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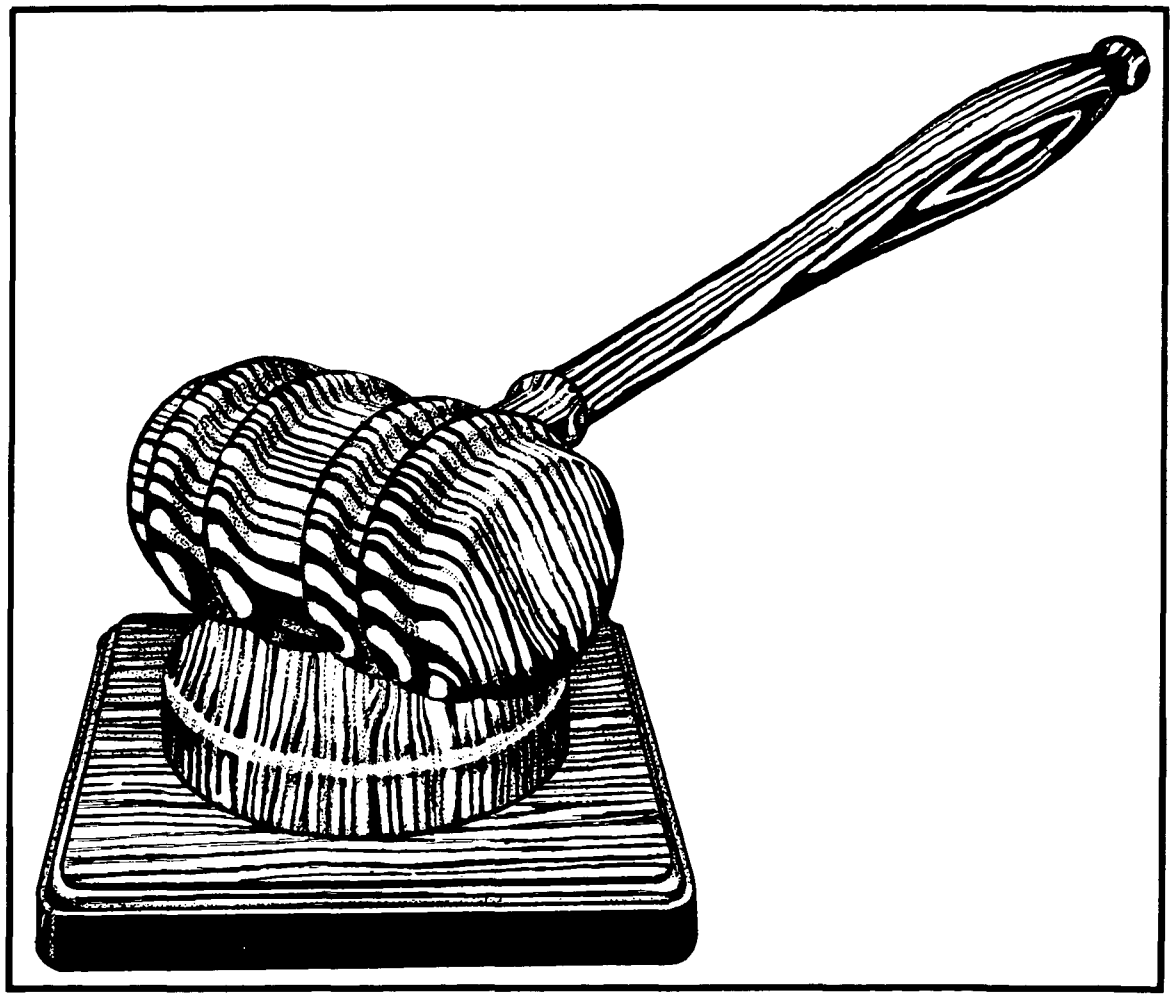

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THE CALIFORNIA Regulatory Law REPORTER

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FEATURE ARTICLE

REGULATING FUNERAL DIRECTORS AND EMBALMERS: WHAT TO PRESERVE

By Elizabeth A. Mulroy

INTRODUCTION: WHY REGULATE

A market exchange economy relies on competition to allocate resources effectively for the benefit of both buyers and sellers. This assumes a market structure in which both buyers and sellers have alternatives, the knowledge to use them, and where there are no artificial barriers to the entry of new competing firms. Buyers can choose among alternative sellers, and sellers may engage in the business of their choice.

