments, and embalmers. The Board regulates the practice of embalming, the business of a funeral director, and on site sanitary conditions (e.g. plumbing, sewage, ventilation, and equipment). The Board specifies conditions for approval of funeral establishments for apprentices, for approval of embalming schools, and controls the licensing examination.

Major Projects:

Currently, the Board's major concerns are the management of pre-need trust funds, and regulation review pursuant to AB 1111.

All money received by a funeral director for funeral merchandise and services, in advance of need, must by law be placed in a trust account until the death of the person for whose benefit the trust was established. A detailed current accounting system pertaining to the funds must be maintained at the establishment and available for inspection. These trust accounts must be audited by the Board. Additional auditors are required due to an increasing volume of accounts. Since the Board must absorb the cost of additional auditors, it proposed legislation (SB 1526 by Petris) to allow a fee of $35.00 per hour to be charged the licensee after the first two days of the audit. The Board contends that if it takes more than two days, the licensee is probably not complying with the reporting requirements and, should pay. After the bill was amended in Committee, the Board asked Senator Petris to withdraw it.

As an alternative to the current pre-need system, the Board is recommending that an individual, instead of establishing a pre-need account with a funeral director, establish a trust with a bank. The trust would be in an individual's own name, with himself as trustee, and with a licensed funeral director as beneficiary. The Board feels that funeral directors are not bankers and thus should not be accepting and investing pre-need funds.

The Board will begin holding hearings for comprehensive review of its regulations in April, and will proceed article by article. The earlier hearings concern the more controversial rules, with the first hearing relating to pre-need funds. The next article to be considered involves licensing. The Board hopes to complete its informational hearings concerning the least controversial regulations in October or November of 1981.

Recent Meetings:

In early 1981, the Board adopted a regulation requiring that on any casket having (or advertised as having) a sealing device of any kind, there must be displayed a separately printed conspicuous written notice that "there is no scientific or other evidence that any casket with a sealing device will preserve human remains."

It modified the consent form required to be completed when obtaining the necessary express authorization to embalm orally by telephone. Notice must be given that embalming is for the temporary preservation of the body and is not required by law.

Currently, there is no requirement that a funeral establishment have a designated manager. Consequently, a funeral "establishment," rather than an individual licensee, may be responsible for compliance with the Funeral Directors and Embalmers law. Because the Board believes the individual who runs the establishment should be responsible for compliance, and disciplined when the laws are violated, it is now proposing regulations requiring that one individual be designated as the manager of a funeral establishment. The designated manager must be a full-time employee of the establishment, be licensed as a funeral director, and be responsible for securing full compliance with the law. Failure to exercise the supervision and control necessary to insure such compliance would be grounds for disciplinary action.

In early 1981, the Board started a review of its licensing examination so it will "be relevant" to the practice of the trade. It is also reconsidering its procedure for licensing out-of-state embalmers.

The Board has opposed AB 2664, introduced by Assemblyman Felando into the 1981 legislative session, allowing a personal income tax deduction for preplanned funerals. It also opposed AB 201, sponsored by the mortuary industry, introduced by Assemblyman Papan, which would require bonds be posted, annual audits of pre-paid trusts be made, and a fixed rate of interest be paid since it does not believe the bill will solve the problems associated with pre-need funds.

The Board is supporting SB 1944, introduced by Senator Dills, which changes the composition of the Board from 8 to 7 members by eliminating one of the five public positions.

Routine Business:

The Board routinely issues or reinstates certificates of registration of apprentice embalmers, and cancels certificates of registration which have been abandoned or for which there has been such a request. They and applications for qualification as an employer of apprentice embalmers. They also approve issuance of original funeral director licenses, assignment of licenses, and changes of funeral establishment name or ownership. They conduct informal hearings and consider proposed decisions recommended by administrative law judges in disciplinary matters.

Future Meetings:

The next Board meeting is scheduled for April 16 and 17, 1981, at the State Building in Los Angeles. The Board will review its regulations concerning the reporting of pre-need funds at this meeting, and continue its other ongoing projects, as noted above.

BOARD OF REGISTRATION FOR GEOLOGISTS AND GEOPHYSICISTS

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

This is an eight member Board created pursuant to the Geologists and Geophysicists Act of 1970. Five of the members of the Board are public members, the remaining three are professional geologists. Currently, one of the professional seats is vacant.

The Board licenses Geologists, Geophysicists, and Engineering Geologists. The category of Engineering Geologists is a specialty. Petroleum Geologists are included in the non-specialty category of Geologist.

Since 1970, the Board has licensed 3,389 Geologists; 1,034 Engineering Geologists, and 873 Geophysicists. The Board has revoked one license.

Major Projects:

The present ongoing activities of the Board include: 1. Proposed legislation to amend the enabling statute to allow the Board to adjust its fees. The Board is considering raising its renewal fees for geologists from $10 to $80 in order to meet budget demands. 2. Proposed legislation to amend the enabling statute to include a definition of "negligence." 3. Implementation of a stronger enforcement program. 4. Coordination of efforts with city and county officials throughout California to help identify geological problems and hazards. 5. Formulation of a policy that will allow experienced out-of-state geologists and geophysicists to obtain a license without examination pursuant to sections 7847.5 and 7847.6 of the Act.

Recent Meetings:

In recent meetings, the Board adopted the Department of Consumer Affairs complaint disclosure form. The Board is currently reviewing its own forms used to summarize the status of complaints. The Board has noted that reviews of reports by volunteer geologist reviewers are often delayed, and the proposal that reviewers be paid for their efforts was made. However, there has been no action on this proposal to date.

Future Meetings:

The Board meets monthly usually on the 3rd Thursday of the month. The exact time and location of the next meeting is usually announced at the previous meeting or shortly thereafter.

BUREAU OF HOME FURNISHINGS

Chief: Gordon Damant
(916)920-6951

The Bureau of Home Furnishings Licenses, manufacturers, retailers, renovators and sterilizers of furniture and bedding. In addition, the Bureau establishes rules regarding labeling requirements approved by the California State Department of Public Health pertaining to furniture and bedding.

To enforce its regulations, the Bureau or its inspectors have access to premises, equipment, materials, and articles of furniture in the control of its licensees.

The Chief or any inspector may open, inspect and analyze the contents of any furniture or bedding and may condemn, withhold from sale, seize or destroy any upholstered furniture or bedding or any filling material which is found to be in violation of rules and regulations of the Bureau. And the Bureau may also revoke or suspend a license for violation of its rules.

There is an eleven member (5 industry members and 6 public) California Advisory Board of Home Furnishings to advise and make recommendations to the Chief of the Bureau regarding changes in rules and regulations of the Bureau, needs of the industry, and policy changes to promote public health and safety.

The Chief of the Bureau serves ex officio as the secretary of the board, but is not a board member.

Major Projects:

The major ongoing project for the Bureau is review of its regulations pursuant to AB 1111. The Bureau forsees no problem with the AB 1111 deadline.

Recent Meetings:

The Board met in February of 1981. A problem regarding the Bureau's testing facility in Sacramento was discussed. Currently the facility is operating under a zoning variance to allow the burning of furniture and bedding materials for flammability testing.

The Sacramento County Air Pollution Control Board, however, is now requiring the facility to install special equipment to help abate the smoke emitted. The cost of the equipment is estimated to be several thousand dollars.

A final draft of a Complaint Disclosure Policy to be adopted was presented to the Board. Although the Bureau maintained an informal policy previously, the new policy will formally become part of the Bureau's regulations. The policy provides that complaints regarding furniture manufacturers will be kept on file for three years and information will be available to the public on request regarding:

(a) Board action against any manufacturer's license;
(b) Violations of Bureau regulations;
(c) Information regarding license numbers of licensees.

The Board expressed support for the Olin Corporation's (a manufacturer of flame retardant chemicals) petition to the Consumer Products Safety Commission. The petition urges adoption of § 1374 of the Rules and Regulations of the Bureau as a national standard for flamability of upholstered furniture. The federal government currently has no such standard.

Future Meeting:
April 22, 1981 in San Francisco.

BOARD OF LANDSCAPE ARCHITECTS

Executive Secretary: Joe Heath
(916)445-4954

The Board of Landscape Architects licenses those in the practice of designing landscapes and supervising implementation of design plans. To qualify for a license an applicant must successfully pass the written exam of the National Council of Landscape Architectural Registration Boards (CLARB) and the Board's own oral exam. In addition, an applicant must have had the equivalent of six years of landscape architectural work. A degree from a Board-approved school of landscape architecture counts for four years of experience.

The Board is required to investigate all verified complaints against any landscape architect and to prosecute all violations of the Practice Act. The Board consists of four public members and two professional landscape architects, one each from Northern and Southern California.

Major Projects:

Current projects of the Board include pretesting the CLARB exam; publication of a consumer brochure on landscape architecture; establishment of a complaint-tracking system; and implementation of AB 1111.

Thirty-nine states administer the CLARB exam. Every year each state conducts a pretest of the exam. The Board recently administered the history portion of the exam to 25 landscape architects who criticized it for lack of clarity and the inappropriateness and discriminatory tendencies of questions. The *results* were then sent to CLARB headquarters in Syracuse, New York.

For the first time since its inception the Board has put out a brochure on Landscape Architects. The brochure is consumer-oriented, explaining the qualifications of a good landscape architect and encouraging consumers to report their complaints to the Board. The Board is currently discussing methods of distribution.

The Board is trying to set up a new complaint-tracking system. Currently, the Executive Secretary personally handles those complaints he has time for and the rest are forwarded to the Department of Consumer Affairs' Department of Investigation. The Board would like to arrange for more regular communication with the Department of Investigation regarding a complaint. This could be provided by a monthly status report, for example.

In 30 years the Board has amassed 3 pages of new legislation. The Board is asking for approximately $14,000 to conduct the AB 1111 review of new and existing legislation.

Recent Meetings:

At the December 13, 1980, meeting the Board increased exam fees from $75 to $125 and the biennial renewal fee from $125 to $150 to cover the costs of administration. Cost of exam material alone last year exceeded the former $75 fee per candidate. Materials costs and the numbers of candidates have been increasing steadily each year. The funding deficiency had previously been absorbed by the Board of Landscape Architects' special account, which is now completely depleted.

The adopted increases will not generate income till the next biennial renewal in January of 1982 (fiscal year 1981-82). Projected revenue increases from the new renewal fees are approximately $45,000 biennially, which the Board says will not cover additional amounts needed to conduct exams during fiscal 1981-82 and 1982-83.

The Board is asking for $57,635 in a budget deficiency bill, SB 310, which is carried by Senator Alquist. The fee increases have been submitted to the Office of Administrative Law for approval.

The Board's concern with the rising costs of exam administration has prompted it to consider three alternatives: (1) having the Board create its own written exam; (2) persuading CLARB to give a quantity discount on the exam (which they currently will not do); or (3) having the exam evaluations done for less than $9 per sheet (6 of the sheets are drawings). Currently, CLARB does the evaluations) and subcontracts them out to the landscape architect department of Syracuse University.

There are approximately 1500 licensed landscape architects in California. The Board received 250 complaints last year, an estimated 90% of which were related *not* to landscape "architects," but to landscape "designers." There is no formal legal distinction. Designers, however, do not need a license and flourish by virtue of an exception in the enabling statute. Section 5641 permits anyone to design a landscape without a license if it doesn't affect public health or safety.

The public is generally unaware of this distinction, according to Executive Secretary Joe Heath. The bulk of these complaints concern designers who accept money and then never commence work. Their fee schedules are usually the same as that of a landscape architect and they invariably promise that work will be completed in one week.

There is little the Board can do to help the consumer in such instances. Sometimes the Board will refer the complainant to the Small Claims Court. Often, if the work entails the addition of a retaining wall or some aspect of irrigation, the complaint can be referred to the Contractor's Licensing Board.

The average independent professional landscape architect employs designers, oversees their work and signs his/her own name to the plans. These designers are not usually the target of complaints. Perhaps 25% of all designers, moreover, are students who eventually get their landscape architecture license. Landscape designers, of whom there are an estimated 1,000 in California, are a phenomenon of the last 10 years. Most architects consider them unqualified and resent their intrusion into the marketplace. The Board has, in the past, unsuccessfully tried to get rid of the exemption (§ 5641) and will probably attempt to get a licensed category for designers next year.

Two and one-half years ago the Board approved the granting of a certificate of landscape architecture through the UCLA Extension Program. Last year the same certificate became available at UC Irvine. The certificate differs from a B.A. in that no electives are in the curriculum. They are evening and weekend programs, the only

two in the nation of their kind. The UCLA program has 400 students, 75% of whom are career-change people. The evening programs are regularly reviewed by the Board's Education Committee and were found to be lacking in student counseling and faculty minority recruitment. In addition, new courses were added without Board approval.

A Sunset bill was passed in 1978 that would have terminated the Board's existenc in June of this year. Last year, however, the passage of AB 1625 extended the Sunset date to June 30, 1984. Continued existence of the Board depends on submission of a report detailing the need for the Board and an evaluation of its performance by June 30, 1982. The Board has already begun work on the report and its projected completion date is October 15, 1981. The Board is also contemplating having a study done on the national impact of landscape architect licensing.

The Board has adopted a resolution concerning landscape architectural plans whose maintenance requires excessive use of water or pesticides. Maintenance is one of the elements of a plan that the Board will review in the event of a complaint. The resolution requires architects to implement planning that uses minimal amounts of water and pesticides.

A resolution urging the California Department of Food and Agriculture to conduct studies on the effect of pesticides on human health has been passed by the Board. The Department of Food and Agriculture, responsible for pesticide management, has refused to do the studies contending that to do so would entail a release of trade secrets.

In its March 7, 1981, meeting, the Board discussed revision of their oral exam procedures. The oral exam tests applicants' knowledge of laws (e.g. mechanics' lien laws) and plants unique to California. At present the Board members are the only ones who administer the oral exam. The Board is considering having professional landscape architects administer the exam.

Future Meetings:

Election of officers, president and vice-president, discussion of Governor's Budget Bill SB 110, and follow up on the projects noted above are expected in the April and May meetings.

There are only four active members on the Board and they were reelected at the March 7 meeting. One position has not been filled and another member (public member Bill Spears) has attended few, if any, meetings. It has often been difficult to establish a quorum of four active members. At the March 7 meeting the Board passed a resolution requesting the Governor to ask for Spears' resignation.

BOARD OF MEDICAL QUALITY ASSURANCE

Executive Secretary: Robert Rowland (916)920-6393

The BMQA is a nineteen member Board within the Department of Consumer Affairs. The Board is divided into 3 autonomous divisions: Allied Health, Licensing, and Medical Quality.

The combined purpose of the BMQA and its three divisions is to protect the consumer from incompetent, grossly negligent, unlicensed or unethical practitioners, to enforce provisions of the Medical Practice Act, and to educate healing art licensees and the public on health quality issues.

The functions of the individual divisions are as follows:

The Division of Allied Health licenses and regulates the areas of audiology, physicians assistants, podiatry, speech pathology, physical therapy, psychology, acupuncture and hearing aides. Most regulation occurs through the Committees of this Division (see separate reports *infra*).

The Division of Medical Quality is responsible for disciplining physicians who are found to be in violation of the Medical Practice Act. In addition, it is currently attempting to establish review mechanisms for identifying physician problems such as drug and alcohol abuse and rehabilitating the physician before the problem becomes more serious and affects patients.

The Division of Licensing's responsibilities include testing for licensing, license renewal, establishing the continuing medical education requirements, and verification of physician's license to practice.

The BMQA, together with its three divisions, meets approximately five times a year at various locations throughout the State.

Major Projects:

The BMQA has recently contracted with the Public Affairs Research Group to undertake a study of the licensing of physicians and allied health care providers in California: The primary objective will be to provide guidance to the Board regarding the need, if any, for revision of the State's Medical Practice Act and, specifically, the current legal definition of the "practice of medicine."

As part of the study, two public hearings have been scheduled. The first occurred on February 20, 1981, in San Francisco. The second meeting was held March 14, 1981, at the Disneyland Hotel in Anaheim.

The alternatives considered are:

(1) Deregulation — completely deregulating the health care occupations and dismantling the existing regulatory framework;

(2) Public certification — substituting a system of certification for the existing system of licensing;

(3) Title licensure — continuing much of the existing licensing, but basing licensure on occupational titles rather than the existing scope of practice law provisions;

(4) Licensure — preserving the status *quo*;

(5) Moderate reform — maintaining the existing regulatory structure while making periodic changes;

(6) Expansion and Unification — expanding the system of regulation by licensure; licensure would be extended to all important specialties within each occupation.

Also of concern to the Board is compliance with AB 1111. To properly comply with AB 1111, the Board has developed a multi-step plan which includes: (1) the issuance of issue papers which set forth the background and purpose of each regulation; (2) two public hearings on the regulations; (3) preparation of position papers setting forth the Board's case for retaining, amending, or repealing each of the regulations. Sometime next Fall, the Board will review the position papers and make its own recommendations. Afterwards, the Board's specific recommendations will become the subject of further hearings.

The first two public hearings will be held September 12, 1981 in Burlingame, and September 25, 1981 in Los Angeles.

The Division of Licensing is continuing to work on developing its new California License Examination. The exam will be field tested this Spring and will include 8 subject areas: alcohol and drug abuse, human sexuality, nutrition, geriatrics, child abuse, medical jurisprudence, medical economics and medical ethics. However, due to the difficulty in formulating appropriate questions, the Board does not expect to include medical ethics or medical economics on the final exam.

Other Board projects include the Physicians' Responsibility task force. The Board is following up its physician responsibility brochures with workshops. The first workshop, which was held last month, apparently was successful enough to warrant the scheduling of a second workshop. It is scheduled to be held in Orange County; and if it is successful, the workshops will be scheduled statewide.

REGULATORY AGENCY ACTION

PHYSICIAN'S ASSISTANTS EXAMINING COMMITTEE

Executive officer: Vacant
(916)924-2626

The Board of Medical Quality Assurance's Physician's Assistants Examining Committee regulates the various types of "physician's assistants," their supervisors and training programs. The Legislature has provided for paramedical health care personnel to stem the growing shortage and geographic maldistribution of health care service in California," and "to encourage the more effective utilization of the skills of physicians by enabling them to delegate health care tasks . . ."

In order to fulfill this mandate, the Committee certifies individuals as physician's assistants (P.A.'s), allowing them to perform certain medical procedures under the physician supervision. For a primary care physician's assistant, this includes the drawing of blood, giving injections, ordering routine diagnostic tests, performing pelvic examinations, and assisting in surgery, etc. A.P.A. may be certified for other tasks where "adequate training and proficiency can be demonstrated in a manner satisfactory to the Board."

A Major Dilemma:

In the January 1981 meeting, the Committee was unable to select an Executive Officer. Even though there was a quorum and a four to one vote in favor of one of the applicants, the law requires "affirmative vote of five members . . . to carry any motion." Since the Governor has only filled five of the nine seats on the Committee, unanimous consent is required "to carry any motion." In this instance, that requirement means that the Committee will be without a full-time Executive Officer for at least six months. Since the Committee has begun no new search for applicants, however, the selection process may not be completed for several additional months. Moreover, the Committee is subject to a veto from any one of its members.

Major 1981 Projects:

The Committee has four goals for 1981:
1. Initiate public relations activities to better inform the general public and other members of the health professions exactly what a P.A. is, and what tasks a P.A. may perform.
2. Seek a change in the law so that a majority quorum may carry a motion.
3. Seek a change in the law so as to allow more P.A.'s membership on the Committee.
4. Clarify and simplify the Committee's regulations (AB 1111) with the Office of Administrative Law Review.

Recent Meetings:

A rule hearing in January of 1981 resulted in the adoption of regulations simplifying the requirement that an annual report be made by P.A. training programs, lowering the application fee requirement of certain classes of P.A. supervisors, and reducing the amount of clinical experience a transfer student must undertake.

In January, the "Women's Health Care Specialist" exam was considered by the Committee. This exam has only been given once in California, in 1980. The major question concerned how to determine which applicants passed. The Committee decided to set the curve to pass sixty of the sixty-two applicants. Most of the applicants had already been working in the field for five to ten years prior to the creation of the specialty.

Future Meetings:

The agenda topics for March-May meetings include: 1. Problems associated with P.A's ordering and dispensing drugs; 2. selection of an Executive Officer; 3. Criteria for approval of additional tasks which a P.A. may be certified to perform; 4. Office of Administrative Law review update; 5. Prioritization of long range planning.

ACUPUNCTURE ADVISORY COMMITTEE

Executive Officer: Dean Lan
(916)924-2642

The Board of Medical Quality Assurance's Acupuncture Advisory Committee is an eleven member Committee charged with setting educational and licensing standards for acupuncturists. The Committee consists of four public members and seven acupuncturists. Five of the Acupuncturists must have at least ten years experience in acupuncture, but need not possess a physician's and surgeon's certificate. The remaining two Committee members must have at least two years acupuncture experience, and must possess a physician's and surgeon's certificate.

Major Projects:

The Committee is currently evaluating twelve schools which have applied for approval of their acupuncture programs. Three California institutions have already been approved by the Committee. This function is considered very important because of the Committee's open interest in establishing higher standards for acupuncture education in the state. The Committee believes that current accreditation standards, set by the Department of Education, should be supplemented by standards relating specifically to acupuncture. Schools would thus be compelled to upgrade their acupuncture programs in order to gain approval of the Committee, and satisfy license requirements.

In evaluating acupuncture programs the Board interviews the faculty member teaching the course. These interviews are designed to analyze the qualifications and experience of acupuncture instructors. The interviews and curriculum evaluation help form the basis for making the final determination regarding the quality of the school's acupuncture program.

Recent Meetings:

At its last meeting on January 28, 1981, the Committee proposed regulations regarding oral examinations. The Committee currently gives 2 examinations per year administered by one certified acupuncturist and one M.D. The examination is given in four languages; English, Japanese, Korean and Chinese, however most M.D.'s only speak English. In order to remedy this problem the Committee would like to substitute another certified acupuncturist for the M.D. when no M.D. can be found who speaks the applicant's language. The Committee hopes this proposal will help examiners better evaluate the knowledge of the prospective acupuncturist who is not fluent in English.

The Committee is also discussing a proposal regarding the title to be given certified acupuncturists. Titles, such as Doctor of Oriental Medicine and Doctor of Acupuncture have been considered. The Board generally believes the title question is important, because of the credibility the term "Doctor" has with the public. Consumers are more likely to seek medical treatment from a person whose name is preceded by the title Doctor, because of the skill and expertise it implies. These suggestions will be left for further discussion at future meetings.

Finally, regulations regarding continuing education were proposed. These regulations call for fifteen hours per year in continuing education courses in acupuncture. These requirements would have to be fulfilled before an acupuncturist could be relicensed.

Future Meetings:

The Committee should take final action on proposed regulations to require continuing education to maintain licensed status, continued consideration of school accreditation to meet the education requirements for licensure, and decide on an appropriately impressive title for licensees. As a new Committee, there is not a great backlog of rules to review pursuant to AB 1111, unlike many other agencies.

HEARING AID DISPENSORS EXAMINING COMMITTEE

Executive Officer: Carol Richards
(916)920-6388

The Board of Medical Quality Assurance's Hearing Aid Dispensors Examining Committee consists of seven members, four public. One public member is a licensed physician and surgeon specializing in treatment of disorders of the ear and is certified by the American Board of Otolaryngology. Another public member is a licensed audiologist. The three non-public members are licensed hearing aid dispensers. The Committee prepares, approves, grades and conducts exams of applicants for a hearing aid dispensor's license. The Committee also reviews the qualifications of applicants for the exam.

Actual licensing is performed by the Board of Medical Quality Assurance (Board). The Committee is further empowered to hear all matters, regarding disciplinary matters assigned to it by the Board.

Recent Actions:

Assembly Bill 194 was recently introduced by Assemblyman Rosenthal to amend § § 3350, et seq. of the Business and Professions Code. The stimulus for this Assembly Bill was the perceived problem caused by "itinerent dispensers" of hearing aids. "Itinerant dispensers" of hearing aids are licensed or unlicensed sellers of hearing aids who move about between various establishments of licensed vendors and sell hearing aids to the public. Allegedly, problems arise when consumers seek service for defective products and are unable to locate the seller who has moved on to a new location. It is already unlawful to fit or sell hearing aids without a license. The bill further defines, in broader terms, who will be "deemed to be engaged in the fitting or selling of hearing aids." (Any individual who makes recommendations, either directly or in consultation with a licensed hearing aid dispenser, to any person with impaired hearing for the purpose of fitting or selling hearing aids and is in direct physical contact with that person.) AB 194 also requires licensed hearing aid dispensers who engage in the fitting or selling of hearing aids at the business location of another licensee to notify the Board of the location and dates that services are to be provided at that location. And the Bill also provides that a licensee who is the owner, manager or franchisee at a location where hearing aids are fit or sold shall be responsible to the purchaser for the adequacy of the fitting or selling of any hearing aid sold by any licensee at that location.

Another problem before the Board of the Hearing Aid Dispensers Examining Committee is interpretation of the provision set forth in Assembly Bill 210 which was approved by the Governor and filed with the Secretary of State in 1979. The new law deals with Professional Advertising. The Board and its members feel that the guidelines in the law need interpretation as they apply to hearing aid dispensers and therefore intend to draft guidelines for its members to follow.