Competition affords market participants general protection. Buyers or sellers who make a mistake in 1 transaction can turn to alternatives in the future. Market participants learn by trial and error. However, there are situations where competition, combined with generally available legal remedies, may not adequately protect a buyer who is injured in 1 transaction. In that case, the state's police power may be exercised to inhibit or prevent irreparable harm that could occur from a one transaction error by a consumer. Often, the state's intervention takes the form of licensure. The state is not convinced that possible legal damages, together with the effect of general laws governing commercial transactions, will protect an ignorant buyer from an unscrupulous seller. Thus, it is believed that laws setting standards for entry into some occupations and the policing of performance after entry to excise those who are deficient will insure minimum level of competence by the practitioners of that occupation.[1]

Although problems of fraud and dishonesty, as opposed to competence, may be addressed by criminal prosecution and other non-regulatory mechanisms, they also are deterred by the possibility of loss of license to practice a chosen occupation. And through resort to the administrative process, buyers dissatisfied with the services received from a licensee may have a quick and inexpensive means for redress of their grievances.

Critics of the licensing procedure argue that it often limits the number of practitioners in that occupation by establishing unduly restrictive qualifications. The result is an artificial scarcity of trained personnel. Further, the creation of barriers to entry may result in monopolistic conditions which tend to reduce competition and raise prices, to the detriment of the buyer. Unnecessary red tape creating rules may directly lead to arbitrary business failures, higher prices and fewer alternatives in the marketplace. Finally, and perhaps most important, arbitrary and unreasonable entry standards, unrelated to knowledge, skill, or competence necessary to perform the occupation, may be applied to deny the seller the right to engage in the occupation of his choice.[2]

The licensing powers exercised by state boards are identical to the methods used by a private cartel in obtaining and maintaining monopolistic control over the supply of a product or service to increase profits and eliminate the competition that would reduce profits to a competitive level. To maintain its monopoly, the cartel must be able to control entry into the industry so increased supply will not reduce prices, and control the behavior of the individual members of the cartel in the event 1 member attempts to violate cartel rules. In the case of a state licensing board, as opposed to a private cartel, the rules governing entry into the occupation and the behavior of licensees are designed to protect the public health, safety, morals, or general welfare, and not for the private benefit of the industry.[3]

Since state regulation of entry into an occupation can both promote the public health, safety, and welfare, and at the same time lead to monopoly control, decreased competition, and the inability to engage in a chosen occupation, regulation for the public good must be balanced against the corresponding loss of individual choice. Occupational licensing cannot be justified merely because it tends to promote the public welfare. *Rather, an occupation should be licensed only where the public welfare is seriously jeopardized by the failure to control entry into an occupation, and existing or alternative methods of redress are inadequate.*

The primary stated purpose justifying use of the police power to establish the Board of Funeral Directors and Embalmers in 1929 was to safeguard the public health, safety, and welfare, and to protect the public from deceptive practices and exploitation by unscrupulous and incompetent practitioners. The exact public health and safety reason for licensing funeral directors and embalmers has never been articulated. Instead, it is merely assumed that "clearly, the undertaking and embalming businesses or professions are sufficiently of a public nature so that, under the police power, the legislature may regulate and control them.[4] A secondary purpose was to limit the handling of dead bodies to those trained to discover life in a body thought to be dead, and to detect and disclose to law enforcement authorities any physical indications that a person's death may have been criminally caused.[5]

EMBALMERS — AN ANACHRONISM?

The Funeral Directors and Embalmers Law defines an embalmer as

> one who is duly qualified to disinfect or preserve dead human bodies by the injection or external application of antiseptics, disinfectants, or preservative fluids; to prepare human bodies for transportation which are dead of contagious or infectious diseases; and to use derma surgery or plastic art for restoring mutilated features.[6]

Embalming involves making an incision in the vascular system of the body and injecting, under controlled pressure, preservative chemicals in the arterial system of the remains at the same time the contents of the venous system are removed.

No one may engage in the practice of embalming unless licensed.[7] "Apprentice" embalmers must register with the Board.[8]

To qualify for an embalmers' license, generally an applicant must be at least 18 years of age; a high school graduate; have completed a 2-year apprenticeship in an approved funeral establishment under the supervision of a licensed California embalmer, during which he embalmed at least 100 human dead bodies; have successfully completed a 9-month course in an embalming school approved by the Board[9] and pass an examination.[10] Licenses must be renewed annually.[11]

The Board is now considering a declaratory relief action to declare "unconstitutional" the requirement that an apprentice embalm 100 human dead bodies under the supervision of a licensed California embalmer. The Board feels that limiting the way one obtains necessary competence and excluding those who acquired that competence by other means

may deny equal protection to some apprentices. Alternatively, the Board is considering legislation eliminating the 2-year, 100 body apprenticeship.

The embalmers' examination includes the theory and practice of embalming; anatomy, including histology, embryology and dissection; pathology and bateriology; hygiene, including sanitation and public health; chemistry, including toxicology; restorative art, including plastic surgery and demi-surgery; and the laws, rules, and regulations which pertain to the funeral industry.[12]

The need to license embalmers has traditionally been justified by public health concerns, since it was believed that proper embalming would kill germs and prevent the spread of contagious disease. Embalmers have been licensed in California since 1915. Prior to that, they were required to register with the Department of Public Health.[13]

The public health concerns may have been understandable in the past, when cemeteries were considered breeding grounds for infectious disease (caused by rodents and seepage from graves into the water supply). However, there is considerable doubt as to whether embalming actually does prevent the spread of contagious diseases. The solution is more likely to be found in proper cemetery planning, engineering, construction, and sanitation systems. When such measures were instituted, the spread of infection stopped, not only in the United States and Canada where embalming is common, but also in Western Europe, where embalming is rarely performed.[14]

Even as early as 1909, a Massachusetts court noted that "'no argument' had been made to show that general embalming was necessary to preserve the public health and that the court knew of no such necessity."[15] And a New York court observed, "we cannot refrain from the thought that the act [requiring embalming] was conceived and promulgated in the interests of those then engaged in the undertaking business, and that the relation which the business bears to the general health, morals, and welfare of the state had much less influence upon its originators than the prospective monopoly that could be exercised with the aid of its provisions."[16]

Although there is little question that embalming is desirable when the body is not to be burried until several days after death and refrigeration facilities are unavailable, the need to embalm even those who have died from a highly infectious disease has been questioned by both physicians in private practice and public health officials. The Federal Trade Commission's "review of the evidence suggests that the empirical basis for the public health necessity claimed for embalming is at best dubious"[17] since embalming does not kill all the organisms in the body. This fact was emphasized in a 1951 study entitled "The Isolation of Pathogens from Tissues of Embalmed Human Bodies" performed by Lyle A. Weed, M.D., and Archie H. Baggenstoss, M.D., and published in the American Journal of Clinical Pathology. Many common pathogens, as well as viable tubercle bacilli, were found in 22 out of 23 bodies that had been embalmed for up to 48 hours. The authors found it significant "that the tubercle bacillus was isolated from the tissues of 22 bodies and from several lesions in many of them. The significance is much greater when it is realized that most of the lesions from which these organisms we isolated were not those with a thick fibrotic wall, but were well-vascularized lesions into which embalming fluid should be expected to penetrate, since all the embalming was done by the arterial method."[18] The authors concluded that

> it is thus apparent that emphasis is placed on the aesthetics of embalming, and not on the disinfection of the remains, although in most states the legal requirements pertain primarily to the elimination of contagion. However, apparently no practical studies have been made on tissues from embalmed bodies to indicate that substances or combinations of substances will produce the 'perfect sanitation of remains.'...Since we were able to isolate virulent tubercle bacilli from the tissues of 22 of 23 embalmed bodies in which there was sufficient evidence that viable organisms were present, it would appear that embalming as such, as ordinarily done by the arterial route, does not render the tissues free of contagion in a short time. It would also appear important to re-evaluate the practical value of embalming if it is used to free the body of contagion.
>
> The relationship of such ineffectiveness of embalming to certain aspects of public health is evident.[19]

In her 1959 Doctor of Public Health dissertation, Elizabeth Ives, M.D., head of the Department of Pediatrics at University Hospital, University of Saskatchewan, concluded that there was slight risk of infection from an unembalmed body. In the case of death by infectious disease, embalming is of very doubtful value because tuberculosis, smallpox, anthrax, and tetanus are unaffected by embalming. She reaffirmed these views in 1973.[20]

In 1976, the British Columbia Deputy Minister of Health, Community Health Programs, noted: "It is our view that the process of embalming serves no useful purpose in preventing the transmission of communicable disease. In those few cases where a person dies of a highly infectious disease, a far better procedure would be to wrap and securely seal the body in heavy plastic sheeting before removing it from the room where death occurred."[21]

Although few controlled scientific studies on the effectiveness of embalming or the incidence and effects of microorganisms in the body after death have been performed,[22] Dr. Bruce Dull, Assistant Director for Programs with the U.S. Public Health Service's Center for Disease Control noted "we have yet to see any data indicating that there is a significant public health problem associated with unembalmed or ineffectively embalmed cadavers."[23] In 1976, the City of Vancouver Health Department reached a similar conclusion.[24] Dr. Jesse Carr, Chief of Pathology at the San Francisco General Hospital and Professor of Pathology at the University of California Medical School also believes an unembalmed body poses no health threat.[25]

Nevertheless, there are those who continue to maintain that embalming is essential to protect the public health. A study funded by the National Funeral Directors Association and conducted in 1970 by the Department of Mortuary Science at Wayne State University concluded that unembalmed bodies are a health hazard.[26] A biochemist for 1 of the country's 2 largest manufacturers of embalming products, as well as a group of microbiologists retained by the Embalming Chemical Manufacturers Association, reached similar conclusions.[27] But claims of unembalmed bodies causing serious illness cannot be substantiated.[28] All 3 studies emphasize *the possibility of danger* to the public health if embalming is not performed. There is no evidence presented that the spread of contagious disease is prevented where a body is embalmed. Moreover, those conducting the industry sponsored studies appear to have an interest in arriving at the conclusions they did, while those who have determined that embalming is of no public health value appear disinterested in the outcome of their studies.