PODIATRY EXAMING COMMITTEE

Executive Officer: Aldo Avellino
(916)920-6373

The Board of Medical Quality Assurance's Podiatry Examining Committee is a six member Committee, appointed by the Governor. The Committee consists of two public members, and two private members who are licensed podiatrists with two vacancies. The Committee regulates by setting educational and licensing standards for podiatrists and is empowered to inspect hospital facilities which specialize in podiatric medicine. This authority also allows the Committee to inspect hospital records relating to podiatry.

Major Projects/Recent Actions:

The Committee is currently involved in evaluating the continuing education courses offered to podiatrists. In order to be relicensed a podiatrist must complete 50 hours of approved continuing education courses over a two year period. Because of this requirement, the Committee has determined that courses offered should correspond with the educational needs of podiatrists, and reflect areas of clinical development.

An institution desiring to offer a continuing education course must first survey area podiatrists to determine what areas of study are most desired and needed. The institution then submits an assessment of its course to the Committee to justify it in light of the needs of local podiatrists. The Committee evaluates these assessments and either approves or disapproves the course. An unapproved course will not be credited toward fulfillment of the continuing education requirement, and therefore approval is necessary to the survival of the course. The supervision of these continuing education programs constitutes the Committee's major ongoing project.

The Committee is currently trying to implement its statutory authority to inspect hospital facilities specializing in podiatric medicine, and is examining hospital records which relate to podiatric care. This authority will allow the Committee to take a more active role in podiatric quality control by allowing it to determine whether hospitals are complying with regulatory rules.

Future Meetings:

The Committee's timetable for reviewing its regulations pursuant to AB 1111 has been approved by the Office of Administrative Law. Review should begin sometime in July, and thereafter the regulations will be submitted to the O.A.L.

PSYCHOLOGY EXAMINING COMMITTEE

Executive Officer: Howard Levy
(916)920-6383

The Psychology Examining Committee (PEC) is the state licensing agency for psychologists. The PEC sets education and experience requirements for licensing, administers licensing examinations, promulgates rules of professional conduct, regulates the use of psychological assistants, conducts disciplinary hearings and suspends and revokes licenses.

Major Projects:

Major concerns of the PEC have been consumer education; sexual misconduct on the part of therapists; the regulating of psychological assistants; ethical violations by licensees which are also legal violations, the licensing of applicants who are already licensed in another state; and the licensing examination itself.

The Examination Controversy:

An applicant for licensure by the PEC must first pass an objective written examination, and then must sit for a subjective oral examination. The Board has been working to improve both exams, focusing on content and relevancy of the written exam. The grading of the written exam, however, has become the center of a bitter controversy.

The current dispute has its genesis in an April, 1977 decision by the PEC to adopt an objective national exam — the examination for Professional Practice in Psychology (EPPP) — in place of the subjective essay exam it had been using. The EPPP is prepared by the American Association of State Psychology Boards and is administered by the Professional Examination Service. The Board also decided to adopt the national mean as a passing score, rather than the 75% raw score it had previously used. Arlene Carsten, a Board member, brought suit against the PEC alleging that the Board was compelled by statute to use a 75% raw score cut-off as a passing grade. The California Supreme Court affirmed the trial court's decision that Ms. Carsten, as a

Board member, was not the proper person to bring the suit since she was not a candidate for licensure and so was not in a position to be hurt by the Board's grading policy. (See discussion in litigation section, *infra*.)

Up until October, 1980 the mean for the standardized national test did, in fact, equate to a raw score of about 75%. In January, 1980 the Board passed a motion to change the cut-off to the national mean for all candidates with doctorate degrees. This refinement, which raised the raw score slightly, was thought to be necessary because in California a Ph.D. degree is an exam prerequisite, while in some other states candidates with master's degrees are allowed to take the exam. The current dispute arose when the refined national mean score for the October, 1980 exam rose to approximately 79%. The result was that seventy-seven candidates who scored between 75% and 79% failed the exam.

Several of these failed candidates filed suit against the PEC seeking a writ of mandate from the court compelling the PEC to apply a lower 75% score cut-off. They relied on the specific wording of the enabling statute which states, "A grade of 75% shall be a passing grade . . . ." The court denied the writ, agreeing with the declaration of a psychometric expert that the statutory language has no plain meaning and has no possible meaning or interpretation unless the raw score is first defined and then related to one of a number of possible standards of comparison.

The question became moot when the PEC, at its January, 1981 meeting, decided to retroactively lower the passing score for the October exam to the national mean for all candidates with Ph.D. degrees minus one-half standard deviation. The practical effect was to bring the cut-off point down to 75% score, thereby enabling the seventy-seven affected candidates to sit for special orals in March. At its February 1981 meeting, the PEC reaffirmed that the passing grade for the April exam will remain the national mean for all candidates with Ph.D. degrees.

Paul Hoffman, a member of the examinations sub-committee of the American Association of State Psychology Boards, was present at the February meeting to answer questions about the EPPP. His explanation for the jump in the national mean for the October exam was simply that the October exam was easier than previous exams. The next three or four years, in Dr. Hoffman's opinion, could see a drastic restructuring of the exam.

The examination has also been the subject of a study authored by Eric Werner of the Department of Consumer Affairs and presented at the January, 1981 PEC meeting. Mr. Werner collected data on the April, 1980 EPPP pursuant to California law, which prohobits adverse impact on any group of candidates unless the examination has been validated for job-relatedness. The review of the April EPPP revealed a significant adverse impact on ethnic minorities and older examinees, raising the legal issues of the exam's relevance to the profession. Mr. Werner concluded that there was doubtful "practice relevance" of EPPP scores in relation to the fundamental purpose of licensure-ensuring public health and welfare. He therefore recommended that the Board reconsider the use of the national mean cut-off.

Interestingly, Dr. Antonio Madrid intends to investigate the possibility of giving the April exam to a group of recognized competent psychologists to see how their raw scores compare to the national mean.

Recent Meetings:

At its February 1981 meeting, the PEC also considered a paper prepared by Arthur N. Wiens, Ph.D. and Herbert Dorken, Ph.D. which proposed major changes in standards and enforcement with regard to unprofessional conduct. The Board expressed strong reservations to the proposal and Dr. Dorken has been invited to attend the later Board meetings to express his views.

Board member, Dr. Matthew Buttiglieri, briefly discussed the extensive statistical profile he has prepared on candidates who pass the licensing exam. His analyses indicated that 90% of the candidates are in the clinical and counseling specialties, and that candidates from out-of-state schools pass the exam at significantly higher rates than those from California schools. The study contains the pass rates for the individual schools.

Dr. Madrid discussed the oral exam and presented statistical evidence that of the 60-75% of the states which administer an oral exam, California has the lowest pass rate. Dr. Madrid will be working on the establishment of an attitude scale for the oral exam.

Dr. Joseph White, the new chairman of the PEC, abolished the Budget, Legislative and Public Information Sub-Committees, replacing them with liasons. The budget liason is Ms. Rita Walker; Ms. Luana Marctilla will perform the functions of both legislative and public information liason. Dr. White appointed members to the remaining sub-committees as follows: Credentials Sub-Committee — Dr. maria Nemeth (Chair), Dr. Antonio Madrid and Dr. Matthew Buttiglieri; Examinations Sub-Committee — Dr. Antonio Madrid (Chair), Dr. Edward Burke, Ms. Rita Walker and Dr. Buttiglieri.

Future Meeting:

The next meeting of the PEC will be in April, 1981.

SPEECH PATHOLOGY AND AUDIOLOGY EXAMINING COMMITTEE

Executive Officer: Carol Richards (916)920-6388

The Board of Medical Quality Assurance's Speech Pathology and Audiology Examining Committee consists of 9 members: 3 Speech Pathologists, 3 Audiologists, and 3 Public Members (one of which is a physician or surgeon). The Committee is responsible for the examination of applicants for licensure. The Committee hears all matters assigned to it by the Board, including but not limited to, any contested case or any petition for reinstatement, restoration or modification of probation. Decisions of the Committee are forwarded to the Board for final adoption.

Major Projects:

Since AB 1111 was not contemplated in its original budget, the Committee needs $2,000 extra to meet the AB 1111 requirements. However, the Department of Finance rejected the request and the Office of Administrative Law is evaluating it. If the request is not approved, the Committee feels it may not be able to review existing regulations properly, as required by AB 1111.

The Committee, in conjunction with the Board of Medical Quality Assurance, will be holding public hearings in Burlingame (September 12, 1981) and Los Angeles (September 25, 1981) to solicit input regarding regulation changes pursuant to the AB 1111 mandate. An "issue publication" will be distributed to interested public groups to provide background information regarding the regulations.

A major ongoing problem facing the Committee is reestablishing the status of the Severe Language Disorder/Aphasia (SLD/A) public school training program.

Qualified applicants must complete 9 months (full time, 30 hours/week) of supervised Required Professional Experience (RPE) after Committee examination, in order to obtain final licensure. The SLD/A program is one of several acceptable types of RPE for this purpose. SLD/A training programs were previously accorded full credit if the applicant was to teach in the school setting on a full-time basis. The Committee now feels that, because much time is spent as an instructor teaching other subjects (math, geography, etc.) as opposed to *strictly* working on speech pathology related problems, less than full credit should

be accorded. This view has sparked heated response from speech pathologists in the school systems who feel that speech pathology therapy is an integral part of instruction while covering other subjects with their special pupils.

Recent Meetings:

On March 6, 1981, the Speech Pathology and Audiology Examining Committee met and established a sub-Committee to formulate input into "standards of practice" being drawn up by the Hearing Aid Dispensors Committee. The "Standards," which will outline the minimum required function of a "dispensor" in his/her practice, interacts critically with audiology practice by the licensees overseen by the Committee. The Committee announced at the March meeting that the licenses of 75 applicants who have "completed" the SLD/A program under previous requirements are being held pending the outcome of the Committee's decision about SLD/A credits. Much debate followed a preliminary sub-Committee report on this problem, but a final decision was postponed until the next meeting when the final report is due.

Next Meeting:

April 24, 1981, in Sacramento.

BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

Executive Officer: Hal Tindall
(916)445-8435

The Board of Examiners of Nursing Home Administrators is empowered to develop, impose and enforce standards to be met by individuals in order to receive and maintain a license as a Nursing Home Administrator. The Board may revoke or suspend a license upon findings in an administrative hearing of: gross negligence, incompetence relevant to performance in the trade, fraud or deception in applying, treating any mental or physical condition without a license, violation of any rules adopted by the Board.

Recent Activities:

Regulation Changes:

Prior regulations provided that an applicant could qualify for the nursing home administrator's examination by either having completed a general education course of study, or by a combination of general education and experience. The revised regulation provides that, in addition to the above, an applicant may also qualify for the examination through relevant "work experience."

The National Association of Boards of Examiners of Nursing Home Administrators has recommended that the minimum passing score for the National Nursing Home Administrator Examination be set by the various states at 75% (113 out of 150 questions). At its December 11, 1980 meeting, the California Board decided to accept the recommendations of the National Association. The California Board changed the minimum passing score on the State examination from 70% to 75% (38 out of its 50 questions). This change is effective February 1, 1981.

Major Projects:

Before the passage of AB 1111, the Board had already undertaken to review its regulations. Hence, the Board is not unduly burdened by the time constraints imposed by the Bill.

Recent Meetings:

1. The Board was recently billed $5,000 for the cost of preparing a transcript for the appeal of a Board decision by an applicant. The Board is concerned that Administrative hearings necessary when a license is denied may compel enormous expenses if the Board (on a limited budget) has to pay the high cost of the hearing reporter's first copy of the transcript. The Board will seek an Attorney General Opinion as to whether the existing appropriations of an administrative agency (such as the Board) can be forced to bear this burden.

2. The Board is discussing the problem of the large number of accredited continuing education programs of poor quality and not very relevant to the practice of Nursing Home Administration. In the past, extensive continuing education requirements "justified" the several thousand programs approved. But now, as fewer hours are needed, the Board feels that quality demands the elimination of many previously acceptable. At present, the Board lacks an established mechanism to "weed out" irrelevant and low quality programs.

The issue has been tabled for further discussion at subsequent meetings in March to May.

3. Establishing the qualifications of applicants to take the NHA licensure exam is one of the major concerns of the Board. For example, in a typical decision in February of 1981, the Board was called upon to decide if the qualifications of a particular applicant (Mr. Axel) met the criterion of the newly amended § 3116. Specifically whether his work experience was sufficient to allow waiver of the 1000 hour administrator-in-training requirement. It was decided in closed session that Mr. Axel did meet the requirements and will be allowed to take the exam.

Future Meetings:

April, Los Angeles
June, Sacramento
August, Los Angeles
October, San Diego
December, Los Angeles.

BOARD OF OPTOMETRY

Executive Officer: John Quinn
(916)445-2095

The Board of Optometry is made up of nine members appointed by the Governor. Six of the Board members are licensed optometrists and three are non-licensees from the "community." At the present time, there are three vacancies on the Board. These vacancies have existed for over a year. The full-time Executive Officer, John T. Quinn, was appointed in early 1980. The Board holds meetings eight times a year at various locations throughout the state.

The purpose of the Board is to protect the consumer from harm caused by unsatisfactory eye care. This purpose is accomplished by the setting of minimum standards for entry into the profession and the monitoring of established practitioners. Each year one exam is given to those wishing to become optometrists. The exam is given at only one location, either Berkeley School of Optometry or the Southern California College of Optometry in Fullerton. Each year the exam site is rotated. The Board monitors the established profession by investigating some of the complaints that are directed to the Board. First, however, the Executive Officer filters through the complaints and determines which should be investigated by the Division of Investigation under the Department of Consumer Affairs, and which can be answered by his office. Generally, the complaints answered through the Executive Office are those "which do not involve a violation of statutes or Board regulations." The Executive Office estimates that 95% of all complaints received fall into this category.

Major Projects:

During the past several years the Board has been concerned primarily with the monitoring of established optometrists.

Probably the most controversial ongoing issue has been that of proposed periodic relicensure of optometrists. In November 1979, Dr. Kelley of the Board indicated that he wanted the Board to reexamine the possibility of relicensure in lieu of mandated continuing education a legislative change is required to give relicensure exams. In January 1980, the idea was sent to Committee for investigation. Consequently, proposed legislation to require periodic relicensure evaluation has recent-

ly emerged. The third draft required licensees every four years to take a written exam that would be administered annually or semi-annually. It empowered the Board to act to "limit the practice of, suspend or revoke the license of any licensee who fails three consecutive relicensure examinations."

During late 1980 meetings, the Board was concerned with various bills. AB 2534, a "contact lense specialist" bill, was rerouted for an interim study. The Board fully supported SB 1850, which required open Committee meetings. SB 1190, a warranty law, was discussed as to its possible implications for the optometry industry.

In addition, the Board has discussed and is still discussing the scope of optometrists' legitimate functions. One issue is whether to allow them to prescribe drugs.

Another unrelated question currently before the Board is whether to allow reciprocity of graduates from schools outside California.

Recent Meetings:

In late 1980 the Board reduced its renewal fee to $13 and $19.50 for delinquent fees.

During 1980, the Board was also involved with revising California Administrative Code § 1515. The Code now requires the designation of O.D. and a license number for all advertising. The Board was concerned that listings in the yellow pages, etc., did not clearly indicate who was a registered optometrist and who disseminated other services. It was also hoped that this requirement would limit fraudulent and deceptive advertisements. The revision was accepted by the Board and sent to the Office of Administrative Law. The Executive Officer expects the revision to be returned within 2 to 3 months.

The relicensure issue was discussed at the January 11, 1981, meeting in Oakland. The Executive Officer indicated that this issue is still in the planning and discussion stages.

The Board also noted in its January meeting an FTC ruling which requires the practitioner to furnish the patient with a copy of her/his prescription. The Board indicated a desire to require a copy to be given only upon request, but this idea was later shelved in lieu of the FTC ruling.

The Board met in San Diego on March 1, 1981. During the morning the Regulation Review Advisory Committee held its first meeting. In compliance with AB 1111, the Committee's purpose is to review all the rules and regulations of the Board. The Exeutive Officer, John T. Quinn, submitted a proposed schedule to the Office of Administrative Law and feels that, given the relatively small number of Board regulations, the schedule will be followed. The decisions of the Committee will be presented to the Board for approval.

During the morning meeting of March 1, 1981, the Committee reviewed Rules 1500-1507.1, and made routine non-substantive changes, e.g. "amend executive secretary to executive officer," et al. In addition, the Committee heard a protest from the audience on the prospective repeal of a regulation prohibiting the purchaser of a practice from using the same name as his predecessor. One speaker felt the prohibition should remain, otherwise it would be unfair because of injustice to those patients who desire to identify who prescribed their glasses.

The Board's regular public meeting commenced with a discussion of periodic relicensure. Dr. Thomas of the Department of Health Services summarized the results of recent optometric office reviews by his office. He complained about the failure of some optometrists to adopt new techniques. Dr. Thomas rated the offices he reviewed from 70-110 on a scale of 100. There were no suspensions as a result of the Department of Health Services investigations. The review was generally positive. However, the investigations did not measure competence, but primarily general office procedure and bookkeeping. Board member Dr. Stacey contended that the review did not discount the need for relicensure, which is directed to competence.

The second topic concerned the Board's new regulation requiring the designation of "OP" and a license number in all advertising. Mr. Conway Nielsen of the General Telephone Directory Company told the Board that the Company will inform a patron when their listing or advertisement is in violation of Board regulations but will not refuse to print the listing or advertisement. The yellow page listing does not feel it has the right or duty to regulate the contents of advertisements it publishes.

The Board discussed and decided not to disseminate the Board of Optometry Directory for 1981. The estimated cost would be $8,500, and the Board decided that the money could be put to better use. The Board will, however, have a computer printout of the directory information available upon request.

Discussion of both the Ethics and Cost Containment courses and other matters were postponed. The FTC is now engaged in proposed rulemaking on eyeglass sales techniques. Board action in this area will await review of the FTC rules.

The issue of the licensure of foreign graduates sparked some debate at the March meeting. The major problem seems to be determining adequate schooling and preparation of foreign graduates. The issue has yet to be resolved.

The Board briefly touched upon the granting of fictitious name permits. Although there is some disagreement on the Board concerning its rules inhibiting issuance of a fictitious name permit, several members are concerned about preventing public confusion about who is doing what.

Also discussed during the March meeting was the lack of public involvement in Board activities. One member suggested that the Board send out notices of their meetings, but the Board felt this would be financially prohibitive. Licensees in the audience expressed their concern about notice, fearing that an issue such as periodic relicensure would be decided without input from those affected.

Next Meeting:

April 26, 1981 in Sacramento. The major issues will cover evaluating foreign applicants, periodic relicensure, AB 1111 review.

BOARD OF PHARMACY

Executive Secretary:
Claudia Klingensmith
(916)445-5014

The Board of Pharmacy licenses pharmacists, pharmacies, drug manufacturers and wholesalers and those engaged in the sale of hypodermic needles. The regulation of the sales of dangerous drugs and poisons also falls within the purview of the Board. The Board employs inspectors, conducts disciplinary hearings and suspends and revokes licenses and permits. The Board is composed of nine members — three of whom are public members, 1 public member position is currently vacant.

Major Projects:

A major concern of the Board has been whether or not to allow the use of pharmacy technicians in dispensing prescriptions. In December, 1979, the Board authorized Dr. William E. Smith to conduct a study at the Outpatient Pharmacy of Memorial Hospital Medical Center, Long Beach. The purpose of the study was to answer two questions: "Can pharmacy technicians help dispense medications safely, efficiently and appropriately?" and "Will pharmacists spend more time consulting and evaluating patients with pharmacy technicians involved in dispensing?" Dr. Smith presented the results of the study at the February Board meeting; the answer to both questions was a very definite "yes."

Five pharmacists and two technicians participated in the study. The error rate for both groups — pharmacists and technicians — were approximately equivalent. The

total percent of error was 5.15% for pharmacists and 5.15% for technicians. The adjusted error rate, calculated by factoring out auxiliary label errors, was 3.23% for pharmacists and 3.79% for technicians. In addition, the average patient consultation time rose from 2.89 minutes to 3.89 minutes — a statistically significant difference. While technicians required slightly more time in which to fill prescriptions, the cost per prescription for technicians was 30¢ as opposed to 61¢ per prescription for pharmacists.

Dr. Smith stated unequivocally that, as a result of the study, he would employ technicians to dispense prescriptions if allowed to do so, although the efficiencies may be somewhat lessened since the technician's work would still have to be checked by a pharmacist. He urged the Board to change the regulations to permit use of technicians. He added that he hoped the study would receive wide dissemination as he had been verbally attacked by pharmacists who strongly oppose any expansion of the role of technicians.

Recent Meetings:

In November of 1980, the Board repealed a regulation which required that the Executive Secretary be a pharmacist. Claudia Klingensmith, a non-pharmacist, was subsequently appointed to fill that position. that position.

It was reported at the February of 1981 meeting that the Board's revenue from 1980-81 license renewals has fallen short of expenses. The Board is therefore facing a deficit of approximately $239,000 on July 1, 1981. As a temporary stop-gap measure, the Board has been attempting to pass a regulation which would increase the biennial renewal fees for pharmacists from $60 to $75. However, the Office of Administrative Law is requiring that the Board justify its decision to impose a fee increase on *pharmacists*, rather than pharmacies. Ms. Klingensmith presented figures at the meeting showing that 62% of the Board's budget is spent on pharmacist-related activities. Since pharmacist licensing renewal revenue is presently less than 62%, she contends, the fee increase is justified and equitable. It is anticipated that the Board will be facing financial problems in fiscal '81-82 even with this fee increase; future meetings will have to deal with the problem of whether to further increase fees or to cut programs.

Recent Meetings:

The Board is currently in the process of revising both its competency statement and its policy guidelines for disciplinary proceedings. The present policy guidelines are considered too simplistic. The Board often disagrees with punishments imposed by administrative law judges under its guidelines in disciplinary matters. The Board is revising the guidelines to distinguish mere technical licensing violations from those that are of a more serious and substantial nature.

The Board began its AB 1111 regulation review at the February 1981 meeting with a review of Articles one and seven. The Board plans to review a few regulations at each meeting, making its way through the pharmacy code by March, 1982. Because there is some question about adequate notice to the public, the time period for written comments on these early regulations has been extended to April 28, 1981.

The Board is working on legislation which would change the licensing prerequisites for foreign graduates by allowing them to make up course deficiencies in U.S. Schools. A second proposed change, which would eliminate the requirement that foreign graduates be first licensed in the foreign country, is being opposed by the California Pharmacy Association. CPHA is fearful that, without the licensing requirement, American students who cannot get into American pharmacy schools will obtain an inferior education abroad and then return to the U.S. for licensing. The Board hopes to hammer out a compromise with CPHA by making the "foreign graduate" designation contingent on a foreign country residency requirement.

Future Meetings:

The Board will meet on April 28 in Los Angeles, on May 27 in San Francisco, and on June 23 in Los Angeles.

BOARD OF REGISTERED NURSING

Executive Secretary:
Barbara Braestan
(916)322-3350

The nine member Board of Nursing Education and Nurse Registration (Board of Registered Nursing) includes three public members, three active licensed registered nurses; one licensed registered nurse active as an administrator or educator to train Registered nurses; one registered licensed nurse who is an administrator of a nursing service and one licensed physician. The Board licenses all Registered nurses and regulates trade entry and specifies practices under its licensing power. The Legislature has provided the legal authority to include more sophisticated patient care activities and the Board determines the requisites for those certain activities. The Board also issues certificates to practice nurse-midwifery to qualified applicants.

The Board is empowered to take disciplinary action against a temporary licensee, a licensed nurse or an applicant for a license. A license may be suspended, revoked, subjected to a probationary period for nursing violations.

Major Projects:

The Board is currently discussing better methods of publicizing disciplinary actions taken against nurses. Some of the more fervent members of the Board are seeking to publish a list of accusations made against nurses at the initial accusatory stage.

The Board prepares and maintains a list of accredited schools of nursing in California. The Board determines the required subject of instruction, the number of units of instruction and clinical training necessary to guarantee competence. The Board shall deny or revoke accreditation to any school of nursing which does not meet Board requirements.

Current Meetings:

The Consumer Education Committee of the Board produces brochures on various topics concerning the public and the medical profession. Two brochures, *How to Report Medical Infractions* and one on an untitled nursing topic, were discussed at the February 20, 1981 meeting of the Board. Dates of publication are pending because of a lack of funds and the need for suitable "inoffensive" graphics.

At the February 19 and 20, 1981 meeting held at the State Building in Los Angeles, the Board held reinstatement, disciplinary and reconsideration hearings, which are closed to the public. Closed sessions are held on disciplinary matters. On February 20, 1981 the Board heard the Committee Reports from the Budget Committee, the Consumer Education Committee, the Disciplinary Committee, the Legislative Committee, the Nurse-Midwife/ Nurse-Practioner Committee and Administrative Committee. Members of the public are encouraged to attend the Board meetings. The large portion of the audience was composed of practitioners in the nursing field and nursing students.

BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS

Executive Secretary:
James W. Baetge
(916)445-5544

The Board of Registration for Professional Engineers regulates the practice of engineering and land surveying. Only those persons who are registered with the Board may practice civil, structural, mechanical, or electrical engineering or land surveying in the state, unless exempt. Other branches of engineering may be registered at the discretion of the Board. It should be noted that ninety-two percent of California's engineers are exempt from regulation.