The fact that no state requires embalming in all circumstances disputes the public health necessity for embalming. Embalming is only required where special circumstances exist, generally where death occurred from a communicable disease, where the body is to be transported to another state, or where the

body is to be held beyond a specified length of time.[29] California law requires embalming only when the body is to be shipped by common carrier.[30] Embalming is uncommon outside the United States and Canada,[31] and there is no evidence of public health dangers as a result. In fact, embalming was not commonly practiced in this country prior to the Civil War,[32] when it was introduced to preserve the bodies of soldiers killed in the war for shipment home.

In response to the consensus of neutral authority and available evidence, and pursuant to AB 1111, which requires that all existing rules be reviewed and justified as "necessary," the Board of Funeral Directors and Embalmers is recommending repeal of *some* regulations controlling detailed embalming procedures, e.g. prescribing attire while embalming, manner of sterilization of embalming rooms and instruments, type of embalming fluids to be used, necessary embalming equipment, and detailing routine examination procedures applicable to the licensing examination. Many other regulations involving embalmers will be repealed because they merely duplicate statutory language.

FUNERAL DIRECTORS AND THE "BUSINESS" OF DYING

A funeral director is anyone engaging in any of the following:

"(a) Preparing for the transportation or burial or disposal, or directing and supervising for transportation or burial or disposal of dead human bodies.

(b) Maintaining an establishment for the preparation for the transportation or disposition or for the care of dead human bodies.

(c) Using...the words 'funeral director,' or 'undertaker,' or 'mortician,' or any other title implying that he or it is engaged as a funeral director."[33]

No one may engage in the business of funeral directing without license.[34]

A license as a funeral director is issued to anyone over 18 years of age,[35] having a fixed place of business,[36] who passes an examination on the signs of death, the manner by which death is determined, laws governing the preparation, burial and disposal of dead human bodies, and the shipment of bodies dying from infectious or contagious diseases, and local health and sanitary ordinances and regulations relating to funeral directing and embalming.[37] There has never been an educational requirement for a funeral director's license. Licenses must be renewed annually.[38]

The services provided by a funeral director includes removing the body to a funeral home, preparing the remains, completing and filing a death certificate, obtaining a burial or transportation permit, preparing newspaper notices, providing a casket, burial clothes, registration books and memorial cards, handling flowers, arranging for pall bearers and someone to perform the actual funeral service, obtaining permits and making any necessary arrangements with a crematory, arranging for the selection of cemetery space or the opening of a grave already owned, assisting in the actual conducting of the funeral service, providing transportation, and filing necessary Social Security, Veterans' benefit, and insurance claims. The funeral home staff spends between 70 and 80 hours arranging for and conducting each funeral.[39]

Although some states issue only 1 license for both funeral directors and embalmers, the separate licensing requirements allow an individual who wants to engage in only 1 of the 2 occupations to acquire the knowledge and skills necessary to perform those functions alone. The licensing requirement is more likely to be related to applicable occupational tasks.

Once a funeral director or embalmer has been granted a license, it may be suspended or revoked for the conviction of a crime substantially related to the qualifications and duties of the licensee,[40] misrepresentation or fraud in the conduct of his business,[41] any false or misleading statement regarding any law or regulation made to obtain business,[42] false or misleading advertising,[43] solicitation after a death or while death is impending,[44] employment of another to solicit after a death or while death is impending,[45] use of profanity in the course of the preparation of a human body for burial,[46] use of a previously used casket,[47] gross negligence, gross incompetence, or unprofessional conduct.[48]