Since 1978, the Board has included thirteen members, seven members from the public. Five members must be registered as professional engineers, and one member must be licensed as a land surveyor. The professional members must have twelve years experience in their respective fields.

The Board has established nineteen review committees, eighteen of them deal with various areas of engineering, and one deals with land surveying. Each committee member is subject to the same rules and regulations as if he were a member of the Board. The committees must each have at least three members, each of whom must be a registered engineer for the engineering committees, or a licensed land surveyor for the land surveying committee.

To be registered as a "professional engineer," the applicant must be of good moral character, have six or more years experience as a professional engineer (graduation from an accredited engineering school counts as four years) and pass an examination on applying engineering fundamentals to factual situations. The applicant must also specify the branch of engineering for which he desires registration. To qualify as an "engineer in training," the applicant must be of good moral character, have 4 years experience and successfully pass an examination on applying engineering fundamentals to factual situations. The qualifications, experience requirements and examinations are essentially similar for licensure as a land surveyor and land surveyor in training.

The Board regularly considers the Proposed Opinions of Administrative Law Judges who hear the appeals of engineering applicants denied registration. In most cases, the judges affirm the registration denial recommended by Board staff, and Board affirms that decision on appeal.

The eighteen committees dealing with the specialties of engineering approve or deny applications for exams, and register engineers who pass the examinations. The Board routinely approves their actions.

Recent Meetings:

October Meeting

In its october meeting, at the suggestion of the Exam Practices Committee, the Board decided that the staff should obtain expert help to rewrite certain parts of the Board's Information Bulletin to make it more understandable.

The Board invited to the next meeting people who conduct review courses for the examinations, in order to discuss their perceptions of the exam and "what is good or bad about it."

Of the six ad hoc committees, only one had a report in October. The Board considered a letter to the Accreditation of Curricula and Curricula Study Committee inviting Board members to serve as observers to accreditation visits to schools by the Accreditation Board for Engineering and Technology. After discussion, three members volunteered. On the recommendation of the Executive Secretary, the Board approved the cancellation of six applications, recission of action in two application cases, and refunds and letters of apology for delay to 29 aerospace engineer applicants who filed their applications in 1976.

The Board approved the attendance of some of its members at meetings and conventions of industry groups. Eleven approvals were given, none were denied. Five of the approvals were given retroactively.

November Meeting:

At the November 19, 1980 meeting, a representative of the State Personnel Board discussed with the Board the Attorney General's opinion which authorizes the Personnel Board to determine which positions in state government require "registration" as professional engineers. After discussion, the representative agreed to present the Board's proposals to the Personnel Board and to report back no later than January 1, 1981 as to the Personnel Board's position.

The Board affirmed Administrative Law Judge decisions in seven cases three granting registration and four denying registration. The Board adopted a Proposed Decision revoking the license of a Civil Engineer for failure to complete a contract, and failure to keep the Board informed of correct address, and the Board considered two requests for reinstatement of revoked licenses. In one case, the Board refused to reinstate the engineer's license until he completed three projects which he had not finished, or otherwise provide restitution for his clients. Reinstatement was denied in the other case also, because the engineer had failed to show rehabilitation required under Board Rule 418(b).

All five of the special committees had reports. The Enforcement Committee presented to the Board for discussion a Proposal on the Review of Enforcement Policy, to be discussed further at the next meeting. The Board also approved the Final Draft of the Proposed Complaint Disclosure policy subject to enactment after a public hearing. The Examination Practices Committee presented to the Board the rewritten Information Bulletins for the examinations, and requested that this item be placed on the next agenda. The Legislative Committee presented a legislative proposal from the Department of Consumer Affairs reducing the experience requirement for nonpublic Board members from twelve to eight years. The Board approved the proposal, two members dissenting, with the additional comment that the age requirement should be removed. The Committee also reported on the progress in the search for a new Executive Secretary. From the Rules Committee, the Board considered the draft of changes in Board Rule 437. The Board considered the revised Review Plan for Agency Regulations (AB 1111). An Executive Order from the governor mandates that this process be completed by July 31, 1982, so the time table was revised and will be resubmitted to the Office of Administrative Law.

The Board approved the appointment of Warren F. Holman as Acting Secretary on an interim basis, effective November 19, 1980, pending the appointment of a new Executive Secretary. Mr. Holman, previously Program Manager, has served as Acting Secretary since July 1, 1980.

The Acting Executive Secretary reported on the status of the Joint Information Bulletin which was to be published in conjunction with the Geology Board, and indicated that the staff is waiting for the Geology Board's draft and will proceed when it is available.

January Meeting:

At the meeting of January 21, 1981, Richard B. Spohn, Director of the Department of Consumer Affairs, addressed the Board on the subject of "indoor environmental pollution." The Board decided that it would enter into an interagency agreement to provide $5,000 to fund a study of the problem.

The Board approved additional attendance of members at various meetings and conferences. An accreditation visit to Humboldt State University by one member, and the attendance of various Board members at committee interviews for a new Executive Secretary were approved retroactively.

The Board considered proposed opinions of administrative law judges in engineer registration cases. Eighteen of these opinions were adopted by the Board, eight granting registration and ten denying registration. In one registration case, the proposed decision was rejected, and the Board moved to decide the matter on the record when it is received and to allow the parties to submit written arguments.

All of the five special committees had reports in January. The Enforcement Committee discussed proposed revisions in enforcement policy and indicated the draft of a revised enforcement manual would be presented to the Board in the near future. The Board asked the Director of the Office of Administrative Hearings and the representative from the Attorney General's Office be invited to a future Board meeting to discuss the problem of Administrative Law Judges using the Board's *minimum* penalty as the recommended penalty in disciplinary actions. From the Examination Practices Committee, the Board considered the rewritten Information Bulletins and directed the staff to further revise them and present them at the next meeting. The Legislative Committee reported on current bills and the Personnel and Finances Committee reported on expenditures from this year's budget and the status of next year's budget. The Rules Committee reported on the regulatory review process pursuant to AB 1111, and generally accepted the staff reports on which rules should receive priority in the review process.

February Meeting:

At the February meeting, a representative from the Central Testing Unit of the Department of Consumer Affairs discussed his report on the new examination procedures adopted by the National Council of Engineering Examiners. The representative's main concern was "how much knowledge is enough," i.e., whether only qualified applicants would pass the test. The Board then voted to send the NCEE a letter on this matter and have the issue addressed at a future NCEE meeting. The Board approved attendance of members at this meeting and another future NCEE meeting.

As is customary, the Board approved the actions of the engineering committees. A total of 518 applications for exams were accepted and 41 were found ineligible. Five applications were reevaluated; two examinations were changed; one examination remained the same; and two applicants were found ineligible. Thirty-five engineers were registered, and five were denied registration. One engineer-in-training was registered. The actions taken by the land surveyor committee were also approved. Two applications to take the land surveyor exam were accepted and one land surveyor was licensed. Ninety-three land surveyors-in-training passed the exam and were licensed; 174 failed the exam and were denied licensure.

Three of the five special committees had reports. The Enforcement Committee reported on proposed legislation which would enable the Board to obtain malpractice settlement information. This information would come either from the engineer's insurance carrier, or from the engineer himself if he has no insurance, where the settlement exceeds $5,000. The bill also provides that if an engineer has been convicted of a crime or is found liable for a death, injury, or property loss, the clerk of the court where the judgment was rendered must inform the Board of the judgment. The Board approved the legislation, one member dissenting.

The Examination Practices Committee requested that consideration of the revised Information Bulletins be held over until the next meeting.

Of the six Ad Hoc Committees, one had a report. The Professional development Committee reported on improved communication with engineering societies, and on the requests of some societies that the Board consider the idea of "continuing education."

The Executive Secretary reported that a law student has been hired to assist the Board in its regulation review pursuant to AB 1111.

In the afternoon, the Board reconvened to consider the adoption of a new Board Rule which would require the disclosure upon request of complaints against a registrant. The Board heard testimony from one person, a representative of the California Council of Civil Engineers and Land Surveyors, who objected that it would be unfair to a licensee to disclose complaints before the entire hearing process had been completed. The Board responded that the information would be released with some cautionary statement to this effect. Since a quorum was not present in the afternoon, the Board decided that it would delay making a final decision on the Rule until the next meeting. A tape recording of the testimony was made in order to give absent members an opportunity to listen to the testimony.

March Meeting:

At the meeting in March, the reports of the engineering committees were approved by the Board. Three hundred and six applications for exams were accepted and 30 were found to be ineligible. Three applications were reevaluated; two were accepted and one exam was changed. Thirty-one engineers were registered and one was denied. One engineer-in-training was registered. The Board also approved the actions of the Land Surveyor Committee, which accepted two applications.

Four of the five special committees had reports. The Examination Practices Committee reported on the revised Informational Bulletins which the Board approved.

The Chairman of the Legislative Committee, I. Michael Schulman, presented his study on Title Act Registration. There were five recommendations. (1) Eliminate all "titles" established by Board regulation; (2) Eliminate all "titles" established by statute; (3) Register all exempt engineers who are in-responsible-charge (i.e., who maintain independent control and direction of engineering work) in licensed disciplines. (Note, engineers, except for civil engineers, are presently exempt from registration if they work for industry, public utilities, or the federal government); (4) Establish criteria to determine if a discipline should be covered by *practice* registration; (5) Review all *titled* disciplines to determine whether they should become practice disciplines. (There is a distinction between *practice* registration and *title* registration. *Practice* registration requires that in order to call oneself the name of a discipline *and* in order to perform the work of the discipline, one *must register* with the Board unless otherwise exempted. In contrast, *title* registration requires that in order to *call* oneself by the name of the discipline, one must register. However, one may perform the *work* of one of these disciplines without registering.) After listening to a summary of the report, the Board decided that it would hold meetings in the future to solicit public comment and that it would also begin to accept written comments.

The Rules Committee submitted for discussion the complaint disclosure policy regulation which was introduced at the previous meeting. The absent Board members heard the taped testimony from the previous eeting and the Board voted in favor of the regulation to disclose complaints against licensees before final adjudication.

Committee also reported on the informational hearing held the previous evening on the subject of individual examination and waiver of the fundamentals examination. After considering the public comment from the hearing, the Board voted to hold a public hearing to consider changing rules on examination requirements.

Future Agenda Items:

The staff is currently reviewing the Board's regulations pursuant to AB 1111. Items for future agendas include invitations of the Director of the Office of Administrative Hearings and a representative from the Attorney General's Office to discuss the problems caused when Administrative Law Judges recommend the Board's minimum penalties in disciplinary cases, revisions in enforcement policy, changes in regulations on qualifying for the individual exam and waiver of the fundamentals exam, and soliciting public comment on the recommendations of the report on title registration.

BOARD OF CERTIFIED SHORTHAND REPORTERS

Executive Secretary: Judy Tafoya (916)445-5101

The Board of CSR was established to protect the consumer in a two-fold manner. The Board attempts to protect those who use shorthand reporters by requiring a minimum competency standard for reporters. To maintain this goal, the Board requires testing and licensing of prospective reporters. A current reporter may be stripped of his/her license where gross incompetence or professional misconduct is found.

The Board also certifies shorthand "schools." The Board considers the educational quality of shorthand reporting schools by reviewing their results in enabling students to pass the reporters' exam. The Board will grant or withhold certification from a school. The Board may also "decertify" a currently accredited school.

Major Projects:

Over the past months, the Board has spent considerable effort on statutory amendments to increase certain fees.

Legislation was passed (AB 2962) that allowed the Board's examination fee to be increased to a maximum of $40. Prior to the Act, the exam fee was $25. The Board itself was to determine the specific increase. Governor Brown signed the bill and the Board proposed a fee increase to $35. The bill was considered "emergency legislation" since the exam was not self-supporting and funds had to be shifted from other areas to meet the deficit, chiefly from enforcement resources.

The Office of Administrative Law, however, rejected the increase to $35 by rule change under the statute, contending it was not an emergency matter. After deliberations, the Board rejected the idea of filing suite against OAL. Rather, it decided to refund $10 to each applicant who had submitted a $35 fee between the proposed emergency regulation and the OAL's action. The Board then moved to increase the fee to $40.

Legislation was passed (AB 1017) to change license renewal fees from $25 on a biennial basis to a yearly fee of $125. The Board justified the huge increase on the basis of the newly established Transcript Re-imbursement Fund. That fund, whose purpose is to extend court reporting services to indigent litigants, is to be supported entirely from the renewal fees. The Board, however, has made a commitment to reduce the fee as much as possible in 1982.

OAL has recently approved of these changes. The amendments will take effect the 30th day after their filing with the Secretary of State. The Board plans to implement the $125 renewal fee for the April 1981 renewal period.

Pursuant to its statutory duties, the Board regulates the qualifying examinations administered to applicants. Thus, the Board reviews grading policies, contents of future exams, petitions of re-consideration from unsuccessful examinees, etc. These examination matters routinely occupy the Board at every meeting. Generally, the Board undertakes these matters behind closed doors.

Recent Actions:

The Board has recently taken steps which it argues will guarantee high professional quality among reporters. The Board has established a committee to define the minimum skills necessary to report competently. Based upon the committee's findings, the examination will be altered accordingly. The Board expects significant changes. Moreover, the Board has joined a committee that will explore the need for continuing education among currently licensed reporters.

The Board's most recent meeting was in early March. Legislative and regulatory concerns dominated that meeting.

As mentioned above, the Board attempts to protect the student-consumer from inferior reporting schools. Thus, the Board had established criteria for the recognition of court reporting schools. Subsequent to each licensing examination offered by the Board, the Board would determine the state-wide average of passing based upon the overall results of all first-time examinees. If a fully recognized or provisionally recognized school fell below the statewide average for three consecutive examinations, that school could be placed on probationary status and be subject to loss or denial of full recognition unless its average was raised to meet the statewide average by no later than the second subsequent licensing examination.

This regulation has been attacked by pending litigation (*Moore's Business College* v. *Board of CSR*). In response to this suit, the Board has amended the regulation to initiate action only after five consecutive deficient examination results, rather than three. There will be no probationary period. Notice and hearing will be given to an offending school. After such hearings, the Board *may* withdraw recognition from the school.

The Board also announced its position on various proposed legislation.

Assembly Bill 328 is a so-called "clean-up" bill. It is designed to establish language uniformity throughout various shorthand reporting statutes. There is, however, a provision in the Bill that would exempt state hearing reporters from the increased license renewal fee. The Board is uncomfortable with this provision. Although most members feel that such reporters are deserving of the exemption, the Board contends that there are other reporters just as deserving. Thus, the Board fears that multiple exemptions will significantly undercut the purpose of the increased renewal fee. The Board, therefore, will maintain a neutral position.

There are two legislative proposals which the Board claims, if passed, would establish more regulatory watch-dog committees (SB 257 and Constitutional Amendment No. 11). The Board opposes both of these bills. It contends that the OAL is more than sufficient to carry out regulatory supervision.

Indeed, the Board is somewhat at odds with the OAL. Aside from the Board's past problems with the OAL with regard to fee increases, there are now problems with the execution of AB 1111. That bill requires the Board to review all its regulations and then pass on those regulations to the OAL. The OAL has pressed the Board for accelerated compliance with the bill. In particular, the Board is to hold public hearings on its regulations. The OAL wants these hearings accelerated. The Board, however, doubts the wisdom of this directive. It feels that it cannot adequately give the public an opportunity to be heard and at the same time speed up the hearing process.

The fiscal year ends in June. The Board has requested a budget that is approximately 27% higher than the current one. The Board's expenditures are some $4,000 higher than what was projected for this time in the fiscal year. The Board attributes this problem to the spiraling costs of air travel and other lesser factors.

Future Meetings:

The next Board meeting will take place in San Jose, May 7, 1981, in the evening. Among other subjects, the proposed 1981-82 budget and the agency's progress in fulfilling AB 1111 are expected to be discussed.

TAX PREPARERS PROGRAM

Executive Secretary: Don Procida
(916)920-6101

The Tax Preparer program is responsible for the registration and investigation of tax preparers within the state of California. CPA's and PA's, attorneys, banks and trust companies, or persons authorized to practice before the IRS are exempt from the Tax Preparer Program's registration regulations. Anyone else wishing to become a registered tax preparer must submit an application, $25 application fee and a $1,000 bond to the Tax Preparer Program. There is no test for competency or ability to become a registered tax preparer but any "commercial" preparer must be registered with the program.

Major Projects:

The program handles consumer complaints about tax preparers. The administrator of the program determines the manner in which each complaint is handled. All complaints are handled by the Tax Preparer Program office. The office receives approximately 400 complaints a year. The Program has the right to suspend or revoke a certificate.

Current Meetings:

Public hearings are required only when there are changes in the existing procedures. Some "public hearings" are conducted through invitations to "write in" opinions. Director Proceda indicates that most of the "changes" were actually explanations and extensions of existing rules and regulations. For example, one rule stated that a tax preparer sign in the way designated by the Chief. The program then had to amplify the rule to tell how the Chief designated people to sign.

The major problem of the Tax Preparer Program is lack of funds. 1979-1980 was the last year that the program was funded for investigations. During that year the program revoked 12 certificates and suspended 1 or 2. Since 1979-80 there have been no revocations or suspensions due to the absence of investigation funding, so the program is essentially ineffective as a policing unit.

BOARD OF EXAMINERS IN VETERINARY MEDICINE

Executive Secretary: Gary K. Hill
(916)322-4070

The six member Board of Examiners in Veterinary Medicine includes two public members. The seven member Animal Health Technician Examining Committee consists of three licensed veterinarians, one of whom must be involved in the education of animal health technicians, three public members, and one member who must be a registered animal health technician.

The Board licenses all veterinarians, veterinary hospitals, animal health care facilities and the animal health technicians. Under their licensing power the Board regulates trade entry and specified practices. The professional qualifications of all applicants for licenses to practice veterinary medicine are ascertained by means of a written exam and a practical exam. The Board establishes the appropriate degree of supervision required for those animal care tasks which may be performed by an unregistered assistant, or by a registered "animal health technician" or by a licensed veterinarian. The Boared may, at any time, inspect the premises in which veterinary medicine, dentistry or surgery is being practiced. All such premises must be registered and meet the minimum standards for operation set forth by law. The Board can revoke or suspend this registration after the matter has been adjudicated in an administrative hearing.

The Board may also revoke, suspend, and/or impose fines, the license or registration of any veterinarian or AHT found in violation of the regulations after a proper hearing.

Current Meetings:

The Board has approved teaching hospitals which provide one year of practical instruction for candidates graduating from unapproved veterinary colleges, usually foreign schools. This program is designed to train U.S. citizens who graduate from an unapproved foreign veterinary school and the foreign born and trained graduate in the standard of veterinary practice in the US, and to prepare them to take the veterinary exam. The Board is currently modifying the program to assure that the education of the foreign graduates enables them to become competent enough to pass the test and enter the trade. At present the failure rate of foreign graduates is above 75%.

In February, the Foreign Teaching Hospitals Committee discussed recent and pending legislation that may affect the Board.

In January, the Board heard a report on the Pesticide Meeting concerning the effect of pesticides on large animals. The Board also reviewed the practice of medicine on privately vis-a-vis publicly owned animals. Apparently the treatment latitude of the veterinarian varies depending upon animal ownership and this variation is not well known to those outside the trade.

The Committee (and Board) is concerned because interns are extremely limited as unlicensed trainees in what they can do. The Board has considered loopholing current limits by declaring interns "animal health technicians," but rejected the concept as unworkable since the interns seek to assist the veterinarian across a wide range of animal health practice. Hence, the Board may seek introduction of a bill to license interns and to designate broad permissible practice under the guidance of a veterinarian.

BOARD OF VOCATIONAL NURSES AND PSYCHIATRIC TECHNICIAN EXAMINERS

Executive Secretary: Billie Haynes
(916)445-0793

The eleven member Board of Vocational Nurse and Psychiatric Technician Examiners includes three licensed vocational nurses, two licensed psychiatric technicians, one vocational or registered nurse with a teaching or administrative background and five public members. The Board licenses all vocational nurses and psychiatric technicians and regulates trade entry and specified practices under its licensing power.

Major Projects:

The Board is considering regulations to require a school teaching vocational nursing or a school for psychiatric technicians to establish a policy for granting credit for previous nursing education and experience. It would require the use of written examinations to determine credit for previous education and experience in the nursing or behavioral sciences fields.

Recent Meetings:

The Board held a meeting on March 5 and 6, 1981 in Los Angeles. On March 5, the Board considered initial survey reports of colleges teaching vocational nurses and psychiatric technicians, the qualifications for vocational nurse licensure and the regulations concerning the qualifications of psychiatric technicians, specifically the 12th grade requirement.

The Board examined a proposed Drug Division Program for licensed vocational nurses and psychiatric technicians. Work related stress and drug abuse are serious problems facing vocational nurses and psychiatric technicians. Drug abuse is a major cause of disciplinary action, often resulting in the revocation, or suspension of a license or the imposition of a probationary period. The Board publishes and distributes a list of vocational nurses and psychiatric technicians who have been subject to disciplinary action.

The disciplinary hearing is an administrative proceeding with an administrative judge, an AG and the accused present. The accused is entitled to have legal counsel present, but most licensees cannot afford the cost of representation. Although one's right to work is involved, the statute is silent on the right to a public defender. Helen Barrios, a public member on the Board, is very concerned about legal representation. She stated that the Board should implement a procedure to include suggestions to the accused for obtaining low-cost legal services in the letter informing a person of an impending disciplinary action against them.

Reinstatement hearings are open to the public and the Board, with an administrative judge, an AG and the petitioner participate in the proceedings. On March 6, 1981 two reinstatement hearings were held: one petitioner had an attorney represent her; the other petitioner represented herself. The quality of the defense offered improved considerably with counsel present.

The first informational hearing for AB 1111 Regulation Review followed the reinstatement hearings. The Board, in an effort to simplify the language used, retained, amended or repealed several proforma regulations, entertaining questions and comments from the audience.

Future Meetings:

The next meeting will be held on May 14 and 15, 1981 at the State Building Auditorium, 350 McAlister Street, San Francisco, California. To many people showed up the Los Angeles meeting.

Business & Transportation Agency

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

Director: Baxter Rice
(916)445-3221

The Department of Alcoholic Beverage Control (ABC) is a constitutionally authorized State department. The Alcoholic Beverage Control Act vests the Department with the exclusive right and power to license and regulate the manufacture, sale, purchase, possession and transportation of alcoholic beverages within the State. The Department issues liquor licenses and investigates violations of the Business and Professions Code and other criminal acts which occur on the premises where alcohol is sold.

The ABC divides the State into various districts, with field offices, in order to regulate its many licensees. The ABC Director, Baxter Rice, is appointed by the Governor. During 1979-80, Mr. Rice was in charge of a 12.2 million dollar budget.

The ABC is restricted from allowing alcoholic beverages to be sold in an area which locally is zoned otherwise and must submit copies of liquor license applications to the "interested" Board of Supervisors and Police Departments.

Major Projects/Recent Meetings:

The Department of Alcoholic Beverage Control does not have regular meetings, and since it is not a multimember Board is not subject to the Open Meetings Act. It is a constitutionally empowered "department," not a "commission," and its powers are substantially vested in its Director, Baxter Rice.

Public hearings are held for proposed rule changes, and hearings occur when licensure disputes arise under the Administrative Procedures Act. If the ABC denies an application or the issuance of a license is protested, there is a right to a hearing before an administrative law judge of the Office of Administrative Hearings Department of General Services. Further, there is a quasi-judicial Alcoholic Beverage Control appeals Board to review ABC adjudicative actions.

The ABC has been embroiled in a series of struggles between the liquor industry and the courts. The former are attempting to maintain anticompetitive restraints and the latter has been successful in striking down those restraints. In the *Corsetti* case of 1978, liquor retailer Corsetti refused to abide by the stipulated resale price set by a liquor manufacturer. In undercutting the vertical price fix figure, Corsetti argued that the statute authorizing manufacturer-set resale prices was unconstitutional, an unlawful delegation of legislative powers and in restraint of trade. The ABC filed an accusation against Corsetti for violating the statute. The ABC Appeals Board declared the statute invalid, upholding Corsetti. The ABC appealed and eventually the Supreme Court rejected the statute and upheld Corsetti's right to price as he pleased. In a successor case applying to identical price fixing in the wine industry (*MidCal*), the District Court of Appeals applied the same concepts to throw out vertical price fixing there. The ABC was prepared to accept the court's judgment, when wine industry intervenors took forther appeals to the State and finally the United States Supreme Court. The ABC refused to participate in the further appeals. It must be noted that ABC Director Rice, although applying the letter of the law, personally agreed with the rulings invalidating it. Hence, when the issue had been tested thoroughly, the ABC was shocked to find the State Attorney General, ostensibly on behalf of the ABC, but without ABC authorization, arguing for maintenance of vertical price fixing notwithstanding recent precedent to the contrary. ABC Director Rice wrote a blistering letter to the Court denying its approval of AG representation of it on behalf of the wine interests intervening or the statute in question. The United States Supreme Court upheld the invalidation of vertical price fixing. AG participation against competition in this hearing is a subject evoking bitter comments about Attorney General Deukmajian from officials throughout State government, including many within his own office.