Under normal market functioning, the number of funeral establishments would equal the number the industry could efficiently support, with marginal operators being forced out of business. However, because the funeral industry is a powerful one, desirous of protecting its members and providing the largest possible distribution for casket and other manufacturers, most observers agree that there are substantially more funeral establishments than the free market would support. In an industry characterized by a relatively inelastic market for funeral goods and services, since there are only a certain number of deaths per year, there are approximately 22,500 funeral homes throughout the country, 10 times the number that could adequately serve the country's needs.[49] Wilbur M. Krieger, Managing Director of the National Selected Morticians and Director of the National Foundation of Funeral Service testified at Senate subcommittee hearings in 1964 that "2,500 firms operating multiunit establishments strategically located could serve the demand."[50] Since the annual number of deaths is approximately 2,000,000, this averages 80 services for each funeral establishment. However, the actual distribution of business is quite different. (In California, there are approximately 850 funeral establishments, and 170,000 deaths annually.[51]) Some large chains perform thousands of funerals each year. Small establishments may handle only 25 funerals annually. One-half of all funeral homes arrange only 1 funeral each week.[52] Since the firm's large operating costs and overhead must be met from the profits of these few funerals, the funeral director is forced to maximize the profits on each funeral and to make each sale a large one.

The financial investment in a funeral establishment is substantial. The facilities of a funeral home include offices, preparation rooms, selection rooms, visitation rooms, a chapel, a central location in an area where property is expensive, trained personnel, parking lots and expensive equipment such as limousines and hearses. Moreover, the staff and facilities must be available 24 hours each day. In 1960, the average investment in a small firm, conducting approximately 57 funerals annually, was $67,724.00. The average investment in a large firm was $366,579.[53] In 1975, the investment in facilities and equipment for a firm conducting less than 100 services annually had nearly doubled to $120,000.00. A firm conducting more than 300 funerals annually required an investment of at least $600,000.00.[54]

In part, such high operating costs result from the construction of extravagant buildings without regard to their income potential. In part, such high fixed costs result from the fact that most funeral establishments are constructed to accommodate the largest possible number of services the firm expects to conduct at once. Thus, the establishment is rarely used to capacity, but must be furnished and maintained as though it were. *It is estimated that 50% of all funeral establishments are over-invested.*[55] The small firms, with a low volume of business, are particularly inefficient.

In the late 1960's, a few companies began acquiring local funeral homes. San Diego based International Funeral Services now owns approximately 100 funeral homes, 20 cemeteries, and 2 monument companies.[56] IFS owns 21 funeral establishments in California. Service Corporation International, headquartered in Houston, which also owns

numerous California establishments, is now twice as large as IFS.[57] Moreover, SCI recently acquired IFS. The major reason for the phenomenal success of the chains is the benefits they are able to derive from their economies of scale. Typically, the chain will purchase several funeral homes in a certain area, enabling it to profit from centralized accounting and legal services, and spread overhead, labor, and transportation costs among groups of homes, while purchasing equipment and supplies in large quantities. A chain owning 5 funeral homes in a locality requires only 2 employees at night, instead of 5. 1 hearse driver can handle 2 or 3 funerals in 1 day.[58] Total costs can be cut by 20%[59].

With the increasingly large number of funeral establishments competing for the limited number of funerals, and the marginal operators now competing with the large chains, one would expect to find a buyer's market and low prices. In other industries, the incentive to absorb excess capacity stimulates competition to increase the market share of each firm, i.e. they have unused facilities, firms should lower prices drastically to fully use them. However, the opposite has occurred in the funeral industry. Prices have increased dramatically. Funeral homes appear to price more as a cartel or monopoly than as competitors.

Clearly, funeral entrepreneurs do not compete aggressively with one another, and because of the nature of the transaction, purchasers do not comparison shop. Since advertising would not generate new markets or expand old ones, but only redistribute existing business or help some firms maintain their share of business, funeral directors have found it mutually advantageous to refrain from advertising prices. Marginal operators have not advertised lower prices in an attempt to compete because the very lack of competitive advertising is what has allowed them to remain in business. Competitive price advertising is not found within the funeral industry, and the industry has long maintained that price advertising is unethical and unprofessional.

"Industry-wide data suggests that the industry is operating at price levels which are based upon the cost curves of the many small firms rather than upon the cost curves of large firms which can spread overhead over large volume."[60] Local funeral industry associations often informally arrive at a figure which they believe is *the lowest minimum price at which a small funeral home will be fully compensated.* Above this minimum, there is no attempt to set prices, and there is wide variety in price maximums.[61]

Such an arrangement is of the greatest benefit to the 50% of funeral directors who provide approximately 1 funeral per week, and the 95% who conduct less than 300 services per year.[62] These smaller firms could not stay in business without this protection against competition. Industry officials admit that overpricing is obvious since some establishments are able to survive while conducting only 50 funerals per year.[63] The large establishments benefit from this arrangement as well. Since their costs for each funeral are lower, their profits are correspondingly higher. The result has been that the total number of establishments has remained large, and to some extent, monopoly pricing exists in an industry characterized by an oversupply of small firms.