The competition struggles have culminated in the current issues occupying much of the ABC's attention. First, there is Rule 105. Adopted originally when vertical price fixing was the accepted law for liquor marketing, Rule 105 authorized price posting by manufacturers of retail prices all retailers were required to follow. And it

also prohibited volume discounts in the sale of beer. In agreeing to eliminate volume discounts, beer interests eliminated a major source of price competition. The ABC, in the wake of the decisions cited *supra*, repealed both of these aspects of Rule 105, effective 1-1-82. The industry responded quickly with AB 429 (Vicenzia) to reimpose by statute the anticompetitive agreement not to discount where economies of scale effect cost savings. On March 18, 1981, this curious legislation passed out of the Committee chaired by Vicenzia by a 14 to 1 vote. The ABC is opposing the Bill. It is presently in the Senate.

The second area of struggle concerns AB 499. Historically, when vertical price fixing (sometimes called "fair trade" by its supporters) was legal, the law stipulated that a wholesaler must receive his supply from a manufacturer or his agent. This is commonly referred to as the "primary source rule." It prevents distributors from searching for the best deal from other wholesalers or manufacturer's representatives in other parts of the country, since the wholesaler can only buy from the manufacturer or his representative assigned to the area where he does business. With the end of vertical price fixing, this "primary source rule" was extinguished as well. Hence, small retailers started buying directly from Oklahoma and undercutting the big California sellers. Why Oklahoma? Because Oklahoma had passed a State Statute called an "affirmation" law, analogous to "most favored nation" clauses in international treaties. The Oklahoma law provided that all manufactuere's sales in Oklahoma must be at or below the lowest price that firm sells to anyone in any other state. Further, Oklahoma had no strict franchise arrangements permitting manufacturer control of prices down the chain of distribution.

The liquor industry was very concerned about the end of the primary source rule. They therefore approached the ABC and negotiated a deal. If the ABC would support their reenactment of the primary source law, anti-competitive impact notwithstanding (contained in AB 499), then they would not oppose an "affirmation" statute for California like Oklahoma's and guarantee California prices at least as low as the lowest offered in any other part of the nation (contained in SB 570). Then a problem developed. Both AB 499 and SB 570 passed, but a lawsuit was immediately filed (*Rice* v. *Williams*) enjoining enforcement of AB 499. It is now pending before the United States Supreme Court. The consensus is AB 499 will not survive. "Affirmation," however, has not been challenged. Thus, the liquor industry is zero for two.

ABC Director Rice, caught in the middle of this struggle, has some ambivalence about the invalidation of AB 499. In principle, he would justify a "primary source" arrangement if integrated into State regulation. The industry-drafted statute designates the liquor manufacturer as the delegator of supply restrictions. In seeking too much for themselves, they will likely be left with nothing.

The final and most interesting project of the ABC is now in progress. In a major deregulation effort, Rice is challenging the current "cap" to general liquor licenses. The law now limits the number of licenses to one per 2,500 population for on-sale (drinking on premises) and one per 2,000 population for off sale (liquor stores). The limits are set county by county. And the law grandfathered in all those licensed when it passed. As a result of the grandfathering, there have been no new on-sale licenses in San Francisco (there were many bars in the County when the law was passed), and no new off-sale licenses in Los Angeles since 1939 (Los Angeles in contrast had a lot of liquor stores). The result of the limit has been some monopoly power control for liquor establishments, and the growth of a very high barrier to entry for new firms. The only way for a new entrepeneur to start up is to buy up someone's existing license. Their value is now enormous, in many places over $60,000 and sometimes higher. This price is a market reflection of the degree of excess profit derived from the protection from competition enjoyed by license holders and is in and of itself a barrier to entry that deserving entrepeneurs from lower or lower middle class backgrounds may not easily overcome.

At the same time, many current licensees have invested their life's savings in their liquor license and to remove its value suddenly might work a hardship, not to mention politically manifested outrage. Rice wants to grant the current licensees a two year moratorium on new licenses, even in areas where population growth may warrant additions. But he would eliminate the county by county basis for limitation. The current licensees would not be troubled by additional licenses, but they could take their licenses to other counties. Some counties would find a much higher density of liquor stores or bars than others. The market would create new entrants from other counties where demand was high, while preserving much of the value of the license. Then after the two years of evening out through intercounty movement, he would end the limits and allow local zoning rules and the marketplace to determine the number of liquor establishments, as it does with shoe stores and the brunt of American retail commerce. Rice would throw in a creative wrinkle to this scheme. He would charge about $6,000 for a license, not an overwhelming barrier, and apply this money to a trust fund. The interest would finance the ABC. If the license were sold or turned in, the licensee would receive his money back. However, should the licensee engage in flagrant violation of rules, he could be fined up to the amount of the deposit. Since the license is the basis for much of the ABC's persuasive power over liquor establishments, a license which may be sold or turned in and the keeping of a returnable fund in trust gives the ABC some disciplinary muscle which may be needed when the value of the licenses is diminished by competitive forces.

The ABC is also involved in other issues. For example, it has been asked by the Athletic Commission to investigate one of its licensees in La Verne, California, which has adopted a new attraction: amateur "tough man" type fights free from physical examinations, etc. One participant is now in critical condition. The ABC is preparing to confront AB 1111 along with other agencies. And the Department continues to engage in routine investigations for sales to minors, sales to obviously intoxicated persons, bookmaking, nude dancing and other rule transgressions warranting license suspension, revocation or other sanctions. Many of these disciplinary actions are printed in the liquor industry trade publication *Beverage Bulletin* in Southern California.

Finally, the ABC hopes to continue its ving-under-the-influence seminars. A pilot project started by an assistant to Rice in 1980, the grant financed program included intensive seminars for owners, landlords, and employees of licensees on how to recognize the signals of excessive alcohol consumption, and other obligations to cease service or take other action to protect the public.

Future Events:

AB 1111 compliance, a major struggle over the removal of license geographic restrictions, and then the removal of the license "caps."

REGULATORY AGENCY ACTION

STATE BANKING DEPARTMENT

Superintendent:
Richard M. Dominguez
(415)557-3535

The State Banking Department is responsible for the execution of all laws relating to banks and trust companies and the banking and trust business. The Department approves the establishment of commercial banks and trust companies, changes of name or location, and new branch offices. It examines the condition of all banks, and supervises bank liquidation.

Major Projects:

As a result of staff and budget reductions following passage of Proposition 13, the Department has been unable to examine all banks annually. Therefore, the Department and the FDIC have arranged to alternatively examine one-half of the banks each year. The Department is also changing the scope of the examination, depending upon the condition of the bank, and studying ways to make more effective use of computers to reduce the time required for each examination.

The Department was instrumental in the expansion of its regulation to include Business and Industrial Development Corporations, (privately financed business loan corporations authorized to make loans directly to businesses, repayment of some of which may be guaranteed by the Federal government). It is also attempting to implement and obtain funding for a Small Busines Loan Program, which was authorized in 1977.

Following Congressional passage of the International Banking Act in 1978, the Department is working with the Federal Reserve Board to establish regulations applicable to foreign banks.

The Department need not complete the review of its regulations as required under AB 1111 until July 31, 1982.

Recent Meetings:

Because the nature of its activities generally does not require public input, the Department does not regularly hold public meetings.

Routine Business:

As of December 31, 1980, the 233 state-chartered banks, having 1,461 branches, had total assets of $54.3 billion, an increase of $7 billion, or 14.8% over the previous year. During this one year period, there was a total increase of 33 banks and 122 branches.

Fiduciary assets of the trust departments of 34 state-chartered banks, two title insurance companies, and thirteen non-deposit trust companies totaled $57.7 billion, an increase of 48.3% for the year.

The assets of 88 branches of foreign banks increased 47.8% to $31.6 billion.

During the fourth quarter of 1980, five applications for new banks were filed, eight applications for new banks were approved, one new bank application was denied, and Certificates of Authority to transact business were issued to eleven new banks. Four merger applications were filed, three merger applications were approved, and one merger was effected. Four applications for branch offices of foreign banking corporations were filed, three such applications were approved, one was denied, and Certificates of Authority were issued to two branch offices of foreign banking corporations which opened for business. One application for a license to engage in the business of issuing travelers checks was filed, and a license was issued to one issuer of travelers checks. One application for a license to engage in the business of transmitting money abroad was filed.

Forty-three applications for new branch offices, places of business, or extensions of banking offices were filed, and 49 were approved. Eight applications for relocation of head offices, branch offices, or place of business were filed, and 11 were approved.

Two applications for change of name were approved, and two name changes were effected. Two banks filed applications to acquire the assets and assume the liabilities of other banks. Two applications for permission to engage in the trust business were filed, one was approved, and a Certificate of Authority was issued to one bank to engage in the trust business.

Two securities aggregating $185 million were certified as legal investments for California commercial banks.

Future Projects:

The Superintendent of Banks intends to introduce legislation this session which will distinguish between a branch office and an Automated Teller Machine. Until this legislation is passed, the Department is treating applications to establish an unmanned Automated Teller Machine as an extension of an office.

DEPARTMENT OF INSURANCE

Commissioner: Robert C. Quinn

The Department of Insurance is vested with the right and duty to regulate the insurance industry within California. The Department is directed by a Commissioner and is divided into various divisions, each responsible for a particular task. For example, the license Bureau processes applications for insurance licenses, prepares and administers written qualifying license exams and maintains license records. The Receipts and Disbursements Division manages security deposits and collects fees, gross premium taxes, surplus line taxes and other revenues. The Rate Regulation Division is responsible for the enforcement of California's insurance rate regulatory laws. The Consumer Affairs Division handles complaints and makes investigations of producers and insurers. In all, there are about seven divisions to divide the work load of the Insurance Department.

The Department has no regular meetings; but, pursuant to the Administrative Procedures Act, it does hold public hearings when rule changes are proposed or licensing controversies arise. The Department publishes a monthly Bulletin in order to keep interested parties informed of its activities.

Major Projects:

The Department of Insurance has been involved in many aspects of the insurance industry. It has created a model "readable" credit life insurance policy, improved the Medicare "package," published a shopper's guide to car insurance in both English and Spanish in cooperation with the Department of Motor Vehicles, and surveyed and compared prices charged by auto insurers. In 1978 the Department established a Bureau of Fraudulent Claims. This relatively new Bureau has become an active part of the Department. During December, 1980, 141 files were forwarded to the Bureau and investigations and assistance resulted in eight arrests.

The Department of Insurance holds between 20 and 30 regulatory hearings a year. Proposed legislation affecting the insurance industry can reach 100-200 proposed bills per year.

Under the direction of Leo Hirsch, the Department has begun review of the Department's thousands of regulations. This review, required by AB 1111, is still in the in-house review stages. Mr. Hirsch is distributing various existing regulations to those Department members best equipped to review particular rules. Although not

many public hearings are scheduled, various public members will be contacted for input. Mr. Hirsch intends to make a *bona fide* attempt to meet the difficult June, 1982 deadline.

DEPARTMENT OF REAL ESTATE

Commissioner: David H. Fox
(916)445-3996

The Department of Real Estate's chief officer is the Real Estate Commissioner, who is appointed by the Governor and must have five years experience as a real estate broker. The Commissioner appoints a Real Estate Advisory Board comprised of eight members, five of whom are licensed real estate brokers, and three public members. The Department issues licenses necessary to practice as real estate brokers or real estate salespersons. A separate license is required for a mineral, oil and gas broker. Both brokers and salespersons must pass examinations, in addition, a prospective broker must work as a salesperson under a licensed broker.

Recent Actions:
Discipline:

A large share of the Department's function is to revoke or suspend licenses for violating the regulations and standards.

Of some 300,000 licensees, from March 1980 to May 1980 the Commissioner: revoked 33 licenses, revoked 28 licenses with a right to a restricted license, suspended 2 licenses, issued 4 indefinite suspensions under recovery fund provisions, suspended 9 licenses with stays, issued 2 public reprovals. Most disciplinary actions followed theft or other criminal convictions against licensees related to their trade.

Examinations:

The results of examinations taken between April and June 1980 are as follows: 18,671 took the sales exam and 7,819 passed; 4,846 took the brokers exam and 2,318 passed.

Rule Changes:

The Commissioner also has the power to adopt, amend, or repeal regulations to enforce the Real Estate Law. In recent months the Commissioner has held hearings and made several rule changes: Setting license fees to the maximum allowed by statute effective September 1, 1980; providing for the immediate return of the license certificate to a salesperson when his or her employment is terminated.

The Commissioner is empowered to take disciplinary action for discriminatory conduct by a broker or salesperson in a real estate transaction. The discrimination must have been based on race, color, sex, religion, ancestry, physical handicap, or national origin. Under a recent change, discriminatory conduct with regards to marital status is also grounds for disciplinary action. And the panic selling prohibition was also amended to include marital status. [Panic selling is the soliciting of sales or rental listings through the use of representations that persons of another race, color, sex, religion, ancestry, marital status or national origin are moving into the neighborhood or area.]

There were some changes in the regulations governing prepaid rental listing services (PRLS). This area was not subject to much regulation previously. Comprehensive legislation passed in 1980 now governs PRLS's. The statute requires licensure of persons who wish to do business as PRLS's, as well as surety bonds or a cash deposit. A real estate broker may operate as a PRLS under his or her broker's license and is not subject to the bond or deposit requirement. The new regulations provide that if a real estate broker wants to do business under a PRLS license rather than his or her broker license, he or she may obtain a PRLS license by simply submitting an application and paying a fee and obtaining either an approved surety bond or an acceptable security deposit. [The Commissioner will pay out of the deposit or bond any unsatisfied judgments against a PRLS licensee.] If the PRLS licensee is moving his main or branch office, he must now give notice reasonably calculated to reach all prospective tenants whose contracts have not expired, informing the prospective tenants of the new location.

Subdivision Regulations:

The other main area of regulation by the Department is subdivisions (improved or unimproved land divided or proposed to be divided into five or more parcels for the purpose of sale, lease, or financing). The Subdivided Lands Act, enforced by the Commissioner, is intended to protect the buyers of new subdivisions from fraud by requiring any seller to file a "public report" if for sale in California, even if the subdivision is located outside the state. The public report contains facts about the property and terms of its offering. Prospective buyers must be given a copy.

The Act was recently amended to include in the term "Subdivision Interests" time share estates and time share uses, subjecting these interests to the Act.

The Commissioner may adopt, amend, and repeal regulations for the enforcement of the Subdivided Lands Act, and has recently made the following changes: New section 2791 provides that purchase money (money advanced for purchase or lease) is to be refunded to the buyer if escrow does not close on the date provided for in the contract, and, further, that purchase money cannot be used as liquidated damages in case the buyer defaults until there has been a judgment by a court that the buyer has defaulted, or unless the buyer waives this right. This was not required previously. Another rule change requires that completion bonds not be less than 120% of the total value of on-site construction work. The old regulation required 100%. Some sections were renumbered. These require that the entire sum of the purchase money must be deposited in the escrow account, or by a bond alternative to protect the buyer; provide for purchase money protection for exempt subdivisions; and require the subdivider to maintain records of funds received from prospective buyers and lessees of subdivisions.

DEPARTMENT OF SAVINGS AND LOANS

Commissioner: Linda Tsao Yang

The Department of Savings and Loan is directed by a Commissioner. The Commissioner is charged with the administration and enforcement of all laws relating to or effecting state licensed savings and loan associations. As an executive department, the Commissioner does not hold regular meetings and is not subject to the Open Meetings Act. Public hearings are held only where required by the APA.

Major Projects/Recent Actions:

The department has recently adopted two parity regulations. One adopted regulation deals with trust powers; the other with loans.

Until January 1, 1981, neither state nor federal law authorized savings and loan associations to exercise trust powers, except to a limited extent related to loans. On that date, however, federal regulations became effective which granted the exercise of such powers to federal S&L Associations. In response, the department adopted regulations to give state licensed associations trust powers comparable to those now enjoyed by federally licensed associations.

The intent of the new regulations is to maintain relative equality of powers between the state and federal associations in California. It is hoped that such equality will better promote competition between the two entities and thus keep viable the dual state-federal system.

Previous state law had prohibited all loans by a state licensed association to its employees, directors, and other affiliated persons. Excepted from this prohibition were loans secured by owner-occupied, single-family dwellings, mobile homes or pledged savings accounts. Existing federal law, however, allows such loans by federally licensed associations. Subject to certain restrictions, federal law also allows loans for home improvements, NOW account overdrafts, educational expenses, consumer loans and credit cards.

Again, in response to these federal laws, the department has adopted regulations that make these types of loans — subject to the same restrictions — available to state licensed associations. Maintenance of competition between the state and federal associations was cited as the basis of the newly adopted regulation.

Both regulations became effective on January 29, 1981. Any interested party may respond to these new regulations through March 28, 1981. Responses must be written and can be sent to either the Los Angeles or San Francisco office.

Apart from regulatory modifications, the department's efforts are absorbed in routine matters pursuant to its statutory duties. Thus, the department either approves or denies applications for branch licenses, mergers, location changes, articles of incorporation, etc. Applicants are entitled to a hearing. The department announces pending applications and the status of previously submitted applications on a weekly basis.

The department is also routinely engaged in the monitoring of association fair lending practices. The Housing Financial Descrimination Act (HFDA) prohibits red-lining and other types of discrimination against certain neighborhoods in California through lending practices by state licensed S&L associations. The California Fair Lending Regulations (CFLR) were issued by the Secretary of Business and Transportation to implement provisions of the HFDA. The secretary designated the S&L Commissioner to enforce both the HFDA and CFLR. The department's enforcement functions fall into three main areas.

The examination division examines association fair lending practices. This is through an analysis of an association's policy statements and its loan data. Within the examination division is an appraisal division. It is used whenever the value or characteristics of a property becomes an issue.

The consumer assistance function investigates consumer allegations of unfair lending practices and attempts to eliminate those practices. Complaints are received either directly from consumers or forwarded by the Office of Fair Lending (OFL). After an investigation, recommendations are sent to the OFL. OFL issues its decision to both the consumer and the suspect S&L association. Decisions are appealable by administrative hearing.

The department also considers loan practices and loan marketing activity of an applicant when evaluating requests for branch or merger approvals.

Upon finding a violation of either HFDA or CFLR, the department's available sanctions include cease and desist orders, specific performance (i.e. make the loan), or monetary damages. Awards of monetary damages are limited to $1,000 and are levied only when specific performance is no longer useful.

Future Meetings:

The Department will hold hearings in San Francisco on March 24 and 25. Applicants will seek approval of articles of incorporation and branch offices. These hearings, however, are not open to the public.

DEPARTMENT OF TRANSPORTATION OUTDOOR ADVERTISING CONTROL BRANCH

The Outdoor Advertising Control Branch (OACB) regulates the construction of advertising displays along California's Interstate and Federal and Primary Highways. The OACB administers and enforces the California Outdoor Advertising Act and operates under the control of the Director of CalTrans.

The purpose given for regulation of outdoor advertising is to bring signs along the highways into some pattern of uniformity and to phase out non-conforming signs by requiring their removal from prohibited locations. California has entered into several agreements with the Federal Department of Transportation. Through these agreements, California receives subsidies for enforcing the Federal Highway Beautification Act of 1965.

Permits and licenses are the mechanisms used to control the outdoor advertising business. Any person engaging in the business must obtain a license and renew it annually. Licensees must also secure a permit for each display erected within the OACB's jurisdiction. Each permit is also valid for one year and must be renewed on January 1. Since the first of 1981, 12,515 permits have been renewed and another 1,000 are expected. There were only 589 new permits issued in all of 1980. The OACB never denies permit renewals. Once a permit application is found to be in full compliance with the Act, the licensees merely mail in their fees in order to renew. In 1980 there were 1,694 citations issued for violations of the Act. The OACB, however, keeps no record of how many permits were revoked and how many were simply put into compliance.

There are currently 356 licensees in California. There are no qualifications for licensure. Applicants need only remit the required fee in order to obtain a license. Each license must be renewed on July 1 of each year. To date there have been no new license applications in 1981. The Act provides for revocation of licenses for violation of the Act; however, no revocation has ever occurred. The Branch's Legal Division is in the process of setting up a revocation procedure at this time.

The OACB has no board or commission and as such it has no meetings.

Department of Industrial Relations

DEPARTMENT OF INDUSTRIAL RELATIONS CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

The Department of Industrial Relations, a cabinet level department, contains California's Occupational Safety and Health Administration. CAL/OSHA was created by statute, effective October 1, 1973, and its authority is outlined in Labor Code § § 140-149. CAL/OSHA consists of a Standards Board, Division of Occupational Safety and Health (DOSH), and the Appeals Board. The Standards Board is a seven-member Board charged with adopting, reviewing, amending, and repealing occupational health and safety orders which affect over 7 million California employees and 200,000 employers. It is required by law to adopt safety and health standards at least as effective as federal standards under § 6 of Occupational Safety and Health Act of 1970 (29 U.S.C.A. § 655) within six months of the effective date of the federal standards. DOSH is the investigative arm of CAL/OSHA and is responsible for enforcement of the safety orders established by the Standards Board. It also enforces the California Occupational Safety and Health Act of 1973 (Labor Code § § 3600 et seq.), the Occupational Carcinogens Control Act of 1976 (Health and Safety Code § § 24200 et seq.), and legislation dealing with occupational safety and health in mines and radiation.

Major Projects:

The Standards Board's major projects include the amendment and repeal of existing safety orders to bring them into conformance with current industrial working conditions. It also devotes a great deal of time to the consideration of variance applications submitted by employers. If an employer can demonstrate by a preponderance of the evidence that its proposed variance in the "condition, practices, means, methods, operations, or processes" will provide employment conditions which are at least as safe and healthful as existing safety orders require, the Standards Board may grant a variance.

Recent Actions:

In recent action, the Board has amended or clarified various safety orders dealing with safety requirements when repairs are to be performed on agricultural or industrial trucks or tractors, clearance between the feed table and the bottom of hydraulic or pheumatic hold-down guards, and minimum vertical and horizontal access distance from the knives of the wood chipper used in the logging and sawmill industries.

Future Meetings:

Future meetings will consider revisions to safety orders which are designed to remove the differences between the State and Federal requirements for permissible exposure to chlorine and explosive blasting safety requirements in proximity to radio transmitters.

Department of Food & Agriculture

Marketing orders may be covered in future issues.

Health & Welfare Agency

OFFICE OF STATEWIDE HEALTH PLANNING AND DEVELOPMENT

Director: Henry W. Zaretsky, Ph.D.
(916)322-5834

The Office of Statewide Health Planning and Development is part of the Department of Health and Welfare. The Office has the power to adopt rules and regulations to meet Health Care needs in the state. The Office does not hold public meetings itself, but the 3 statutorily created Boards within the Office do, the Health Manpower Policy Commission, Advisory Health Council and Building Safety Board.

The largest of the 3 Boards within the Office is the Advisory Health Council, which is empowered to:

1. divide the state into health planning areas;
2. evaluate and designate annually one area agency for each health planning area;
3. integrate area plans into a single statewide health facilities and services plan;
4. adopt a statewide health facilities and services plan;
5. act as the appeals body on petitions for appeals of certificate of need decisions rendered by the Office;
6. request public agencies to submit data on health programs pertinent to effective planning and coordination;
7. advise the Office relative to health planning activities, regulations and the setting of priorities in accordance with the statewide health facilities and services plan.

The area agencies referred to above are the Health Systems Agencies (HSA) created pursuant to Federal law. California has 14. These agencies submit local health plans to the Advisory Health Council for integration into the Statewide Health Facilities and Services Plan.

The remaining Boards within the Office, the Building Safety Board and the Health Manpower Commission are narrow in function.

The Building Safety Board helps to ensure that health facilities are constructed according to certain safety guidelines. The Health Manpower Policy Commission administers a loan program to encourage the construction of health facilities in shortage areas. It also administers a loan program to aid minorities to obtain an education in the health professions.

Recent Activities:

Recent activities of the Advisory Health Council include:

1. the creation of a 23 member statewide cardiac care task force to adopt planning methods, reimbursement policies and licensing policies to regulate health facilities which engage in cardiac care, especially care requiring surgery. The task force held its first meeting on March 4, 1981 in Los Angeles.
2. planning the guidelines for appropriateness review. Appropriateness review is a proposed activity which will be parallel to the existing Certifi-

cate of Need (CON) program. While the Certificate of Need approves proposed *new* health services, the Appropriateness Review Program would approve already existing health care services with an eye to eliminating those which are outdated or no longer used.

The Appropriateness Review Program was created by Federal Law PL 93-641 but has not yet been implemented in California. The Advisory Health Council is in the process of creating guidelines for the local Health Systems Agencies so that they may administer this program uniformly. The Appropriateness Review has been renamed the Planning Policy Section to emphasize the role that this activity will play in health planning.

3. The Council is in the process of amending a 5 year statewide health facilities and services plan. This plan will be presented to the Office for adoption later this year.

At the March 6, 1981 joint public meeting of the Planning and Health Committees of the Advisory Health Council held in San Diego, the Council discussed the future of Appropriateness Review. In view of possible budget restraints from the new administration in Washington, the Appropriateness Review Program may never be implemented. However, the Council decided to go forward with its planning of guidelines until more definite word from Washington is available.

At that same meeting, the Council heard arguments from a former Advisory Health Council member now representing private concerns that the HSA's method of determining need for acute care beds should be modified in the case of rapidly growing North San Diego County. The Council rejected those arguments, deciding to leave the planning control in the hands of the local HSA. The Council pointed to the already existing adjustments to the determination of need initially at the HSA level, and finally at the Certificate of Need (CON) level. The Council did not see any reason to create yet another level of adjustment to the determination of need.