PRIVATE AGREEMENTS AND GOVERNMENT ACQUIESCENCE

A History of Competition

Small firms which refuse to maintain these price floors have been subject to boycotts, making it impossible for them to purchase funeral merchandise. Even the larger firms are expected to comply.

Indicative of the industry's dominance over its members, on May 22, 1961, the California Funeral Directors Association expelled Nicholas Daphne, owner of one of San Francisco's largest firms, charging him with violating the 1960 code of ethics which restricted price advertising and the making of agreements with special groups. Daphne had advertised funerals for $150.00 when the minimum charged by other funeral directors was $500.00.[64] In addition, he had contracted with two funeral societies to provide simple funerals for $150.00 to $210.00, including embalming.[65] According to his attorney, Robert Truehauf, one of the founders of the Bay Area Memorial Society, and now one of the public members on the Board of Funeral Directors and Embalmers, Daphne had been advertising prices for 15 years.[66] Other industry leaders also advertised prices. Many believe that he was expelled because he agreed to service the funeral societies at low costs.[67]

To prevent his price cutting from spreading, the California Funeral Directors Association also banned Daphne from its convention exhibit hall so he would be prevented from ordering the merchandise and equipment on display. However, when Daphne picketed the convention, his expulsion became headlines and he was featured as an ethical businessman victimized by the industry. His business increased. Claiming that the code of ethics appeared to be an attempt to keep information about funeral prices from the public, to fix prices, and to eliminate competition,[68] and deciding to take advantage of the opportunity to increase its business by advertising lower prices, Forest Lawn, whose volume is 100 times that of the average funeral director, immediately announced its resignation from the California Funeral Directors Association. Forest Lawn decried the advertising ban, and started advertising "Undertaking: $145." Utter-McKinley, a Los Angeles competitor with 16 funeral establishments, soon advertised its price of $100.00.[69]

In 1967, the Justice Department brought an antitrust action against the National Funeral Directors Association, charging restraint of trade in violation of section 1 of the Sherman Act, in promoting agreements not to advertise prices and discouraging price competition. The National Funeral Directors Association signed a consent decree in 1968 agreeing not to prohibit the advertising of funeral prices and to exclude from its membership any group that restrict price advertising.[70] Nevertheless, few funeral directors even now advertise prices.[71]

Government Appears

Because of tactics such as those used by the California Funeral Directors Association, as well as the high costs of funeral goods and services, numerous newspaper and magazine articles critical of the funeral industry have been published. But a detailed and well documented article in the May 19, 1951, issue of *Collier's Magazine*, entitled "The High Cost of Dying", alleging numerous specific abuses in the funeral industry in California, and in particular in Los Angeles, ranging from price fixing to unethical lobbying efforts, led to an official investigation. House Resolution Number 199 adopted by the California Assembly at the 1951 Regular Session of the Legislature, created an Assembly Interim Committee on Funeral Directors, Embalmers, Mortuaries, and Funeral Establishments, to inquire into all aspects of the funeral industry and recommend appropriate further regulation.

The Committee, consisting of Assemblymembers Clayton A. Dills, H. Allen Smith, and Glenard P. Lipscomb, held hearings, sent questionnaires to all funeral establishments in California, and analyzed studies made available to it by national funeral director organizations.[72] However, neither the contents of the questionnaire, the responses to it, nor the percentage of responses received were ever released to the public. The Committee's report, dated June 2, 1953, adopted and reproduced in its entirety a study by the National Better Business Bureaus, Inc., an "organization that keeps watch over business ethics and practices in all parts of the country."[73] The Bureau's report noted that it receives few complaints involving funeral

directors. The Bureau concluded that there appears to be widespread criticism and suspicion of funeral directors as a result of ignorance and misunderstanding of services performed and because of "questionable advertising, high pressure sales tactics, and serious malpractices by a small minority" of funeral directors.[74]

The Committee concluded that the Colliers' article misrepresented the funeral industry in California. It noted that the number of establishments per death in California was 54% below the national average, partly as the result of the high urbanization of California population.[75] Where population is concentrated in urban areas, volume can be developed in fewer establishments, resulting in reduced overhead per case and lower costs to the purchaser. In a highly urbanized region, with a volume that supports more establishments, both service and price competition increases. Volume and competition have reduced the cost of funeral service in California to a very low level. In 1948, California's average funeral, cost was $340.00, 14% below the national average. The average cost in Los Angeles was $275.00, 30% below the national average. However, the per capita effective buying income in California that year was 15% above the national average. So California had the lowest funeral costs in the United States in proportion to income. The increase in funeral expenses between 1939 and 1948 was less than the increases in the cost of other goods and services.[76] Profits before taxes were only 13%.[77]

The Committee observed that California funeral establishments, their equipment and employees are of the highest quality,[78] and there appears to be no just ground for the criticisms that led to the investigation.[79] The Committee concluded that the funeral industry of California is unusually well organized for the public interest[80] and recommended no further legislative action.[81]

However, the Better Business report, adopted by the Committee, is based on material furnished by the National Funeral Directors Association.[82] Moreover, a letter dated July 24, 1953, from J. Wilfred Corr, Executive Secretary of the California Funeral Directors Association to Wilber M. Krieger, Managing Director of the National Selected Morticians, indicates that the Committee's report was actually *prepared by* the funeral industry. The letter states:

> Dear Mr. Krieger,
>
> Thank you for your letter dated July 21 congratulating us on the Dills Committee Report....
>
> I want to correct a possible wrong impression as indicated in the first sentence of your letter. You congratulated us on 'the very fine report that you have prepared and presented to the Dills Committee.' Although this may be one hundred per cent correct, it should be presumed that this is a report of and by the Dills Committee, perhaps with some assistance.
>
> Actually Warwick Carpenter [a funeral industry market analyst] and Don Welch [owner of several Southern California funeral homes] wrote the report. I engineered the acceptance of the report by Dills and that actual filing of the report, which was interesting. One member of the committee actually read the report. He was [H. Allen Smith] the Assemblyman from Glendale and Forest Lawn [located in Glendale] naturally wanted the report filed. He approved the report and his approval was acceptable to the others.
>
> Sometime when we are in personal conversation, I would like to tell you more about the actual engineering of this affair. In the meantime, as you realize, the mechanics of the accomplishment should be kept confidential.[71]

The powerful funeral industry has exercised its influence in California in other ways as well. In 1970, San Diego's State Senator, James R. Mills, requested an Attorney General's opinion to determine whether an organization not licensed as a funeral director could, for a reasonable charge, arrange for the cremation of human remains and the scattering of the ashes at sea. The organization did not intend to maintain a funeral establishment or prepare the remains for disposition. It would merely remove the body from the place of death, obtain necessary permits, arrange for cremation of the body, and scatter the ashes at sea. In an informal letter opinion[84] the Attorney General indicated a funeral director's license was unnecessary since the activities included only 1 of 3 functions statutorily defined as funeral directing. At that time, the statute defined a funeral director as one engaged in *each* of the following:

"(a) Preparing for the burial or disposal, and directing and supervising for burial or disposal of dead human bodies.

(b) Maintaining a funeral establishment for the preparation for the disposition or for the care of dead human bodies.

(c) Using, in connection with his or its name or funeral establishment, the words 'funeral director,' or 'undertaker,' or 'mortician,' or any other title implying that he or it is engaged as a funeral director."[85]

In 1971, 3 of Senator Mills' constituents, a bio-chemist, an attorney, and an advertising executive, none of whom possessed a funeral director's license and relying upon the Attorney General's opinion, founded the Telophase Society, the first low cost, direct cremation business in the United States.[86] Total charges for their services were approximately $250.00.

Shortly thereafter, outraged that Telophase was taking business away from them, local funeral directors complained to the Board of Funeral Directors that Telophase was operating without a license.[87] Telophase maintained that it was no directing funerals nor embalming bodies and therefore did not require a license.

In addition to its lack of a license, there were complaints about Telophase's holding station, a 10-foot square concrete block garage located at the rear of a building used by another business in a residential neighborhood. Bodies delivered to the room were placed in covered plywood or cardboard boxes. The room was not refrigerated, and bodies held for several days produced a strong odor. In an attempt to eliminate the problem, Telophase packed dry ice on the bodies to help preserve them, but it had little effect.[88] When local residents threatened to bomb the building, Telophase moved to another garage containing a used beer cooler converted into a refrigeration unit which held the bodies after they had been placed in either plywood or cardboard boxes. However, the cooler's refrigeration system leaked, and occasionally water dripped onto boxes stacked on the floor, also containing bodies. The odor of decaying bodies inside the garage was distinct.[89]

A convalescent hospital employee complained about the casual dress and rude behavior of a Telophase employee who came to the hospital to remove a dead body. After placing the body in his station wagon, the employee returned, asking for paper to clean up after his dog.[90]

Others complained that Telophase was violating the Board's ban against solicitation of business.[91]

Several meetings between Board and industry representatives took place. Both were concerned that Telophase was disposing of dead human bodies but was not subject to the laws imposed upon others. They decided to introduce legislation requiring direct disposition operations such as Telophase to obtain a license from the Board.[92]