Future Meetings:

May 1, 1981 - Los Angeles
June 19, 1981 - Sacramento
July 31, 1981 - San Francisco.

Resources Agency

AIR RESOURCES BOARD

Chairwoman: Mary Nichols
(916)322-5840

The California Legislature created the Air Resources Board in 1967 to control air pollutant emissions and to improve air quality throughout the state. The Board evolved from the merger of two former agencies: the Bureau of Air Sanitation within the Department of Health, and the Motor Vehicle Pollution Control Board. The five members on the Board are appointed by the Governor and have experience in chemistry, meteorology, physics, law, administration and engineering and related scientific fields.

The Board approves all regulations and rules of local air pollution control districts, oversees the enforcement activities of these organizations, and provides them with technical and financial assistance.

The Board staff numbers 425 and is divided into seven divisions: Technical Services, Legal and Enforcement, Stationary Source Control, Planning, Research and Administrative Services.

Major Projects:

Projects of the Board include consideration of: limiting the sulfur content of diesel fuel; adopting loaded mode testing procedures for change-of-ownership vehicle emissions inspection; implementation of AB 1111.

The federal Clean Air Act makes the Environmental Protection Agency (EPA) answerable to Congress for improving air quality throughout the nation. The Air Resources Board, as the state pollution control agency for all purposes set forth in federal law, is in turn answerable to the EPA for improving air quality in the state.

The EPA has adopted national ambient air quality standards (maximum concentrations of air pollutants that can be tolerated before the environmental and health effects become too harmful) for sulfur dioxide (SO_2), particulates (solid waste from incompletely burned material, dust from sand-blasting operations etc.) and visibility reducing particles. The Clean Air Act as amended in 1977 requires the state to attain and maintain the air quality standards for SO_2 and particulates by December 31, 1982, through the adoption and implementation of all reasonably available control measures as expeditiously as is practical.

The Board has also established air quality standards for SO_2 and particulate matter. The Board's staff report indicates that SO_2 is dangerous to vegetation and human life. In the past, national and state standards for particulate matter and the state standard for visibility have been consistently violated (the state visibility standard is exceeded when visibility is reduced to less than 10 miles and relative humidity is less than 70%).

Sulfur compounds are present in diesel fuel in varying amounts depending on the amount of refining and the source of the fuel. During diesel combustion, the compounds contribute to the SO_2 and particulate matter in the air. Pursuant to its authority to regulate the amount of pollution in vehicular fuels, the Board is considering a regulation limiting the sulfur content of diesel fuel sold for use in motor vehicles to 0.05% (sulfur by weight). (The current California regulation for unleaded gasoline is 0.04% sulfur by weight and will become 0.03% sulfur by weight on January 1, 1982. A similar standard for diesel fuel does not exist.) The Board staff report estimates that the proposed regulation will reduce emissions of sulfur compounds from diesel powered motor vehicles by more than 80%.

The 122 page report also indicates that diesel emissions accounted for 8% of all SO_2 emissions statewide in 1979 and is expected to rise to 13% in 1985 if the proposed regulation is not adopted.

Several refiners have contended that equipment needed to meet the proposed regulation will itself result in increased emissions of SO_2 and particulate matter. The staff report admits this is true, but points out the amount would be small and can be offset by reducing emissions from existing refinery units.

The staff believes it is reasonably cost-effective for refiners to implement the regulation and is in line with the regulation limiting sulfur in unleaded gasoline.

The regulation would go into effect for all diesel manufactured after January 1, 1985.

REGULATORY AGENCY ACTION

California's Motor Vehicle Inspection program began on March 19, 1979, on a trial basis in the South Coast Air Basin (the 1976 definition of South Coast Air Basin was used, which at that time included all of Orange and Ventura Counties and portions of Los Angeles, Riverside, San Bernardino and Santa Barbara counties). The program is still in operation and only applies to vehicles undergoing change of ownership registration. The inspection procedure consisted of an "idle" exhaust emission test (a diagnostic test to determine possible malfunctions) and a visual check of the emission control systems. On July 16, 1980, the procedure was changed. The visual inspection test was eliminated and replaced with a "loaded mode" (dynamometer) test which consists of a 40 m.p.h. cruise mode emission test (simulating road driving conditions). The idle emissions test remained. The Board is currently considering amendments to the Administrative Code that would codify the 40 m.p.h. cruise mode and idle mode tests.

The Department of Consumer Affairs' Bureau of Automotive Repair administers the Motor Vehicle Inspection Program. Their report to the Legislature this year indicated that the two-mode test described above improved detection of malfunctions in emission control devices. Board staff believes it is also cost-effective. The program is run by Hamilton Test Systems Incorporated, under a contract with the Air Resources Board, which operates 17 test facilities throughout the South Coast Air Basin.

Last year the California legislature considered and rejected several bills that would have authorized annual vehicle emission inspections in non-attainment areas of the state (that is, areas which cannot meet federal air quality standards by 1982). California law mandates that such inspection start after January 1, 1981. The EPA had approved that law as part of California's Air Quality Plan and is now imposing sanctions on this state for non-compliance. The EPA has notified California of its intention to withhold as much as $850 million in sewer and highway funds for growth inducing projects.

At the closing session of the 1980 legislative year the Senate rejected SB 1948, a bill authorizing the Brown administration to design and prepare to implement an annual motor vehicle inspection program. This year another annual vehicle emissions inspection program has been introduced in the legislature. SB 33, sponsored by the South Coast and Bay Area Air Quality Management Districts, was much amended by the Transportation Committee and is going to be heard in the Senate Finance Committee. The bill enjoys slim support in the Legislature, but strong support in the Air Resources Board. Twenty-seven states have adopted an annual inspection program.

California has actually been under a ban since July 1, 1979 — a ban on construction of "large new sources of air pollution." This ban has had insignificant impact on California because of EPA definitions of "large" and "source." California's local air pollution regulations are so stringent, and so many controls are put on sources, that any source with a local permit is likely to be a "small" source under the EPA definitions. Those definitions recently underwent a change, and as a result, it appears that in the entire state, perhaps *one* project will be affected.

The Board issued its first notice of review of regulations pursuant to AB 1111 on February 6, 1981. The first sections to be reviewed are the Administrative Procedure and Emergency Hearing sections. Notices have also been sent out for review of the Ambient Air Quality standards, Agricultural Burning sections, Air Pollution Records, General Provisions and Motor Vehicle Pollution Control Devices.

Review is staggered according to the complexity of the regulations and the volume of public response anticipated. The last notices, of which there are three to be sent out together, are due to be mailed out April 30, 1982. These are the Enforcement of Vehicle Emission Standards, Surveillance Testing Standards for Motor Vehicle Fuel, and Emission Control System Warranty sections. The Board hopes to have the review completed by the December 31, 1982 deadline.

Recent Meetings:

The Board recently adopted a resolution amending a portion of the Administrative Code dealing with exhaust emission standards and test procedures for post-1983 heavy duty engine models. On January 21, 1980, the EPA had adopted an entirely new test procedure for testing emissions of heavy duty engines ("heavy duty" vehicles are vehicles 3,500 pounds or larger, e.g., furniture vans.) for 1984. The result of a few years research, the test uses much more sophisticated equipment than the test presently used in California. It more accurately indicates the amount of emissions than the "concentration test" now in use. It has generally been Board policy to use the same test procedures, cycles, and calibrations as the EPA.

The new federal "transient test cycle" is a way of testing engines to demonstrate emission levels of typical driving conditions. The present test looks only at "steady state emissions," which does not indicate emissions levels at varying speeds. Manufacturers of diesel powered heavy duty engines are seeking judicial review of the new test procedure adopted by the EPA.

The Board is currently considering:

- a suggested measure for control of nitrogen oxides emissions from electric utility gas turbines.
- problems associated with vapor recovery systems at gasoline stations and how such problems can be resolved. The objective of the vapor recovery program is to reduce emissions of air pollutants during fueling operations and to conserve gasoline. Vapor recovery systems must capture at least 95% of the escaping hydrocarbon vapors to be certified by the Board.
- an amendment to the Administrative Code that provides for testing of emissions sources (primarily factories, plants, and other "stationary sources"). Currently, owners and operators of emissions sources, with some exceptions, are required to pay fees for source testing conducted by the Board. The amendments eliminate Board authority to charge fees for testing other than for determining compliance with permit conditions or with state or local laws relating to air pollution. The amendments also establish a mechanism by which owners and operators of emission sources may request to be compliance-tested by an independent testing service rather than by the Board itself. The proposed amendments essentially implement provisions of AB 3067 (1980). They also update the current fee schedule to reflect increased costs and allow the Board to refuse a request for independent testing for good cause, etc.
- a proposed Board policy regarding incineration as acceptable technology for PCB disposal.

Polychlorinated Biphenyls (PCBs) are a mixture of synthetic chlorinated hydrocarbon compounds that range in consistency from oily liquids to waxy solids. PCBs have been shown to be toxic even at low levels of concentration. Some suspected toxic effects of exposure to PCBs and their incomplete combustion by-products include liver injury, tumors and reduced immunity to diseases.

PCBs have been in industrial production since 1929. Production was halted in 1971. Seventy-five percent of the PCBs produced went into electrical equipment that is still in use today. The 1976 federal Toxic Substance Control Act authorized the EPA administrator to develop and implement a regulatory program for PCB manu-

facturing, use, disposal, etc. Rules promulgated by the EPA in 1978 and amended in 1980 require proper disposal of PCBs by either landfilling or incineration.

PCBs are already a universal atmospheric contaminant. In California, it is expected that over 1 million pounds of PCBs per year will require disposal over the next ten years. A Board staff report recommends incineration of PCBs in cement kilns equipped with safety features. This method of disposal would also provide an incentive to cement kiln operators because not only would they be paid for destroying PCBs but they would gain a modest fuel savings as well because PCBs have heating value.

Board staff believes that PCB incineration in cement kilns is safe, is available today and has the potential to handle large volumes of PCB liquids at a relatively low cost and in an energy efficient manner. In addition, Staff find that this method is superior to the landfill option in terms of environmental and public safety.

Next Meeting:

April 22 and 23 in San Francisco.

CALIFORNIA COASTAL COMMISSION

Director: Michael Fischer
(415)543-8555

The California Coastal Commission (CCC) is responsible for land use regulation of the Coastal areas of California, supplementing local land use controls. Where a land use change or major building project invokes the possible jurisdiction of the Commission, plans must be submitted to the applicable "Regional Commission" for review. Changes affecting the coastal area of the State cannot be started without a Commission permit where there is Commission jurisdiction. The six Regional Commissions handle most matters by a notice and consent calendar summary proceeding. All property owners within a specified area are sent formal notice of land use or building change plans. If there is no protest and no staff objection, the matter is approved routinely on a Regional Commission consent calendar. If there is an objection or protest, and either goes to one of the statutory criteria guiding Commis- decisions, the Regional Commission may prohibit the change or impose conditions. The Regional decision may be appealed to the State Commission which can and often does reverse local decisions.

Major Projects:

One of the most pressing problems facing the CCC is the rapid approach of a July 1, 1981 deadline, after which the six Regional Commissions are statutorily extinguished and the Local Coastal Program (LCP) process administered by local government is supposed to be complete. As of February 15, 1981 only 14 of the 68 required LCP's had received final approval from the CCC. of the remaining 54 LCP's, 32 have had their Land Use Plans approved (a preliminary step). After expiration of the Regional Commissions, the remaining, incomplete LCP's will be routed through the CCC directly.

In addition to LCP supervision responsibility, after July 1, 1981 the CCC will have the responsibility of regulating development in those coastal areas without a certified LCP. (See Section 30518 Public Resources Code; See also AB 412 discussed *infra*.) These increased responsibilities come in the face of a CCC staff projected budget deficit of $625,000-$1,525,000 for the January 1, 1981 - June 30, 1982 period. A February 11, 1981 report states three reasons for the projected budget deficit:

(1) A substantial decrease in federal funds as a result of the federal austerity budget;

(2) Increased cost projections, the result of inflation and unanticipated complexities on the Phase III portion of the LCP process (zoning program phast).

(3) The loss of previously granted, but unspent federal LCP monies. (On December 31, 1981 over $600,000 in grant money reverted to the federal government because local government LCP grant recipients had not utilized the money.)

The February 11 report suggests that the CCC establish a priority program for the allocation of the remaining LCP budget. Basically, the recommended priority budget program would award LCP grants to those programs that are committed to the LCP process and have demonstrated progress toward successful completion of the LCP process.

As has been the case during prior years, the CCC has again been barraged by a number of hostile bills. These bills are briefly summarized as follows:

AB 260 Ellis; ACA 20 D. Brown — If adopted, both measures would abolish the CCC.

AB 164 Bergeson — The Coastal Act requires that housing opportunities for persons and families of low or moderate income shall be protected, encouraged, and, where feasible, provided. This measure ld exempt from the above provision any proposed housing development which complies with the local housing element.

AB 385 Hannigan — This measure would require the CCC to establish a schedule for the submission of all LCP's to the CCC that are not submitted to the CCC or regional commission before July 1, 1981. All submittals must be scheduled before January 1, 1983.

AB 321 Hannigan — Existing law provides that after certification of the LCP coastal development permit regulation is returned to local government the CCC retains specified appellate jurisdiction pursuant to Section 30603. This proposal would limit the grounds for such an appeal to the contention that the local government action raises a substantial issue as to conformity with the certified LCP.

AB 412 Ryan — The Coastal Act provides that if a LCP has not been certified by July 1, 1981 the CCC, upon certain findings, may prohibit local government from issuing coastal development permits or require such a permit be obtained from the CCC.

This bill would delete the authority of the CCC to prohibit issuance of a permit by local government and, after January 1, 1982, the authority of the CCC to require obtainment of such a permit from the CCC. After January 1, 1982, local government will have the exclusive authority to issue coastal development permits, regardless of the absence of a certified LCP.

AB 391 Farr — This Act would prohibit the amendment of a certified LCP more frequently than three times in any one year.

Recent Meetings:

The CCC met in San Diego on February 19, 1981. The two most pertinent topics included a discussion of the effectiveness of the Commission as an enforcer of its laws, and LCP funding policies.

Pat McGovern from Pacific Beach testified on the issue of enforcement. She cited several instances where the Coastal Act and permits issued by the CCC were presently being violated. She claimed that she had brought these problems to the CCC's attention some time ago and has received no response.

The CCC acknowledged that there were "violations up and down the Coast." According to CCC, Staff, the regional commissions (charged with enforcement) simply don't have the staff to deal with them all. Proposition 13 cut a huge chunk out of the CCC's budget.

LCP funding comes from the federal government, with matching funds from the State. Estimates of the cost of completing the LCP's, provided by various cities and counties have increased by 30% to 40% since last October. The problem is that for the 1981 fiscal year, cities and counties

were granted federal funds to complete the first phases of creating an LCP. Any money not spent by the end of 1980 reverted back to the federal government. Many cities and counties had hundreds of thousands of dollars remaining at the end of 1980 which were forfeited. The CCC is now in a position where they must set priorities and allocate what little money they receive accordingly. The CCC Staff has set up a tentative scheme, discussed at the February meeting. Those cities and counties who have made a lot of progress and who will have nearly completed their LCP by July 1981 will have top priority. There are 3 priority categories which follow from there. It is doubtful that those cities and counties in the last category will get any money. The Commissioners considered giving priority to those cities and counties who have progressed the *least* but rejected it on staff advice. (Why throw good money after bad?) Another suggestion was to give priority to the cities and counties with the greatest "natural resources." Counties should, according to CCC staff, have priority over cities. The rationale for this decision is that most counties contain a larger geographical area of coastline.

A few cities and counties testified at the hearing. They appeared to be extremely distraught. Local governments need to know where they stand so that they can act accordingly. Almost every local government representative complained to the CCC about receiving inadequate notice for the LCP funding agenda item. Local government wants the CCC to hold off on any final decision on prioritizing until Northern California has a chance to comment.

The CCC responded, stating that the funding problem is a management issue. It's good to get public input, however it is an executive type policy decision. Cities and counties incurring costs will be reimbursed for their efforts up until the day that a final decision is made. While the CCC awaits a final decision from Washington, it will do what it can to acquire money. There is a chance that the CCC will get general fund allocations from the State budget to cover costs. The CCC moved to carry over any final decision on prioritizing until after the Northern California meetings. This would equalize the input between the North and South. The motion succeeded.

Future Meetings:

April or May, 1981 in Northern California, to be announced.

BOARD OF FORESTRY

Director: Lewis Moran
(916)445-7228

The State Board of Forestry establishes general forest policies: protects the state's interests in privately owned forests (through logging restrictions, etc.), maintains the state forests, operates a statewide system of fire protection, and provides research in the technical phases of forest management, such as erosion or pest control. The Board also licenses Registered Professional Foresters. These forester's plan the sale and harvesting of timber, determine the environmental impact of management decisions, appraise the market value of a timber stand, and direct the control of tree diseases, among other things. They may work as consultants, for private companies, or for the state.

There are a total of nine members on the Board. The law requires that "some" of the members have backgrounds in the forest products and range livestock industries.

Major Projects/Recent Meetings:

The Board of Forestry met for its monthly meeting on February 3 and 4, 1981, in Sacramento. The meeting dealt primarily with two issues currently occupying the Board: watercourse and lake protections and proposed silviculture rules.

The current Watercourse and Lakes Protection Proposal would allow the state to comply with the Federal Water Pollution Control Act, PL 92-500. The proposals deal with the amount of debris which will be allowed to enter certain classes of streams and lakes as a result of timber operations, the area of buffer zones between logging operations and streams and lakes and the amount of flexibility required for different geographic locations, among other things. The precise rules adopted by the Board will affect top soil run off. A failure to provide plant growth near streams may cause excessive soil enrichment, resulting in oxygen depletion and fish kills or other damage. On the other hand, a rigid rule may prevent harvesting where harm is not a danger.

The proposed silviculture rules deal with the practice of controlling the growth of forests. They deal especially with regeneration, including the type and extent of cutting allowable to maintain the land at or near its productive capacity. The Board is currently considering these rules and the hearing is now closed.

SOLID WASTE MANAGEMENT BOARD

The Solid Waste Management Board is charged with managing solid wastes in this state to protect the public health, safety, and to preserve the environment. The Board must provide for the maximum reutilization and conversion to other uses of the state's diminishing resources. The Board is comprised of two representatives from local government, three public members, two members from the private sector of the solid waste management industry; a civil engineer, a representative of the public with specialized education and experience in natural resources conservation and resources recovery and three nonvoting exofficio members.

Major Projects:

In response to dwindling space for landfills in the state, the Solid Waste Management Board is focusing its attention on waste reduction, garbage recycling, and the conversion of solid waste into energy. Energy recovery planners are faced with problems of lagging technology. SB 1855 (1978) was enacted to provide financial support for waste-to-energy proposals. The monies are to be used for preconstruction activities. Six grants have been issued by the Board to date. The activities of the grantees are being monitored by the Board periodically.

SB 650 (1977) provides a special fund for recycling and resource recovery grants to public agencies or private entities.

The grants program encourages innovation in the development of recycling, resource recovery, and anti-litter projects. The Board is currently reviewing a new group of grant applications.

The SB 650 fund also finances the Boards' public awareness and education activities. The Board has contracted with Solem and Associates, a private public relations firm, to implement a $520,000 public awareness program. A significant development in the program is the "Great California Resource Rally." This event will take place the week of April 20-26 throughout five major cities of the State. The purpose of the Rally is to attract the attention of citizens and the media and to encourage recycling efforts. Waste and litter reduction will also be a focal point of the Rally. At the Boards' March 3 meeting, Solem and Associates presented television and radio spots, to be aired throughout the State, announcing the Rally.

The Boards' education efforts resulted in the awarding of a $102,991 contract to SWRL (Southwest Regional Laboratory) Educational Research and Development. The contract was for primary school curriculum development. SWEEP (Solid Waste Environmental Education Program) provides an approach for teaching elementary school children proper waste management practices. By the 1981-82 school semester, the Board hopes to have introduced SWEEP to the entire State. Presently, SWEEP has been introduced in a handfull of other States.

At its March 3, 4 meeting, the Board awarded a $30,000 contract to Public Response Associates. The firm is charged with conducting a waste reduction marketing research study. The primary focus of the study is to identify effective and acceptable waste reduction methods as well as techniques which are effective in popularizing the waste reduction concept. The implementation of these methods and techniques will hopefully bring about desired changes in consumption and production.

The Board is in the process of conducting a litter baseline survey. An independent contractor was hired to measure the litter accumulated in one year at 106 representative sites across the State. At a recent Board meeting the contractor reported that there is no indication that the incidence of littering is declining.

The implementation of AB 1111 is and will continue to be a major project for the Board. A committee comprised of almost 50 persons has been established to work on the review. Members on the committee represent Northern and Southern California including 13 different entities operating within the State. At this time the Board has made plans to review only two out of nine chapters in its regulations. The Board and committee have expressed their enthusiasm for the project.

The Board is in the process of approving a state plan on solid waste management in California. The Board has prepared a report on solid waste management in the state which assesses current and potential management practices and technologies and makes recommendations for future actions. The report fulfills requirements outlined by the E.P.A. for states receiving federal grants for solid waste management plans, pursuant to the 1976 Resource Conservation and Recovery Act. Public comment on any aspect of this report is invited. Interested persons may utilize the toll free public comment on any aspect of this report Interested persons may utilize the toll free public comment number (800-952-5545) or they may address written comments to: State Solid Waste Management Board, Office of Planning Services, 1020 9th Street, Suite 300, Sacramento, California 95814.

The Federal Resource Conservation and Recovery Act requires that the Board conduct an inventory of disposal sites to determine which are open dumps. The E.P.A. has set standards for solid waste disposal facilities. Landfills cannot pollute surface or ground water; cannot have an adverse affect upon endangered wildlife species; threaten public health; diminish the quality of the air; or be a safety hazard. "Open dumps" which do not conform to state minimum standards may be required to either correct operating deficiencies or be shut down within five years.

Recent Activities/Meetings:

At its March 3, 4 meeting, the Board considered numerous items including review of proposed and existing solid waste facility permits; the proposal of legislation; and the acceptance of a study report prepared pursuant to an SB 650 grant.

The Solid Waste Management Board is responsible for approving permits for the siting of new solid waste facilities. Modifications to existing facilities must also meet Board approval. All proposals for new permits and modifications must conform to appropriate county solid waste management plans and must be consistent with state policy. At the meeting the Board made findings and determinations for five different proposals. All five proposals were approved by the Board.

The Board has been considering the proposal of legislation which would prohibit the production of bi-metal cans (steel cans with an aluminum top) and caps which leave neck rings on glass bottles. The proposal stems from the difficulty in recycling these materials. One Board member felt that the staff report prepared on the matter was not comprehensive enough to make a firm decision. A majority of the Board, however, felt that no regulations should be issued in lieu of the staff report and anticipated extra cost to the industry.

On May 18, 1979, the Board approved $16,842 in SB 650 grant funds for Conservatree Paper Company. The funds were provided to conduct a study to determine the technical and economical feasibility of constructing a deinking plant to produce marketable pulp from waste paper. Conservatree gave an oral presentation of the highlights as the study report. The Board accepted the report stating that it fulfilled the requirements of the contract awarding the funds.

Current Legislation:

The Board is in the process of introducing bills which would, respectively, make it easier to apprehend illegal dumpers; appropriate $400,000 from the Environmental License Plate Fund to the Board for a two year investigation of the use of safety features at landfills which leak methane gas; and establish a procedure for siting solid waste management facilities which would avoid unnecessary costs to project proponents, private citizens, local government, and the state. Ambiguities in the current law have led to situations where proposed solid waste facilities have been judged to be in conformance with the county plan, but their operating permits were delayed because the final status of the project did not conform to state and local solid waste management policy.

The Board has recently introduced two bills. AB 467 amends oil recycling law to (1) require oil collectors to give receipts to used oil recyclers; and (2) exempt from regulation recyclers who receive less than 15,000 gallons of used oil annually. The purpose of the bill is to reduce oil thievery and encourage greater participation in used oil recycling programs. SB 161 revises last year's budget to appropriate $250,000 for the mobil pyrolzer (a unit which would convert agricultural wastes into energy) from the Energy Resources Fund rather than from the State Litter Control, Recycling and Resource Recovery Fund.

STATE LANDS COMMISSION

Executive Officer:
William F. Northrop
(916)322-4105

The State Lands Commission consists of the State Controller, the Lieutenant Governor and the State Director of Finance. The Commission has exclusive jurisdiction over all ungranted tidelands and submerged lands owned by the State. It also controls approximately 610,000 acres of "school lands" granted to the State by the Federal Government in the 1800's. Altogether the Commission's jurisdiction extends to approximately 4.5 million acres. The Commission administers and controls all such lands and may lease or otherwise dispose of such lands as provided by law and in accordance with such rules and regulations as the Commission adopts.

Major Projects:

The major activities of the Commission include the issuance of permits for oil and gas wells and the development of procedures to avoid pollution caused by these wells. The Commission also leases lands for marinas, wharves, timber harvest, grazing, mining and development of geothermal electric power generation.

Recent Meetings:

The Commission generally meets on the last Thursday of each month. Because of the technical nature of most of the items on the Commission's calendar, the Commission is assisted by a staff of more than 250 specialists. A typical Commission meeting lasts only 1-2 hours as the Commission Chairman, Kenneth Cory, quickly disposes of 40-50 agenda items. In the course of its last 4 meetings, the Commission has failed to disapprove a single agenda item.

During the last two Commission meetings, January 26 and March 5, the major issues addressed included: (1) Conditional approval of proposed uses sought by Wrather Port Properties, Ltd. relating to the area surrounding the Queen Mary in Long Beach; (2) Approval of a court settlement of a boundary line dispute between California, the City of Eureka and local property owners; (3) Monitoring of possible subsidence and seismic hazards in the Wilmington Oil Fields; (4) Acceptance of $26,000 for 164 acres of State lands needed for the construction of the New Melones Dam Project; and (5) Authorization to hold public hearings for the purpose of reviewing the Commission's rules and regulations.

The Commission routinely approves numerous other leases, permits, and sales applying to State lands which impact both the environment and the State budget. Meetings are held in Room 2170 of the State Capitol Building in Sacramento.

Future Meetings:

The next meeting is scheduled for May 28, 1981, at 10:00 a.m.

STATE WATER RESOURCES CONTROL BOARD

The Water Resources Control Board, established in 1967, regulates State water resources. The State Board and the nine California Regional Water Quality Control Boards are the principal state agencies responsible for the control of water quality in California. The State Board consists of five full-time members who are appointed by the Governor. Each regional board consists of nine part-time members appointed by the Governor for four year terms.

Major Projects:

The State Board has used its broad powers to institute diverse programs. Water quality regulatory activity includes issuance of waste discharge orders, surveillance and monitoring of discharges, and enforcement of effluent limitations. The Board engages in areawide water quality control planning, assistance to wastewater facility construction, research and technical assistance in the areas of agricultural pollution control, wastewater reclamation, groundwater degradation, and impact of discharges on the marine environment. The Board is responsible for administering California's water rights laws. In the performance of this duty, the Board licenses appropriative rights and may exercise its investigative and enforcement powers to prevent illegal diversions, wasteful use of water and violation of license terms.

Current Meetings:

A major water rights project, part of which was contested at the February 19, 1981 Board meeting is the Vern Freeman Diversion Project. To prevent further seawater intrusion caused by excessive pumping of the Oxnard aquifer system in Ventura County, a "local request" was presented to the State Board for a State Assistance Program (SAP) grant of $8 million to build a pipeline to a lower water system. Because the lower water system is not replenished at any significant rate, this project is only an interim solution. Water import to the area may eventually be required. The United Water Conservation District (United), which sells the water to the users, is in the process of forming a Special Assessment District to raise $18 million to match the Board's $8 million. The Staff for the Board developed special grant terms to be met prior to release of SAP funds. The purpose of the grant terms is to ensure that the project will be constructed and operated in a manner which avoids the necessity of "Section 2100 action." A § 2100 action is the filing of an action in superior court by the Board to restrict pumping or to impose physical solutions, or both, to prevent irreparable injury to groundwater quality.

Over one dozen persons representing four distinct groups, United, the County, the retailers, and the farmers, participated in the discussion. There was much confusion concerning the conditional terms, few had the opportunity to review them. The farmers did not learn of the conditions until after January 20, 1981. However, public hearings on the basics of the project were held in Ventura County in the last few years. Apparently, although the Board had spent at least two years on the project and various Board members had made several trips to Ventura County for the purpose of developing the assistance plan, the bulk of their dealings had been with United and the County. The farmers had not received complete information on the project. Ray Swift, a farmer, commented that the farmers were unwilling to write "a blank check" for $18 million without knowing what the local plan for the diversion project would involve and objected to the lack of communication between the farmers and the Board. The Board's Chairwoman replied "communication is a two-way street" and said it was "too bad you (the farmers) didn't coordinate the plan with United." One Board staff member said that it was United's responsibility to communicate with the farmers. John Drether, an attorney and farmer complained because so many Ventura people had to go to Sacramento.

The Board's prime concern was result oriented: "all we want is no further seawater intrusion" and "we're not prepared to listen to a local debate." The point of the assistance program is to put control over the diversion project into "local hands."

After hearing that United, Ventura County, and the Farmers Bureau had expressed some support for the locally controlled diversion program to be headed by an elected official, the Board adopted the proposed grant terms with a footnote added to allow for future review of the conditions after the local Board was set up. The Regional Board of Los Angeles and Ventura County is not involved in the administration of the Vern Freeman Diversion Project.

Other items before the Board included proposals to refer illegal diversion cases to the Attorney General for prosecution and approval of waste discharge requirements adopted by various regional Boards. Representing a farmer in the Marine-Nevado area, attorney Tina Thomas objected to San Francisco Bay Regional Board discharge and reclamation requirements in a particular order, arguing that the require-

ments were based on a 1977 Environmental Impact Report and that a stay should be granted until a new EIR was prepared. The requirements were approved. Ms. Thomas later commented "I knew it would be 4-0, they always make staff decisions in advance." The Board also heard and denied a request for $25,000 to produce a film on Acid-Mine Drainage which was proposed by a staff member of the Central Valley Region who had no specific plans for distribution and no specific audience in mind.

A typical Regional meeting took place on February 23, 1981. The San Diego Regional Water Quality Control Board met. The San Diego Board considered one major discharge case. There was a complaint against the Konyn Dairy which is discharging barn washing wastes of approximately 5000 to 7000 gallons/day into the San Dieguito River. The San Dieguito River flows into Lake Hodges which provides 50% of the water supply to the Santa Fe and San Dieguito Water Districts. Although advocating enforcement proceedings against Konyn, Diana Barich of the State Department of Health Services commented that water sampling at the dam of Lake Hodges is conducted only once a year and she was unable to report whether there was any bacterial contamination or an elevated Coliform count. A motion to refer enforcement against Konyn to the Attorney General was unanimously approved. One Regional Board member, Mr. Dzubek, said that ordinarily enforcement does not reach the level of the Attorney General because the polluters correct poor practices upon urging of the Regional Board. Here, Mr. Konyn denied there was any run-off from his cattle-raising facility whatsoever (although Mr. Konyn's attorney and Mr. Konyn contradicted this position on several occasions). The Konyn Dairy will continue to operate and discharge wastes into the San Dieguito River until enjoined by the Attorney General or until some other solution is reached.

A conference to discuss priority water resource control problems was attended by the State Board and nine Regional Boards on March 2nd and 3rd, 1981 in Sacramento. Consideration of a document intended to state policy, identify priority items and goals and to serve as a committment to the Environmental Protection Agency for funding purposes, provided the structure of the meeting. Each region suggested modifications of the document as well as new priorities.

A new priority item which was strongly supported was increase of the Board's regulatory presence in critical areas. Some regions complained that their staff lacked expertise for regulatory purposes, eg., at least one region had no toxicologist. There was a strong pitch for funds to train staff. It was also suggested that staff be redirected to perform more fieldwork. Regional Board members expressed dissatisfaction with the performance of the Attorney General in enforcement actions. It was suggested by a Regional Board member that the Water Board was not high on the Attorney General's politically responsive ladder. William R. Attwater, of the State Board staff disagreed, responding that all the Attorney General's clients are of equal priority and that the Deputy Attorneys General have indicated that some Regional Boards referred enforcement actions to them without fully developing the facts. Howard Manning of the Los Angeles Regional Board commented that the Attorney General was weak in defending the Board against injunctions sought by persons seeking to avoid compliance with water quality standards. The State Board suggested that the Regional Boards invite the Deputy Attorneys General to their meetings and sessions so that they could acquire an understanding of the Regional Boards' operations. The State Board also commented that the performance of the Attorney General was hampered by continuous new crops of deputies unfamiliar with water resources law.

The majority of past years' priorities were approved, such as action on ground water degradation, sedimentation and erosion, municipal wastewater reclamation, Lake Tahoe and the San Francisco Bay Delta, however many Regional Board members suggested deletion of urban runoff from the list. It was concluded that the conference added to the Board staff's ability to anticipate regional needs. The State Board expressed appreciation and need for criticism.

Monthly meetings normally attended by the Water Resources Control Board, the Department of Food and Agriculture, the Department of Health Services, the Solid Wastes Management Board and the Air Resources Board are conducted to discuss coordination of agency action on toxic substances. No representatives of the Solid Waste Management Board or the Air Resources Board were present at the recent meeting of March 10, 1981.

Future Meetings:

The next regular State Board meetings are April 16, 1981 and May 21, 1981 at the Resources Building, Auditorium Room, 1416 9th Street, Sacramento, California. The next regular San Diego Regional Board meetings are April 27, 1981 and June 1, 1981 at 1350 Front Street, Room B109, San Diego, California. These meetings usually begin at approximately 9:30 AM.

Independents

BOARD OF CHIROPRACTIC EXAMINERS

Executive Secretary: Edward Hoefling (916)445-3244

The Board of Chiropractic Examiners was created by an initiative measure approved by the citizens of California on November 7, 1922. The Board's duties include examining chiropractic applicants; licensing successful candidates; approving chiropractic schools and colleges; approving continuing educational requirements and courses; and, maintaining professional standards through the invocation of prescribed disciplinary measures.

The Board has seven members, two public members and 5 licensed professionals. The Board convenes twelve times each year.

Major Projects:

The Board administers its examination twice each year. In order to be eligible to take the exam a candidate must attend a Board approved and accredited chiropractic institution for a minimum of three academic years. The Board recognizes only those chiropractic institutions that receive accredition from the National Council on Chiropractic Education (CCE).

In 1979, the Board instituted a new mandatory continuing education program. As a condition of license renewal each licentiate is required to complete a minimum of 12 hours per year of Board approved courses.

Future Activities:

One problem of immediate concern is the AB 1111 review process. Because Executive Secretary Hoefling was just recently appointed, he is unfamiliar with the Board's review plan. However, he did tell us that he believed the Board's review plan had been approved by OAL and provided for "several" public hearings. The Board's regulations are found in Title 16 of the Administrative Code, commencing with Section 300.

Executive Secretary Hoefling indicated to us that a controversial issue soon facing the Board will be the issue of accreditation of new chiropractic institutions. Presently, a new institution must receive entry level accredition from the CCE within 3 years of its formation. If an institution does not receive accreditation its graduates are not eligible to take the Board's examination. The Board is now receiving petitions from institutions denied CCE accreditation alleging caprice and abuse of discretion by CCE. The Board must decide if it wishes to grant accreditation to these institutions, notwithstanding CCE's refusal.

Current Activities:

A significant portion of the Board's $392,000 1980-81 fiscal year budget is devoted to the resolution of consumer complaints. (The Board's projected 1981-82 fiscal budget is $405,000.) Recently appointed Executive Secretary Hoefling told us that the majority of consumer complaints are in the areas of fraud, incompetence and patient molestation.

The Board does not have its own investigation office, but contracts with the Department of Consumer Affairs, Division of Investigation Services for these services. Likewise, the Board relies on the office of the Attorney General for legal counsel.

A future disciplinary hearing will involve the case of licentiate Fraterno Cabral of Los Angeles who is charged with involuntary manslaughter. Cabral is accused of criminal negligence in the death of a 19-year-old patient who suffered from a seizure disorder. Cabral allegedly advised the patient to discontinue a prescribed anti-convulsant medication and submit exclusively to chiropractic treatment. The youth died 10 days later.

Executive Secretary Hoefling told us the Board regulates approximately 5,300 chiropractors. He was unable to provide recent statistics on the kind and number of consumer complaints.

CALIFORNIA ENERGY COMMISSION

Chairman: Russell Schweickert
(916)920-6811

In 1974, the Legislature created the state Energy Resource Conservation and Development Commission, which is better known by its short name, the California Energy Commission. The Commission is charged generally with assessing trends in energy consumption and energy resources available to the state; reducing wasteful, unnecessary uses of energy; conducting research and development of energy sources alternative to gas and electricity; develop contingency plans to deal with possible fuel or electrical energy shortages; and in its major regulatory function, siting power plants.

There are five Commissioners appointed by the Governor to serve five year terms. Four Commissioners have experience in engineering, physical science, environmental protection, administrative law, economics and natural resource management. One Commissioner is a public member.

Each Commissioner has a special advisor and supporting staff. The entire Commission staff numbers 500.

The five divisions within the Energy Commission are: Conservation; Development, which studies alternative energy sources e.g., geothermal, wind, solar, etc.; Assessments, which is responsible for forecasting the State energy needs; Engineering and Environment, which does evaluative work in connection with the siting of power plants; and Administrative Services.

Major Projects:

Current on-going projects of the Commission include establishment of a Residential Conservation Service (RCS); preparation of a Contingency Planning Report; administration of the federal Institutional Conservation Program; and implementation of AB 1111.

The National Energy Conservation Policy Act (NECPA) of 1978 (part of the 1978 National Energy Act) requires implementation of a "Residential Conservation Service" program. States, or their utility companies, must devise a plan that provides free or low-cost energy audits of homes. The California Energy Commission is responsible for administration of the program in California, which involves coordination of private utility companies and the State Contractors Licensing Board. Scheduled to go into effect in the next three months, energy audits of homes will be conducted by utility-trained auditors.

The audit is strictly voluntary and will be completed within 45 days of a homeowner's request. The auditor will explain to the homeowner specific energy conservation measures for the home in question, their cost and the resulting energy savings in dollars. The auditor will also, for example, supply a homeowner with a list of qualified insulation contractors in the area, and a list of Savings and Loan Associations that will finance the insulation. Finally, the auditor will do a follow-up inspection of the insulation job to determine whether it was done adequately. The homeowner pays nothing for the audit. The cost to the utility company of training and hiring the hundreds of auditors that will be needed will be borne by the utilities' rate structure.

The Commission is working on a report detailing contingency measures available to California in the event of an energy shortage. (The report must be updated every five years.) In 1979 SB 1444 required the setting up of a reporting system of oil resources availability. It sets up reporting guidelines for oil companies and distributors. The fuels report, formerly quarterly, became monthly in January of 1980.

The Commission is administering the federal Institutional Conservation Program which gives 50% matching grants to local governments, and public or private non-profit schools, hospitals and public care institutions (e.g., orphanages) to retrofit their buildings for energy conservation. The program is optional and grants are allocated on a competitive basis. Institutions saving energy will be given preference. Institutions applying for the grants must undergo both an energy audit and a technical assistance audit. The Commission's version of the program enables a member of the institution's own operating staff to conduct the audit. That person must attend a three-day training session at one of 16 designated community colleges around the State.

The federal program requires that energy auditors be certified. The staff member must thus fulfill certain prerequisites, e.g., have a college degree and experience in operating a building. At the training session staff are taught how to look for energy waste and to identify low cost conservation measures. A low cost conservation measure is one that pays for itself in a year. For example, if a time-clock is employed to shut off a lighting system after a specified number of hours, the value of energy saved after a year will be much greater than the cost of the time-clock (which may cost around $25). Implementation of low cost measures usually results in about 20% energy savings. The federal government will not fund low-cost measures.

Participation in the energy audit is not limited to institutions seeking grants. Any public or private concern may send a staff member to the three day course. Since the first grant cycle in December 1979, participation has increased greatly. Approximately 5,000 energy auditors have been trained thus far. The classes are free until July 1981, at least.

After the energy audit, the grant-seeking institution must next hire a registered engineer to do the technical assistance audit. He or she will review the initial audit and make more detailed recommendations, e.g., suggest the use of solar water heating. Institutions may receive a 50% loan to finance the technical audit as well as to finance the energy conservation measures recommended in the audit.

The Legislature realized that many institutions might not be able to match the federal grants because of Proposition 13 cutbacks. Thus, the Energy Conservation Assistance Act was passed in 1979, which created a revolving loan fund of $10 million for an eleven year maximum loan ending in 1990. The 1980 addition to that bill provides for an $8 million fund for local governments' retrofitting of street lighting systems. Once the participating institutions have had the energy and technical audits and received the grant, they must report on their implementation of the audit recommendations. The Commission also makes checks of 5% of the institutions around the State receiving grants for conservation measures.

The next grant cycle starts on May 1, 1981. The new federal Administration has decided to continue the federal Institutional Conservation Program.

The Commission expects to meet its June 30, 1981 deadline for review of existing regulations as mandated by AB 111. The first notice was sent out January 26, 1981. The Commission publishes and mails out "issue papers" detailing how the regulations do or do not meet the AB 1111 criteria of necessity, authority, clarity consistency, and reference.

Recent Meetings:

The enabling statute empowers the Commission to prescribe cost-effective standards for new residential and nonresidential buildings. In December of 1980 and January of 1981, hearings were held on proposed regulations for new houses. The proposed regulations established standards for energy usage cost savings of 80% over previous building practice. The regulations also effectively mandated use of solar water heating, which costs approximately $3,000 and is only cost-effective under certain assumptions, including marginal costs and all tax credits. (Presently under State law a 40% State tax credit is given for implementation of conservation measures. Conservation measures installed in conjunction with a solar unit, however, yield a 55% tax credit.)

Commissioner Suzanne Reed asked her staff to revise the building standards to make them more flexible. The goal is now 70 to 75% savings of home energy usage cost. These calculations use "lowest life cycle cost" analysis. The lowest life cycle cost is the cost at which it is most economical to add a conservation measure. John Chandley, Special Advisor to Commissioner Reed, offers this clarification: "It means making the best *investment*; it doesn't mean spending the least *money*. That is, getting the most energy savings for the least cost."

The reports contain "component conservation packages" that differ according to climate (there are 16 climate zones in California), availability of natural gas, and other factors. They employ both active and passive solar design. Active solar design uses mechanical devices, e.g., a solar water heater. Passive solar design utilizes the structural elements of a building to take advantage of solar energy. Passive features cost less and save much energy. Chandley says the revised set of standards in early April, offer a greater number of component packages.

In 1977 the legislature required the Commission to adopt standards governing the safety and thermal performance of insulation materials (e.g., fiber and cellulose). The Commission adopted standards in 1978. Those standards have been recently revised in an Insulation Quality Standards Committee report. The report is designed to provide more consumer protection and improve safety and performance. One recommendation in the report deals with urea formaldehyde foam. In January of 1980 the federal Consumer Product Safety Commission proposed banning it because it emits gases that are carcinogenic and mutagenic.

The Committee report would require that manufacturers of urea formaldehyde foam meet the criterion of 0.00% by weight of free formaldehyde emissions. It further requires that a test be done on "aged" foam. (Currently manufacturers must do fire and flame retardant tests on insulation materials.) The aged foam must also meet the 0.00% by weight criterion, or else it cannot be sold. Some representatives of the industry have told the Energy Commission that it is possible to manufacture the foam so that it does not emit gases. The report recommends placing a plastic vapor barrier between the foam and interior living space. The industry protests the 0.00% emissions level as too stringent. The federal Department of Energy has proposed a .3% free formaldehyde emission standard.

The report would also require that a notice be given to the consumer regarding the dangers of urea formaldehyde foam. The purchaser must read the notice before purchase.

Another recommendation is that when insulation material is installed, the thermal performance value be posted in the building. The thermal performance value shows how that material affects the rate of heat flow.

Recently the two biggest utilities in the State, Pacific Gas and Electric and Southern California Edison, voluntarily withdrew their application to build two coal-fired plants, one in Nevada and one in Utah. Ninety percent of the energy from this plant, called the Harry Allen-Warner Valley Energy System, would have gone to California.

The Energy Commission had no jurisdiction in the matter because the plant was to be located out of state. The Public Utilities Commission *did* have jurisdiction, however, because it issues the certificate of public convenience and necessity to the utility company which enables the company to set rates in California. The Energy Commission nevertheless participated in the PUC hearing. In those hearings, the Energy Commission testified that alternatives to the coal-fired plants were available.

On February 25, the day that the Energy Commission was holding a public hearing to approve adoption of its stance against building the energy facility and to publicly review the brief to be submitted to the PUC, the two utility companies voluntarily withdrew their application and said they were considering resubmission of the application on a different timetable. On March 5, the companies announced that they were permanently abandoning the project. The Energy Commission sees this as a vindication of their energy forecasting and energy conservation function.

Proposed Legislation:

Some one hundred energy bills have been introduced into the legislature in the last three months. The Commission cannot sponsor all significant bills because sponsorship is extremely time-consuming and its legislative staff is limited.

A bill sponsored by the Commission, requiring mandatory retrofit of a home for conservation measures upon sale of the home, has been introduced in the Assembly. AB 781 (last year's AB 3046) would require that the seller install six low-cost conservation measures in the home before selling it: ceiling insulation, weather stripping, caulking of external cracks, external

water heater insulation blanket, low flow shower heads, and insulation of heating and cooling ducts.

AB 781 has a built-in three-year waiting period before the conservation measures become mandatory. In this period, those who implement the conservation measures would receive both federal and State tax credits.

This controversial bill finds its greatest opposition in the California Association of Realtors, who protest the extra financial burden on the sale of the home and also the extra paperwork that will result.

At the federal level, the Commission is sponsoring an amendment to the Federal Fuel Use Act which prohibits usage of natural gas in new power plants. The amendment would exempt California from the provisions of this Act.

Future Actions:

The Commission is currently drafting bills which concern action that must be taken in the next two years. One would give the Commission statutory authority to provide financial incentives (e.g., grants, loans or loan guarantees) to private concerns or to local government to develop a variety of alternative energy sources, e.g. wind energy, biomass alcohol fuel production (biomass is the use of waste products, usually agricultural waste, to generate electricity).

Another bill would give the Commission greater authority in the transportation sector. The bill would authorize the Commission to monitor and forecast transportation usage and demand with the goal of decreasing energy usage (as is now done with electricity and petroleum).

The Commission is also drafting a bill providing for reimbursement of local agencies to monitor compliance with power plant siting decisions. The bill would require the utility company to pay for the local government's monitoring services.

CALIFORNIA HORSE RACING BOARD

Chairman: Nathaniel Colley
(916)322-9228

The California Horse Racing Board is an independent regulatory Board consisting of five members appointed by the Governor. In order to qualify for Board membership an individual or his/her spouse or dependent cannot hold a financial interest or management position in a horse racing track. An individual is also excluded from Board membership if he/she has an interest in a business which conducts parimutuel horse racing or in a management or concession contract with any business entity which conducts parimutuel horse racing. Horse owners and breeders, however, are not barred from Board membership, and the Legislature has declared that Board representation by these groups is in the public interest. The Board regulates by licensing horse racing tracks, and allocating racing dates. The Board also has regulatory power over wagering, horse care and "over all persons or things having to do with the operation" or horse racing meetings. As with the Athletic Commission, this Board is not subject to Administrative Procedure Act notice, discovery and hearing requirements, and may regulate with a freer hand than other agencies.

Major Projects:

The Board is currently in the process of allocating racing dates for 1982, '83 and '84. This is one of the Board's most important regulatory functions. The process begins by surveying licensed racetracks to see if improvements can be made over schedules set in previous years. The Board will then discuss these findings and formulate tentative racing schedules. Racetrack operators are then allowed to go before the Board and voice objections to the date allocations. The Board considers these objections when reaching their final decision. This allocation function, if done without State authority, would be a *per se* antitrust violation.

At the Board's January, 1981 meeting, it deferred discussion of date allocations for 120 days.

Another important area of Board involvement deals with the use of drugs on racehorses. The Board has recently proposed regulations that would strictly control the amounts and types of drugs administered to horses. These regulations, however, were rejected by the Office of Administrative Law. The O.A.L. contended that conditions were insufficient to warrant a change. The Board, rather than contesting the O.A.L. substantive rejection as beyond the Office's authority, is now attempting to reformulate the regulations in an attempt to make them acceptable to the O.A.L.

Recent Meetings:

The Board met on January 28, 1981. At that meeting the Board approved futures wagering at Santa Anita. [Futures wagering allows the bettor to go to the track the day before a race and place a bet.] Such bets are placed by using computerized equipment similar to automatic bank tellers. The futures wagering system is being used on an experimental basis for the first time in California.

The Board also discussed standards for horsemen's accommodations at the January 28th meeting. The Board is considering setting minimum requirements for stable space, kitchen facilities and sleeping areas.

Another item on the agenda dealt with charity distributions. Currently part of the money wagered at horse races goes to different charities. The Board would like to see a portion of these funds distributed to charities for horsemen.

Routine Business:

Future meetings will explore horsemen's accommodations, evaluate further future wagering based on the Santa Anita experience, further allocate horseracing dates for 1981-1983, and resubmit drug-abuse-to-horse regulations to the O.A.L.

NEW MOTOR VEHICLE BOARD

Counsel: Boron Chertkov

The New Motor Vehicle Board was created in 1967 for the purpose of licensing new automobile retail dealerships and reviewing disciplinary actions taken by the Department of Motor Vehicles against dealers. The Board consists of four new motor vehicle dealers and five public members, all appointed by the Governor for four year terms. Five members constitute a quorum.

In 1973 the Automobile Franchise Act expanded the Board's powers to include regulation of the establishment of new dealerships, relocation of existing dealerships and manufacturer termination of franchises. The Act was intended to avoid "undue control" of new motor vehicle dealers by the vehicle manufacturer or distributor and to insure that dealers fulfill their franchise obligations and provide acceptable consumer service.

Major Activity:

Typical Board meeting agenda items include the executive secretary's report, discussion of accusations and petitions challenging the activities or practices of new motor vehicle dealers, an update on the status of appeals and protests against new or relocating dealers, and executive non-public sessions to deliberate upon the merits of the protests or upon the proposed decisions by an administrative law judge. The meeting usually concludes with announcement of the Board's decisions and tentative scheduling of the next meeting.

Regulation of new dealers entering the market or relocation of existing dealerships is achieved by a notice, protest, and hearing process. Essentially, anytime a franchisor plans to move a franchise more than one mile from its existing site or intends to establish a new franchise, he must notify the Board and each franchisee carrying the same line-make within a ten mile radius. Any franchisee in this relevant market area of 314 square miles may file a protest with the Board within 15 days. In effect, the franchisee need say no more than "I object." The Board then notifies the franchisor of the protest and the franchisor may not proceed to establish or relocate the proposed dealership pending a hearing by the Board. The hearing is generally to be held within 60 days but continuances may be granted for good cause. When the matter is referred by the Board to an administrative law judge or other hearing officer, no statutory time limit is imposed. The Board may further delay the approval process by requesting additional evidence. When an administrative law judge is consulted, his proposed decision is usually adopted, but the Board may reach an independent decision.

In 1980, approximately 170 notices of intent to establish or relocate dealerships were filed. Sixty notices announcing franchise cancellation or modification were filed. Twenty-five protests were filed. How many of these protests were against proposed franchise terminations and how many were against opening new business sites is unclear because the Board's minutes fail to distinguish the bases for the protests. The Board made approximately 27 decisions.

A survey of recent Board decisions indicate it is rare that the Board permanently enjoins establishment of a new franchise or relocation of an existing one. However, one protest took one month until a decision was reached, the delay for another extended to 4 months. The issue of delay and the right of the Board to preclude site changes or new dealerships without hearing (pending a hearing) has been a major issue of concern to applicants and to the Board.

This Board contends it may modify, replace, enter into, relocate, terminate or refuse to renew a franchise pending a hearing. Failure to comply can mean suspension or revocation of a license to do business. In one case where the delay reached nine months, the petitioner sued to challenge the law. A three-judge District Court held that the due process clause did mandate a prior hearing of some sort. However, the Supreme Court reversed in *N.M.V.B.* vs. *Orrin W. Fox Co.*, 439 U.S. 96 (1978). The majority refused to characterize the notice to not open a dealership pending a hearing as a temporary injunction. Thus, the showing normally necessary for issuance of a preliminary injunction was not required. Justice Stevens in dissent, suggested that since 99% of the protesting franchisees do not prevail (two-thirds of the protests through 1978 were abandoned prior to any hearing), their primary object is simply to delay their competitors from setting up business.

The Board has proposed one legislative change, Assembly Bill No. 361 (Deddeh) introduced on January 28, 1981, which would require license expiration on December 31st of each year and yearly license renewals. There is currently no license expiration provision.

Future Meetings:

The Board is required to meet at least twice a year and met eight times in 1980. The frequency of the meetings fluctuates depending on the number of protests pursued and the general workload of the Board. The Board has no major rule changes before it, but is focusing on individual petitions and protests case by case.

BOARD OF OSTEOPATHIC EXAMINERS

Executive Secretary:
Gareth T. Williams
(916)322-4306

The Board of Osteopathic Examiners was created by an initiative measure approved by the citizens of California on December 7, 1922. The Board is charged with the duties of licensing Osteopathic Physicians (DO's) and medical corporations; administering its examination; approving schools and colleges of osteopathic medicine (including intern and resident training); and enforcing professional standards by disciplining its licentiates. The Board consists of five licensed osteopathic physicians.

Major Projects:

The major projects of the Board are the continuing activities of test administration and investigation of consumer complaints.

The Board meets 6 times each year and the agendas for these meetings are fairly routine. The examination is offered three times a year. In order to qualify for the examination a candidate must have graduated from one of 14 Board approved educational institutions, and successfully completed the required post-graduate work in Board approved hospitals.

The Board enforces mandatory continuing educational requirements and requires each licentiate to complete 150 hours of education every 3 years. Lastly, the Board requires each licentiate to maintain a valid CPR certificate.

The Board practices partial reciprocity with licensed DO's from other states, only requiring successful completion of the oral and practical examination if the reciprocity candidate achieved a satisfactorily high score on the national written exam.

The Board has a small license population of approximately 1,200 DO's of which 425 practice in California. In 1980 the Board eived 20 consumer complaints. Three complaints alleging excessive fees were ruled non-jurisdictional. Of the remaining 17 complaints three resulted in revocation and three in suspension. Data on the length of the revocations and suspensions was not immediately available. The Board employs its own attorney but contracts with the Department of Consumer Affairs, Division of Investigation Services to perform required investigatory services.

A related topic which might occupy the attention of the Board in the near future is the question of fining capability. Presently, the Board does not have any fining capability. Executive Secretary Williams told us that he is interested in augmenting the Boards disciplinary authority to provide for the levy of fines.

Future Activities:

Non-routine business that the Board will soon confront is the AB 1111 review process and the issue of public members.

The Board's review plan has been approved by OAL and provides for three public hearings. It is the intent of Executive Secretary Williams to schedule the AB 1111 hearings so that they coincide with regularly scheduled Board meetings. The Board is preparing the required Issue Papers. The Board's regulations are found in Title 16, Chapter 16 of the Administrative Code.

Presently, the Board does not have any public members. The Board of Osteopathic Examiners may be the only "board" in State government that does not have public members. Assemblymen Rosenthal is currently sponsoring a bill that would add two public members to the Board, increasing the Board to seven members.

Executive Secretary Williams told us that the Board is opposed to the Rosenthal measure (no bill number has yet been assigned). The Board does not oppose the addition of public members to the Board but objects to the method by which Rosenthal is doing it. The Board believes that because it was created by initiative any amendment to the Osteopathic Act should be by means of initiative. The Board is attempting to persuade Rosenthal to introduce a constitutional amendment that would add two public members to the Board. The Board would support such an amendment.

PUBLIC UTILITIES COMMISSION

Executive Director: Joseph Bodovitz

The California Public Utilities Commission is an administrative agency exercising both legislative and judicial powers. Its function is to regulate certain privately owned utilities while ensuring the public receives adequate service at rates which are just and reasonable. The PUC has jurisdiction over intra-state gas, electric, telephone, telegraph, heat and water carriers, as well as common carriers by rail of passengers and freight.

The Commission consists of 5 members appointed by the Governor, with the consent of the Senate, for terms of 6 years. Recently, Governor Brown has filled two vacancies on the Commission by appointing former Assemblyman Victor Calvo (D-Mountain View) and Priscilla Grew, Director of the Governor's Department of Conservation since 1977. Both oppose nuclear energy and played key roles in halting construction of San Diego Gas and Electric's Sun Desert nuclear power plant. Both appointees to the $51,468 a year jobs have been characterized as "anti-business," and a bitter Senate battle is expected over their confirmation.

Major Projects:

Among the major projects of the PUC are the promotion of energy efficiency and conservation, meeting California's future energy and water needs, and insuring the availability of adequate funds for the eventual decommissioning of nuclear power plants.

Describing conservation as "the most important task facing utilities today," the PUC set Southern California Edison's (SoCal) 1981 conservation budget at $32,702,000. This figure is over twice the level set in the company's last general rate case two years ago. However, if SoCal fails to achieve a specified level of gas savings (60.6 billion cubic feet) by the end of 1981, the company will be penalized through a rate reduction of $1 million for each 1.3 billion cubic feet (BcF) it falls short. If, on the other hand, SoCal achieves savings in excess of 63.7 BcF, it will be rewarded by $1 million for each 1.3 BcF by which it exceeds that goal. The maximum reward or penalty was limited to $5 million. In making its decision, the PUC noted that the failure to conserve is very costly; and although traditionally the ratepayer has borne that cost, henceforth shareholders will also be shouldering some of the costs associated with the failure to conserve.

After nearly a year of hearings and investigation, the PUC adopted the first phase of an extensive program for utility financing of energy efficiency improvement for California residences. The Zero Inter est Program (ZIP) authorized Pacific Gas and Electric Company (PG&E) to provide loans at zero interest for such improved energy efficiency measures as attic, wall and floor insulation, storm doors and window caulking and weatherstripping. The loans are to be repaid through utility bills beginning on June 30 of the year following the year in which the loan is approved. Phase I will be initiated in PG&E's San Joaquin Division where 14 percent of the company's 3.3 million electric customers and 10 percent of its 2.7 million natural gas customers reside. $8.8 million in increases in gas rates and $1.2 million in electric rate increases will finance Phase I of ZIP.

Eventually, it is hoped ZIP will be instituted statewide. For the present, however, the PUC's goals are limited to the expansion of the program throughout the rest of PG&E's service territory. Public hearings on this proposal, Phase II, will begin on April 6, 1981, in San Francisco.

According to PUC President John B. Bryson, ZIP is "the most sweeping program for utility investment in energy conservation in the country." It is expected to "generate new supplies of gas and electricity for California at lower cost than by any alternative means." The improvements in efficiency the program contemplates, Bryson said, "will result in making available gas at ⅓ the price of new supplies from conventional facilities and electricity at about 29% of the cost of supplies from new power plants . . . The result will be reduced dependence on vulnerable imported fuels, less need for costly new power plants, and lower utility bills than would otherwise exist."

Bryson anticipates the financing program will be particularly appealing to the individual homeowner, especially when the state's recently enacted 40% energy conservation tax credit is also taken into account. According to PUC calculations, the combination of the tax credit and the reductions in utility bills each month, "will generally exceed the monthly principal repayment obligations for persons installing conservation measures. Thus, participants will have no out-of-pocket costs at the outset, and savings through utility bills and tax credits from that day forward," said Bryson. Moreover, with the option of selecting a more generous repayment plan, landlords were provided an additional incentive for participating in the program.

A recent order which illustrates the PUC's policy of encouraging the development of alternative energy sources is the grant of a $1.6 million general rate increase to SDG&E to finance first year costs of solar demonstration programs.

Recent Meetings:

In other recent action, the PUC ordered a formal investigation to determine the best way to ensure that money is available to pay for the eventual decommissioning of nuclear power plants in California. Recognizing that nuclear power plants will require decommissioning at the conclusion of their useful life (estimated at 30 years or more) in order to protect the public from the hazards of radioactivity that will remain long afterwards, the PUC order required the careful consideration of alternative methods of ensuring that future decommissioning will be adequately and equitably funded. Presently, decommissioning costs are depreciated, but utilities are not required to set aside any specific monies. Estimates of the costs of decommissioning one plant exceed $100 million, which current technology would accomplish in one of two ways: either by "entombment" — covering the plant and equipment with concrete or other materials, or by dismantling the plant and removing all radioactive materials.

As of January 1, persons disabled by multiple sclerosis began receiving additional winter lifeline allowances for gas heating. Customers dependent upon life support equipment, as well as paraplegics and quadriplegics, have already been receiving such allowances in consideration of their greater heating and cooling needs.

The PUC has withdrawn its own motion to require energy utilities to place a "label" or "tag" in all their advertising so as to inform the public whether the cost of the ad was to be financed by ratepayers or shareholders. This prospective action raised

constitutional questions which the PUC has failed to address. Instead, the staff will prepare a pamphlet or brochure explaining the Commission's policy on advertising expenses.

In response to legislation signed in September, 1979, which added Section 2831 to the Public Utilities Code, the PUC on January 21, 1981, ordered California telephone companies to provide the deaf with 90,000 free telecommunications devices. The companies are required to report to the PUC by May 20 on the devices to be provided, the methods for their distribution, and administration of the fund which will provide the free service.

Future Meetings:

In future proceedings, the PUC will be scrutinizing the needs of PG&E in meeting the future energy needs of its service territory. While making some initial comments on the plan, however, PUC President Bryson stated the Plan "is significant new evidence of a quiet revolution in the way utilities plan to meet future energy needs." While encouraged by PG&E's plans to turn to "a wider array of energy sources such as geothermal, small scale hydro, wind and cogeneration — and [to] vastly increase the efficiency of energy use," Bryson expressed concern, however, about the deferral of certain geothermal and cogeneration projects which were in a previous plan. Nevertheless, noting that PG&E is the nation's largest investor-owned gas and electric company, Bryson anticipated "its path breaking decision to rely on energy efficiency and alternative sources will have widespread influence throughout the country."

STATE BAR OF CALIFORNIA

President: William Winke
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Article VI section 9 of the California Constitution created the State Bar of California as a public corporation and required that everyone admitted to practice law be a member of the State Bar. The State Bar Act designates the Board of Governors to run the Bar. The Board of Governors consists of 22 members, 16 of whom are licensed attorneys elected from regional districts and 6 public members who are appointed by the Governor and confirmed by the Senate and whose terms expire at the end of 1982. The State Bar establishes the rules and regulations for admission to practice law. The Board of Governors promulgated the Rules of Professional Conduct which were approved by the Supreme Court. The Board has six standing committees, one of which is charged with disciplining lawyers who violate its rules and regulations. An examining Committee consisting of at least two public members is in charge of drafting and administrating the State Bar entrance examination. The Board of Governors performs a myriad of other functions from establishing broad State Bar policy and legislative programs to publishing the monthly California State Bar Journal. The Journal lists many decisions of the Board as well as all disciplinary actions.

Major Projects:

The Board of Governors is presently trying to improve the quality of legal services and the general competency of attorneys. There are presently two proposals before the Bar. The voluntary peer-assistance program and a voluntary minimum standard for continuing legal education. The peer-assistance program calls for attorneys to help each other on a voluntary basis with competing related problems stemming from poorly managed law practices, emotional conflict, alcohol abuse, or lack of specific skills. The second proposal would set a voluntary standard of 60 hours of continuing legal education every five years for California attorneys. As part of a seven-year pilot project on the legal specialty certification program, the State Bar will be holding an examination for a family law certification.

The Board of Governors has also been active in a mandatory arbitration program of attorney-client fee disputes that became effective by legislation in 1979. The Board created a new staff position of fee arbitration coordinator to oversee the program and approved their 32nd county arbitration program in Fresno.

The Board of Governors has started a major effort to determine the scope of problems facing the courts and methods of solving them. The Board created a 13 member standing committee to look into such areas as court efficiency, overcrowded court dockets and delay, and possible sources of additional funding for State courts.

The Board has also named a new judicial review panel which is continuing to assess and present recommendations for all nominations to the bench. They have made recommendations for over 250 potential appointees and with the prospect of two new Supreme Court justices, this commission should be active.

Recent Meetings:

In January the State Bar announced its decision on the Monterey Committee in which strong consideration was given to the institution of a volunteer bar and of limiting the powers of the unified bar strictly to areas of admission and discipline. The Bar has come under recent attack for its mushrooming budget (11 million dollars) and its increasing mandatory dues ($130 for a 3 year member). The California State Legislature created a Legislative Oversight Committee to examine the activities of the Bar, which has been completed. After 18 months, an intensive investigation by the Monetary Committee concluded that the State Bar should remain unified and continue the programs it has been pursuing for many years.

On a tie vote of 10-10, the Board of Governors defeated a proposal to support an economic boycott of 8 states that have not ratified the equal rights amendment. The ABA's annual meeting is in New Orleans, Louisiana, a state that has not ratified. The Board did support Senate Bill 2845 which would permit an income tax reduction for legal services similar to that now permitted for medical expenses. The Board also amended the Rules regulating admission to practice law in California to establish discovery procedures for bar-applicant moral-character investigations. In addition, the Board is proposing an amendment to the Code of Civil Procedure to allow electronic recording and video tape-recording of depositions. The Board has also agreed to authorize funds to keep the Prisoners Legal Assistance Program afloat after the federal government eliminated its block funds. The program provides civil legal services to inmates in two California prisons.

Routine Business:

The Board of Governors approved an $11 million budget, $8.5 million which now comes from membership fees. They also established a 50% late payment penalty fee on State Bar dues which will set 1981 fees at $75 for lawyers in the first three years of practice and at $130 for those of 3 years or more.

Since the new year the Board has disbarred 3 members and suspended or put on probation 8 members. There have been comments by Bar members that the disciplinary procedures do not effectively deter gross incompetence.

California Supreme Court Decisions

Drawn from a survey of California cases over the past eight months, the following appellate decisions may have generalized impact or precedential consequences on the California regulatory process.

Carsten v. Psychology Examining Committee, 27 Cal. 3d 793 (September 5, 1980).

Plaintiff Arlene Carsten was appointed as a public member of the Psychology Examining Committee (PEC) of the Board of Medical Quality Assurance by Governor Brown in 1976. In 1977, over Carsten's dissent, the PEC adopted a rule which changed the required grade of a 75% raw score on the examination to a minimum score based on a national curve. After the 1977 change by the PEC, Carsten petitioned the Court for a writ of mandate compelling a minimum 75% raw score to obtain a license (See PEC Summary *Supra*). The PEC demurred and the trial court sustained the demurrer without leave.

The California Supreme Court, in a 4 to 3 decision, affirmed the dismissal order of the trial court. The Court ruled that the plaintiff lacked standing to seek mandate relief. Although Carsten was a board member, she was not "beneficially interested", as required by California Code of Civil Procedure § 1086. The Court held this requires some special interest to be served or some particular right to be preserved or protected over and above the interest the party holds in common with the public at large. The Court held that since Carsten was neither seeking a psychology license nor subject to loss of a license, she was not a "beneficially interested" person under § 1086. Nor did her status as a Board member carry any weight.

Carsten contended that in addition to being a board member she was "benefi- interested" as a taxpayer. The Court ruled, however, that "her interest in the subject matter was piqued by service on the board, not by virtue of the neutrality of citizenship. The suit was brought in the former not the latter capacity. The law is replete with examples of forfeiture of some rights available to others by virtue of acceptance of public service."

The Court noted that Carsten has filed 3 law suits against the PEC and stated "the handwriting is on the wall: If petitioner were to prevail, Courts will be asked constantly to resolve internal Board conflicts over licensing examination procedures and if that were permitted, the utility of administrative boards — unless they always achieve unanimity — would face an untimely demise. We choose to avoid taking, as requested, a giant step toward immobilizing the administrative process in California, and in time rendering it impotent and chaotic."

Richardson, Bird and Tobriner dissented.

Glen D. Ramirez v. State Bar, 28 Cal. 3 d 402, (December 19, 1980).

Attorney Ramirez represented the Terrys, farmers/cattle raisers who were the subjects of a foreclosure by a farm credit bank over an alleged $45,000 debt owed to the bank. Attorney Ramirez cross complained and was successful in cancelling the alleged debt and in obtaining an award of $65,000 in damages from the trial court. However, the 3rd District Court of Appeal reversed the judgment, finding prejudicially erroneous instructions by the Court, and that the judgment was not based on substantial evidence.

Ramirez filed another action in the Terry's behalf in Federal District Court against the bank and the 3 judges of the Court of Appeal, alleging violation of civil rights under the Civil Rights Act of 1863. In his reply brief, Attorney Ramirez stated that the 3 California justices had acted "unlawfully" and "illegally" in reversing the Terrys' trial court judgment. The attorney implied that the justices had improperly favored the bank and stated "Money is King, and some judges feel they are there to see that it doesn't lose." Finally, Attorney Ramirez referred to an alleged "invidious alliance" between the judges and the bank.

While the Federal appeal was pending, the California State Bar commenced a disciplinary investigation and attorney Ramirez wrote a letter to the 3 justices apologizing and attempting to explain his statements. After the federal dismissal of the Ramirez complaint on behalf of the Terrys in federal court, Ramirez applied for certiorari to the United States Supreme Court and implied that the unblemished records of the judges of the Court of Appeals who had reversed the trial court decision in the case were "undeserved."

As a result of these further statements, the State Bar instituted disciplinary proceedings. The disciplinary board found that Ramirez had violated his oath by "falsely maligning" the 3 appellate court justices and recommended that he be suspended from law practice for one year, suspension to be conditionally stayed after one month. The Supreme Court upheld the decision of the disciplinary board in a 4 to 3 decision. The Court held that the evidence demonstrated that the statements demeaning the justices were made with "reckless disregard for the truth."

Newman, Bird and Tobriner dissented.

Chief Justice Bird in her dissent noted: "I find the sensitivity of the Court to the sensibilities of judges quite touching, but if taken to its logical conclusion rather dangerous. . . . The chilling effect this decision will have on the actions of a lawyer is too high a price to pay for the fragile sensibilities of a judge or justice. Further, it smacks of arrogance to so limit the Bar while we ourselves carry on dialogues which match or exceed what was said here."

Arneson v. Fox, 28 Cal. 3d 440 (January 9, 1981)

In 1975, California Real Estate Broker Arneson entered a nolo contendere plea in Federal District Court for feloneous conspiracy. The indictment charged numerous acts in furtherance of a land fraud connected with the downfall of U.S. Financial Corp. Following the nolo contendere plea by Arneson, the Real Estate Commissioner of California began disciplinary proceedings against him. Following hearings, the Commissioner found that Arneson's federal conviction was "a felony" and a crime involving moral turpitude" which was "substantially related to the qualifications, functions or duties" of a real estate licensee. Arneson sought administrative mandate from the Superior Court. The Superior Court reviewed the administrative record and denied mandate.

Arneson appealed to the Supreme Court contending that a nolo contendere plea cannot be used as an admission of guilt for purposes of administrative discipline. Arneson argued that the applicable deferal rule of criminal procedure states that evidence of a nolo contendere plea cannot be used in any civil or criminal proceeding against the person who made it. The Court held, however, that this prohibition does not refer to the use of the nolo conviction in collateral administrative proceedings, but impliedly leaves the matter to State law. And in Business and Profession Code § 10177b, the Legislature expressly authorized the Realty Commissioner to suspend or revoke a real estate license following entry of a nolo plea or conviction of a felony or a crime involving moral turpitude that is not a felony.

Arneson's contention that the State statute giving punitive weight to a nolo plea was unconstitutional as a denial of due process was rejected by the Court. The Court ruled that no additional Constitutional mandate compels the disciplinary Board to relitigate the issue of guilt. The Court noted that as a final safeguard the Legislature has recently required an Administrative Board to develop written "criteria" to assist it in determining whether there is a requisite special relationship between the acts giving rise to the conviction and the activities of the licensee. Although this criteria had not been formulated for the Arneson case, the

petitioner failed to establish prejudice by its absence.

The Court also ruled that the findings of the Superior Court, in incorporating by reference the Administrative Board findings, met procedural standards. Finally, the Court rejected the substantive argument of Arneson that the indictment pled to did not adequately relate to the functions of the licensee, citing the allegations of dishonesty and fraud in the indictment that Arneson had pled to.

Bird and Newman dissented.

Woods v. Superior Court, Butte County, 28 Cal. 3d 668 (February 13, 1981).

Plaintiffs were ordered to vacate dwellings they had occupied as tenants after the city of oroville declared them dangerous and unfit for habitation. The Department of Social Services denied the tenants relocation funds to move. The plaintiffs petitioned for CCP § 1094.5 Administrative Mandate Relief. The relevance of this holding to California regulatory law involves the interpretation of CCP § 1094.5 governing administrative mandate relief. The Court held that CCP § 1094.5 is the proper means for review of an adjudicatory decision of the Department of Social Services which is alleged to be invalid because it is based upon an invalid regulation. The Court held that "where a statute empowers an administrative agency to adopt regulations, such regulations 'must be consistent, not in conflict with the statute, and reasonably necessary to effectuate its purpose.' " A Court may undertake a reasonably limited scope of review without judicially interfering in administrative discretion via writ of mandate.

The Court added that the judicial function in the setting of a CCP § 1094.5 Administrative mandamus challenge does not nvolve the adequacy of the administrative record. The Court wrote: "invalid regulations need not be applied or enforced in statutory 'fair hearings,' and if they are, judicial review may be invoked by 'administrative mandamus' pursuant to CCP § 1094.5. Furthermore, *interested persons*, who are not entitled to such 'fair hearing' because they are neither applicants for, nor recipients of, public social service benefits, and who otherwise have standing to complain, still may challenge invalid regulations by mandamus pursuant to § 1085, or by action for *declaratory relief* pursuant to § 1060, (Gov. C 11350.)" Hence, while the Court reaffirms in dicta its traditional reluctance to engage in review of rulings on pleadings by prerogative writ prior to final factual determination, it will do so by administrative mandamus or by action for declaratory relief where the issue is one of the legality of the regulation.

Elroy R. Giddens v. State Bar, 28 Cal. 3d 730, (February 20, 1981).

Attorney Giddens had been admitted to the California law practice in 1972. The State Bar received three complaints about his law practice. Two regarding client abandonment and one regarding a misappropriation of $4,000. A 1977 hearing was scheduled, although the State Bar was unable to notify the attorney.

In 1977 the attorney, who had left California in 1975, pled guilty in Texas to a Federal drug conspiracy charge. He requested a hearing postponement on the California Bar hearing until he could be physically present. His request was granted. he attempted to secure leave from prison in order to attend the hearing but was unable to do so. The State Bar granted Attorney Gidden's permission to file written affidavits challenging the oral testimony of his accusers.

The Court held that the resulting State Bar Disbarment Order must be reversed for lack of a fair hearing. The Court ruled that Attorney Giddens must be given an opportunity to be physically present at his hearing to testify and to cross-examine witnesses against him. The Court ruled that in view of the harshness of the punishment recommended, the State Bar's refusal to postpone his hearing until he could personally attend violated his Business and Professions Code § 6085 right to present a defense.

Richardson and Clark dissented.

Andrews v. Agricultural Labor Relations Board, 28 Cal. 3d 781 (March 6, 1981).

In 1975 the Agricultural Labor Relations Board counsel accused certain agricultural growers of unfair labor practices in favoring the Teamsters over the United Farm Workers in a labor organization struggle. The ALRB appointed Armando Menocal as a temporary Administrative law Officer to conduct hearings on the ALRB charges of unfair labor practices against the growers. At that time, Menocal was an attorney in private practice with Public Advocates, Inc., a public interest law firm in San Francisco. The growers first learned of his appointment one hour before the hearing was to begin. The growers sought and were denied time to file an affidavit of prejudice. However, they were allowed to make an oral affidavit. They contended that Public Advocates was involved in various racial cases and was otherwise biased against the growers or in favor of the United Farm Workers.

During ensuing delays, the growers filed written declarations of counsel seeking the disqualification of the ALO. ALO Menocal ruled that sufficient grounds to disqualify him had not been presented and refused to step aside. Menocal filed a decision adverse to the growers. The NLRB issued a final decision essentially adopting the viewpoint of ALO Menocal, without treating the disqualification issue.

The growers petitioned for Appellate Court relief. The Court of Appeals held that the ALO should have disqualified himself. The California Supreme Court granted hearing. It held that the ALO did not err in refusing to disqualify himself. The Court noted that the applicable regulation (20230.4) requires an ALO to disqualify himself only when, in his own opinion, an affidavit setting forth grounds of personal bias or disqualification is sufficient on its face. Contrary to the provision of Code of Civil Procedure 170.6 applying to the Court, a party is not permitted a liberal disqualification right i.e., a discretionary challenge, to an ALO.

The Court held that the political or social outlook of an ALO is irrelevant to prove bias. Likewise, the Court noted that the association of an ALO with a particular law firm was not persuasive evidence of the political or social outlook of the individual attorney. In dicta, the Court denied that a strong opinion on social issues by ALO's is relevant to a determination of possible bias, and noted that "the ALO, like most intelligent citizens, will have at some time reached an opinion on the issue. His is an unavoidable feature of a legal system dependent on human beings rather than robots for dispute resolution."

The Court added that even should the strong political or legal views of an ALO result in an appearance of bias, such appearance is not sufficient grounds for disqualification. Rather, the Court argued, even in the case of a judge the moving party must be able to demonstrate actual concrete bias. The Court held that a different rule is not to be applied to a temporary ALO.

Finally, the Court denied the growers' final contention that bias appeared on the face of the ALO's findings and recommended decision. The Court noted that there is no reason to explore the heart and mind of an ALO when the proper and effective relief is readily available if the reviewing Court concludes that a finding is "unsupported by substantial evidence." Newman concurred separately.

Clark and Richardson dissented. The dissent contended "The appearance of bias . . . is not only a sufficient but a compelling ground for disqualification. Disqualification on the basis that a quasi-judicial officer appears biased is essential to the health and stability of the adjucative process."

CALIFORNIA COURTS OF APPEAL DECISIONS

California Manufacturing Association v. Industrial Welfare Commission, 109 Cal. App. 3d 95 (as modified August 15, 1980).

Before 1972, California's Industrial Welfare Commission had authority to determine the wage and working conditions of women and minors, but did not have that authority over men. In 1972-73, the Legislature extended its powers to include men. In 1979, the California Supreme Court rendered its decision in *California Hotel and Motel Association* regarding the validity of IWC's order pertaining to the public housekeeping industry. The Court required such Industrial Welfare Commission Orders to include an adequate statement of basis i.e., to reflect factual, legal and policy foundations as a part of the order. This case applies the California Supreme Court ruling in the CH&M case to IWC orders regulating wages, hours and employment conditions for the manufacturing industry, for the canning, freezing and preserving industry, for the professional, te;chnical, clerical, mechanical and similar occupations and for the handling of products after harvest.

The plaintiff California Manufacturing Association, representing more than 500 private employers, sought mandate to invalidate these four orders raising six major issues. The Superior Court upheld the IWC orders and denied mandate.

The Court of Appeal affirmed the mandate denial of the Superior Court. In a general analogy to the new Administrative Procedure Act, the IWC is guided by the requirement in Labor Code § 1177 that it submit a *statement of basis* along with each IWC order it issues. The Court defined the following standards in formulating this statement of purpose: (a) The Statement shall reflect factual, legal and policy foundations for the actions taken; (b) It must show the order adopted as reasonably supported by material gathered by or presented to IWC; (c) It must show that it is reasonably related to purposes of the enabling statute.

The Court noted that because the IWC exercises a legislative function in promulgating its orders the Courts necessarily exercise a limited review. A Court will uphold agency action unless it is arbitrary, capricious or lacking in evidentiary support. In the instant case, statements of basis were not defective although they did not contain the IWC's own investigation of working conditions including investigations of the particular problems of each industry separately.

The Association's contention that the statements of basis were fatally defective because they did not show how the orders were "demanded" by the health and welfare of male employees was rejected by the Court. The Court ruled that the primary legislative mandate imposed upon the IWC to now include men required the IWC to make a policy decision to either extend protection to men or to eliminate them for women. The factual burden to demonstrate that prior protections are no longer appropriate for employees in a modern society was on the party contending that conditions had changed. The IWC could justifiably resolve its mandate by extending the terms of its orders to apply to men, particularly given the Federal Civil Rights Act of 1964 requirement of equal treatment for men and women.

The Court also upheld the trial court's invalidation of one IWC order. IWC had declared that climbing and descending more than three flights of stairs could be detrimental to the general health and welfare of employees. This "elevator clause" provision, requiring elevators if more than three flights of stairs are regularly encountered by employees, was invalidated by the trial court based upon an IWC statement of basis which was "speculative" and "did not reflect reasoned decision making." The Court noted that medical thought regarding the benefits of exercise had changed from the 1919 date of the original order as applied to women. Hence, to extend it to men without examining the basis, given changed circumstances, requires an additional statement of basis.

The Court rejected a further association contention that IWC orders were preempted by federal labor policy in the National Labor Relations Act. Likewise, the Court rejected the Association's contention that the State's Occupational Safety and Health Agency has exclusive jurisdiction over these IWC orders. The Court noted that the California Supreme Court has adopted the IWC's interpretation of Labor Code § 1173 and concluded that "IWC retains jurisdiction to regulate working conditions related to the health and safety of employees in the absence of any actual conflict with existing Cal/OSHA regulations or policy."

The Association contended that the IWC failed to prepare or file an environmental impact report. The Court ruled that it was not necessary to consider this argument, since the statute of limitations had passed, barring these contentions. Kaufman dissented.

Sepatis v. Alcoholic Beverage Appeals Board, 110 Cal. App. 3d 93 (October 31, 1980)

Sepatis applied to the Alcoholic Beverage Department for the transfer of an on-sale retail liquor license to a new location in San Francisco's Haight Street area. The ABC has a formula for determining maximum density of liquor establishments in given areas. By the ABC's formula there were already too many bars in the Haight Street area. However, Sepatis intended his bar to be a Victorian type of pub in a renovated Victorian building with snack food and games and other distinguishing features. The ABC Department granted him an on-sale license after finding that his bar would attract persons presently reluctant to enter other ones in the vicinity, and thus would serve the public convenience or necessity. No protests from churches, schools or police had been received. Competing bars appealed to the ABC Appeals Board. The Board reversed the Department's decision, concluding that its findings of public convenience or necessity had not been supported by substantial evidence.

Sepatis appealed from the Board's ruling. The Court reversed the Board's decision allowing Sepatis his relocation. Applicable Business and Professions Code § 23958 provides that the Department may deny an application for a license if its issuance will tend to create a law enforcement problem or if its issuance will result or add to an undue concentration of licensees and an applicant fails to show that public convenience would be served by issuance. The Court assumed that the Legislature intended by the phrase "public convenience or necessity" to invoke criteria different from those utilized in determining "undue concentration." Hence, the Department may find "public convenience and necessity" even where there is "undue concentration" if other factors counterbalance.

The Court acknowledged the major difficulty in interpreting the statute and the Department's rules since the term "public convenience and necessity" as used above, is nowhere defined. The Court declined to provide relevant criteria, but upheld the Department granting of the license on the narrow grounds that substantial evidence supported the Department's findings.

San Francisco Bay Area Rapid Transit District v. Division of Occupational Safety and Health, 111 Cal. App. 3d 362 (December 12, 1980).

In 1979, a fire occurred aboard one of the BART trains in San Francisco. The State's Public Utilities Commission conducted hearings and issued safety orders as a result. Independently, California's Division of Occupational Safety and Health conducted its own investigation and issued its own special order requiring that outlets for fire hoses be extended into a

gallery between tunnels within the tube where the fire had occurred. The BART unsuccessfully contested the Division's order administratively and then sought mandate relief.

The mandate relief was issued directing the Division to set aside its order for lack of jurisdiction. The Court held that Labor Code § 6800b confers jurisdiction on the Division of Occupational Safety and Health only over employees of electric interurban railroads who are "employed in the generation, transmission or distribution of electric energy or in shops devoted to the repair of railroad equipment or in any non-public utility operation of the railroads." Since the Division's order for safety equipment in BART's transbay tube did not involve any of these situations, it lacked the authority to act. The Court noted, however, that the PUC retained full authority to issue orders covering the fire hose outlets in BART's transbay tube, as the regulator of intrastate rail transport.

Jones v. Orange County Superior Court, 114 Cal. App. 3d 725 (March 13, 1981).

The California Horse Racing Board, after an Administrative Hearing suspended petitioner Jones' horsetrainer's license for six months for administering a prescribed drug to a horse and for having that prescribed drug in his possession. Jones sought administrative mandate relief under Code of Civil Procedure § 1094.5. The Superior Court denied his petition. The Court of Appeal affirmed the mandate denial.

The Appeal Court held that the California Horseracing Board was a Board of constitutional origin for purposes of administrative mandate review. The Trial Court had properly applied the "substantial evidence" test rather than an "independent judgment" test in weighing the suspension of Jones by the California Horseracing Board.

Further, the Appeal Court rejected Jones' contention that the initial hearing was improperly conducted before a referee who was an employee of the Horseracing Board. The Appeal Court contended that it was the Horseracing Board, not the referee, who made the decision. The referee merely wrote a proposed decision which the Board was free to accept or reject. It should be noted that the California Horseracing Board, as with the California Athletic Commission and several other regulatory bodies, may not be subject to the Administrative Procedure Act requirements in adjucative hearings for an independent hearing examiner from the Office of Hearing Examiners.

ATTORNEY GENERAL OPINIONS

Opinion # 80-321 (October 2, 1980).

The Board of Dental Examiners, a part of the Department of Consumer Affairs under the State and Consumer Services Agency, requested an opinion of the California Attorney General as follows: (1) What legal steps are necessary for the Board to expend the State Dentistry Fund and the State Dental Auxiliary Fund; (2) What authority does the Director of the Department of Finance, the Secretary of State and Consumer Services and the Director of the Department of Consumer Affairs have over the budget of the Board of Dental Examiners?

The Attorney General Opinion concluded that the Director of Finance has the authority to grant an initial approval to audit and to revise, alter or modify the budget of the Board of Dental Examiners and to authorize deficiency spending over and above its limits. The State and Consumer Services Agency and its Department of Consumer Affairs have no legal authority to approve or control the budget of the Board of Dental Examiners. The only impact they might have on the budget of the Board of Dental Examiners would be in the provision or non provision of their ancillary services to the Board of Dental Examiners based on the Department of Consumer Affairs own budgetary requests.

In its important detail, the Attorney General noted that the Secretary of State and Consumer Services and the Department of Consumer Affairs under it serve as an important conduit "through which the budgets of the departments, offices of other units of the agency are formulated. He is responsible for the sound fiscal management of the departments, offices and units he supervises and he developes their long range planning and their annual proposed budgets. His rule, however, does not encompass approving the budgets of the individual Boards within the Department of Consumer Affairs as such. "While the Secretary of State and Consumer Services then, may exercise budgetary authority over each Department, office and unit within the agency, which may apply to Bureau's, it does not include the word Board. Hence, it is the position of the Attorney General that Boards are independent regulatory bodies not subject to direct executive control through the Secretary of State and Consumer Services on budgetary matters."

Although the Department of Consumer Affairs may control the general budget of the Department of Consumer Affairs, it does not have control over the several special funds in the professions and vocations fund that are kept in separate accounts. Hence, the Attorney General views the above language as a grant of power to the Department of Consumer Affairs limited to the Consumer Affairs fund, used for the benefit of all the Boards comprising the Department and not to the distinct professions and vocations fund in which the Board's funds are placed for housekeeping accounting purposes. Since many of the Boards are "special fund" boards, and are funded by fees and license monies generated from the regulation of their respective trades, the opinion means that the Department of Consumer Affairs authority over these special funds is extremely limited and is confined to the very limited administration of the Consumer Affairs fund, involving very few of the budgets of the Boards under the aegis of the Department of Consumer Affairs. The AG concludes "The Director of the Department of Consumer Affairs has general authority over the Boards and Bureaus comprising the Department of Consumer Affairs which he controls, but that does not dilute the ability of each of the component Boards and Bureaus to function *independently* in fulfilling its statutory charge. As we said in 62 OPS Cal AG 258 *supra*, "it is . . . apparent that the Director does not have absolute authority to make all final decisions with respect to the functions of the various Boards comprising his Department." . . . "The Legislature has declared that 'each of the Boards comprising the Department exists as a separate unit.' And we deem the Legislature to have ensured this independence by maintaining each of the Board's funds in a separate account, and by requiring the consent of each Board for its money to be transmitted to the treasury through the Department instead of directly by its Secretary.

"Control over the budgets of the individual Boards is *not* one of the enumerative powers given to the Director in § 310 . . . we conclude that he lacks legal authority to approve or otherwise control their budgets other than impressing the pro rata assessment of the funds of the various Boards for funding the Consumer Affairs fund. The Director of Consumer Affairs true budgetary concern is thus with the Consumer Affairs fund, since it funds the necessary administrative expenses of the Department of Consumer Affairs as a whole as well as its general consumer programs undertaken pursuant to the Director's powers and duties enumerated in § 310."

GENERAL LEGISLATION

Because this is the inaugural edition of the **California Regulatory Law Reporter** a few prefatory remarks are in order. This Legislation section will appear in every issue of the **Reporter**. The purpose of this section is to introduce and track the leading legislation of the current 1981-82 Legislative Section. It is not the intent of the editors to follow every piece of legislation, but only those bills that most impact State regulatory agencies, regulated businesses, and the California consumer. With each successive issue of the **Reporter** more legislation will be introduced and the history of already-introduced legislation will be updated. Specific bills relevant to the narrow concerns of an individual agency may be mentioned in the agency report *supra*. These bills represent general regulatory policy changes, or presage a major impact in a regulation area.

The **Reporter** welcomes response and comment from its readers. If we have unfairly represented or improperly neglected to introduce a certain bill, please contact us.

***Sunset** (AB 24 Johnson; AB 54 Filante, Baker, D. Brown, Frizzelle, Hallet, Herger, Ivers, Kelley, Leonard, Rogers, Sebastiani, Statham, L. Stirling, and Wright (co-authors Senators Craven, Davis, Doolittle, Nelsen, O'Keefe, Rains, Schmitz and Speraro); SB 26 Campbell).

Sunset legislation is not new to California. In both the 1977-1978 and 1979-1980 Legislative Sessions then Speaker McCarthy introduced Sunset bills. Neither bill survived. This year Sunset legislation might receive a more favorable response. With the changing political climate and the cry of "over regulation" ringing through the Capital, the Legislature might be moved to approve Sunset this session.

The three Sunset bills of this session are nearly identical. All three proposed bills state:

"The Legislature finds and declares that state government actions have produced a substantial increase in the number of agencies, growth of programs, and proliferation of rules and regulations and that many bureaucracies have developed without sufficient oversight, regulatory accountability, or a system of checks and balances. The Legislature further finds and declares that by establishing a comprehensive system for the termination, continuation, or reestablishment of such agencies, it will be in a better position to evaluate the need for the continued existence of present and future regulatory bodies."

The Sunset provisions of each bill are identical. Each bill abolishes existing state regulatory agencies as of a prescribed date unless, not less than 90 days prior to such date, the Legislature enacts specific legislation extending the life of the agency for a period not to exceed five years.

New agencies created after a specific date (either January 1, 1980 or January 1, 1981) are abolished five years after first empowered to exercise their regulatory authority unless, not less than 90 days prior to the five year expiration date, the Legislature extends the life of the agency.

Each bill proposes an expiration timetable for existing agencies. Each timetable covers four years, the only difference is that SB 26 concludes June 30, 1987, while AB 24 and AB 54 conclude June 30, 1988. If the Legislature does not vote to extend the life of the agency, the agency is given until June 30 of the following year to wind up its affairs.

The bills create a joint Legislative Audit Committee, charged with the duty of conducting a performance audit of each agency scheduled for termination at least one year prior to the statutory termination date.

An important feature of the bills is that prior to any vote on termination or continuation, appropriate policy committees of each house must hold public hearings and receive testimony from the public and the subject agency. At these hearings the subject regulatory agency "shall have the burden of demonstrating a public need for the continued operation of its various programs . . ."

Each bill provides criteria which the policy committee must consider when determining if the subject agency has demonstrated a public need for its continued existence. These criteria are identical and include: a review of agency methodology to determine efficiency, a determination of government as the most effective entity to perform the regulatory function, a cost-benefit analysis, the efficiency of the agency's investigation and enforcement of public complaints, and the responsiveness of agency regulation to change in the regulated sector.

All three bills have been referred to the respective committees on governmental organization.

***Legislative Veto** (ACA 2 Johnson; ACA 11 McAlister; SCA 3 Boatwright; SCA 4 Carpenter; SCA 6 Campbell).

Most simply, the "Legislative Veto" is the means by which the Legislature can invalidate regulations of state agencies. These five proposed constitutional amendments are essentially identical and, if approved by a ⅔ vote of both houses and again by the citizens of California, would empower the Legislature by concurrent resolution to invalidate any regulation, in whole or in part, which was duly adopted by any state agency (with limited and specified exclusions).

All five measures provide for the retroactive application of the concurrent resolution veto to all existing regulations.

***Administrative Agencies** (SB 216 Boatwright; SB 257 Rains).

SB 216 amends Section 11346.8 of the Government Code. The bill would prohibit adoption, amendment or repeal of a regulation (with the exception of nonsubstantive or solely grammatical changes) unless the complete text of the proposed regulation is made available to the public at least 15 days prior to the close of the public hearing.

*SB 257 is entitled the Permit Reform Act of 1981. The measure states that because "the Legislature finds and declares that current administrative practices often result in unnecessary and burdensome delays in the process of obtaining permits, licenses, certificates, [and] registrations" it is the intent of the Legislature to create a "system of specific deadlines and procedures designed to expedite the process of obtaining permits and other forms of [agency] authorization."

The proposed law requires that each agency submit a plan to the Office of Permit Assistance in the Office of Planning and Research (OPR) detailing permit processing deadlines and procedures. OPR must approve or disapprove the submitted plans. OPR has the additional responsibility of formulating plans for those agencies whose plans are disapproved.

Interestingly, the proposed act does not provide for sanctions against agencies that violate their new permit processing deadlines and procedures. SB 257 does not contain a "deemed approved" clause.

***Economic Impact Statements** (AB 41 Young)

If approved, AB 41 would require a state agency to prepare an economic impact statement (EIS) when a proposed action to adopt or amend a regulation (with limited and specified exceptions) would result in direct aggregate costs to persons or businesses of $10,000 or more in any one year.

The EIS would be prepared and made available to the public at least 45 days prior to the hearing on the proposed agency action. Notice of preparation of the EIS would be published in the Administrative Code Notice Supplement. The EIS would be updated before final agency action.

AB 41 authorizes a declaratory relief action and states that a regulation may be declared invalid if there is a lack of good faith compliance with EIS requirements. ceeding requirements.

Lastly, the bill requires the Legislative Analyst to review and evaluate the effectiveness of EIS, and report its findings before December 31, 1984.

GENERAL LEGISLATION

***Home Improvement Contracts** (AB 424 Lockyer; ACA 7 Lockyer).

Both measures address the problem of home improvement contracts and mechanics liens. Essentially, both measures would eliminate or reduce the likelihood of a homeowner paying twice for the same home improvement – once to the general contractor and later to the unpaid subcontractor.

Proposed Assembly Constitutional Amendment 7 is a straightforward measure that would prohibit the use of mechanics liens in connection with a home improvement contract.

AB 424 approaches the double loss problem directly. This bill would require a contractor, after receiving payment for a portion of the work performed and prior to receiving further payment, to furnish the owner an unconditional release from the mechanics lien for that portion of the work for which he received payment.

Violation of the release requirement would be a misdemeanor punishable by a fine not to exceed $5,000 and/or imprisonment not to exceed one year.

***Mortgages** (AB 393 Robinson and McAlister)

Because of escalating housing costs and interest rates, the issue of "alternative" mortgages will certainly arise this session. Anticipated bills will include proposals for Variable Interest Rate Mortgages, Renegotiable Rate Mortgages, Shared Appreciation Mortgages and other types of "flexible" mortgages that depart from the traditional 30 year fixed-rate mortgage. Because of the importance of these bills and their technical detail, they will not be discussed now but in more detail in later issues. Only one bill of general application will be discussed here.

AB 393 is a broad disclosure bill requiring specified lending institutions to make the following written disclosures before execution of the loan agreement:

1. The annual percentage rate of interest for each loan.
2. The total required monthly payment including the amounts of property tax, assessments and insurance.
3. Any fee, commission or cost payable by the borrower to secure the loan.
4. An explanation of terms and conditions of the loan which would require repayment, prepayment or penalty payments.

In cases of willful violations of these disclosure provisions, the borrower may recover three times the total of the finance charges imposed and the lender shall be barred from collecting any of the charges.

***Products Liability** (AB 425 McAlister).

AB 425 proposes sweeping changes in the doctrine of products liability and, if successful, would reduce the chances of an injured person to recover damages.

Under existing law a product liability action based upon the doctrine of strict liability in tort may be brought against the seller of the product.

AB 425 would limit the seller's liability to those instances in which:

1. The seller is the manufacturer,
2. The seller knew or should have known of the defect,
3. The seller altered, modified or repaired the product in such a way as to cause the injury,
4. The seller failed to provide adequate warnings, instructions or labels,
5. The seller damaged the product and such damage resulted in injury,
6. The manufacturer is beyond the jurisdiction of the court.

AB 425 further provides that in any action brought on the grounds that the manufacturer is beyond the jurisdiction of the court, the plaintiff must prove by clear and convincing evidence that such is the case.

***Recycling** (SB 4 Rains).

SB 4 is the Beverage Container Re-use and Recycling Act. SB 4 provides that every beverage container (bottle, can, jar, carton or other receptacle which is constructed of metal, glass, plastic or other nondegradable material) sold in this state after April 1, 1983 must have a clearly embossed, stamped or labelled refund value of at least $.05.

The Act defines "beverage" to include beer and other malt beverages, mineral waters, soda water and similar carbonated soft drinks.

The Act provides that any dealer (one who sells such containers directly to consumers) must accept and refund an amount equal to the stamped refund value of all such containers. In turn, a distributor (one who sells such containers to dealers) must accept all such unbroken and stamped containers from a dealer and refund the embossed refund value plus 20% of the refund value.

Furthermore, a distributor must accept all beverage containers from any consumer or dealer that are made of the same material sold by the distributor. In such a case, the distributor must refund the embossed value plus 20% of the same.

The Act provides for a legislative analysis of the Act and its effects on litter, beverage container manufacturers, energy savings through recycling, consumer prices and reduction in solid waste disposal costs.

Lastly, SB 4 states that the Legislature is occupying and pre-empting the field and no other regulations by any public entity shall be permitted.

***Public Utilities Commission** (AB 40 Young)

This bill would require every electrical, gas, sewer system, telephone and water corporation to prepare a credit statement for a subscriber when the subscriber terminates residential service. The statement would set forth the credit information applicable to the subscriber and which is customarily requested by the corporation when deciding whether to require a deposit from a prospective subscriber.

Upon application for commencement of service and reception of a credit reference not older than one year, a corporation shall institute service to a prospective subscriber without requirement of a deposit, if the subscriber meets good credit requirements.

***Consumer Documents** (AB 187 Johnson)

Present law requires that every non-government identification document which purports to be, or might deceive an ordinarily reasonable person into believing it is a government document, have printed at the bottom the words "NOT A GOVERNMENT DOCUMENT."

This measure would require the warning "NOT A GOVERNMENT DOCUMENT" to appear diagonally across the face of the document.

The Act provides for injunctions brought upon the complaint of any citizen and also provides for misdemeanor convictions.

***Others**

The editors would note several other problems that will attract special Legislative attention in 1981. Because of the complexity and controversial nature of these problems, detailed discussion of these bills will be postponed for later publication.

— Air pollution and the closely related problem of vehicle emission inspections will be a hotly contested issue in the current session. California is threatened with an EPA cut-off of approximately $850 million and is under imminent pressure to act (SB 33 Presley; SB 86 and 87 Montoya, AB 356 Bosco; AB 423 Ivers, etc.).

— Insurance reform will be an important issue. AB 96 Harris is a leading measure and proposes the "Insurance Reform Act of 1981." (See also AB 268 McAlister.)

— Consumer credit and finance issues will again be important. SB 107 Foran and SB 140 Maddy may dominate this arena.

— The issue of hazardous waste disposal is difficult, expensive and emotional. Although not yet at the legislative forefront, this issue is generating increasing publicity and concern (AB 69, 70, 71 Young; AB 192 Ryan).