The bill, introduced in the California Senate in March, 1972, proposed

changing the statutory definition of funeral director to include engaging in the preparing for the burial or disposal, *or* directing or supervising the burial or disposal of dead human bodies. No person would be permitted to act as a funeral director or use any title implying that he was a funeral director unless licensed by the Board of Funeral Directors and Embalmers. Every funeral director was required to maintain a funeral establishment, which included a chapel and a preparation room for embalming. The last requirement would insure that Telophase's holding facility, where the body was stored for several days until the death certificate was signed by the attending doctors and the cremation permit was processed by the county health department, would be subject to Board regulation. In addition, the California Funeral Directors Association apparently wanted to discourage formation of other direct disposal organizations by requiring them to maintain conventional funeral service facilities.[93]

The bill was extremely controversial during its 6 month life. The news media noted that the senator who sponsored the bill was investigated 2 years previously by a grand jury for allegedly receiving a $5,000.00 campaign contribution from the California Funeral Directors Association. That investigation had been dropped for lack of evidence. The sponsor admitted that the legislation was drafted with Telophase in mind since the Society "did not comply with proper health standards." In response, J.B. Askew, San Diego County Director of Public Health, sent a telegram to the legislature endorsing, without qualification, Telophase's entire operating procedure.[94]

Telophase lobbied heavily against the bill, charging the funeral industry with attempting to protect its business monopoly by eliminating low-priced competition from the market. The news media generally supported Telophase.[95]

The bill passed both the Senate and the Assembly when it was referred back to the Assembly for consideration of minor amendments, where it encountered unexpected consumer opposition. Certain of defeat if the bill came to a vote, its proponents withdrew it.[96]

Thereafter, the Board asked the Attorney General whether his 1971 opinion would apply to an operation also engaged in holding bodies pending final disposition. The Attorney General responded that Telophase's holding stations could be considered preparation rooms because containerizing bodies for disposition was an act preparatory to transportation. Therefore, no entity could maintain such a room without a license from the Board of Funeral Directors and Embalmers.[97] The Board then brought suit to enjoin Telophase, arguing that by wrapping a body, or placing it in a box for storage, Telophase was preparing the body for transportation to the crematory and eventual burial. The Board contended that the legislation applicable to a preparation room included not only rooms used for embalming but also those used for preparing a body in any manner for burial or transportation. Telophase maintained that a preparation room was for the embalming and preparing of a body for a funeral, activities it did not perform. Its holding stations were merely "stop-off points" in the direct cremation service, and were required only for the time it took to obtain the certificates and permits legally required prior to cremation.[98] The Superior Court denied the injunction, agreeing with Telophase that a "preparation room" giving rise to licensing must be used for more than the mere handling of bodies. The Court noted that the Board's own regulations referred to preparation rooms alternatively as embalming rooms, requiring them to be equipped with embalming instruments and supplies, which Telophase would not use.[99]

As a result, the industry introduced a bill in the 1973 legislative session which would require Telophase licensure. A funeral director would be anyone engaging in "any" rather than "each" of the 3 specified functions. Preparation of dead bodies for transportation, burial, or disposal became a function of the funeral director, who would be one who maintained an "establishment" rather than a "funeral establishment." A suitable storage room was required instead of a chapel. The definition of a preparation room was likewise changed to include the activities performed by Telophase.[100]

This time, proponents stressed the consumer protection aspects of the bill, indicating their concern over the handling of membership fees collected by Telophase prior to performing any services. (Preneed funeral funds collected by licensed funeral directors were regulated by the Board). Those favoring licensure of Telophase maintained that this was the only way to protect consumers' funds. And they argued that unless Telophase was licensed, the Board could not investigate the consumer complaints which it had received.

These arguments, and a strong industry lobby, resulted in passage of the bill in 1974. It was signed by Governor Reagan, and became effective in January, 1975. At that time Thomas B. Weber, president of Telophase, applied for and received his funeral director's license. In February, 1975, the Board amended its regulations to implement the new law.[101]

In 1974, Telophase acquired its own crematory, the first in California operated independently of a cemetery. However, this has resulted in a new confrontation with the State Cemetery Board, which licenses private cemeteries, defined to include a burial park, mausoleum, crematory and columbarium,[102] cemetery brokers, and cemetery salespeople. Through a succession of court actions, the Cemetery Board tried to close Cremar Crematory leased by Telophase. The Board claimed Telophase was operating without a license, which the Board refused to grant,[103] and that it was scattering remains without proper authorization.[104] (An ecumenical church group, excluded from Cemetery Act coverage, actually scatters the remains.) Further, to qualify for a license, the Cemetery Board required Telophase to be subject to several complicated and costly requirements not applicable to its operation.[105]

In 1978, the California appellate court determined that since Telophase did not perform statutorily defined cremations, did not make statutorily defined interments, and did not operate a cemetery as that term is statutorily defined, Telophase was not doing any of the 3 without the necessary certificate of authority and was therefore not in violation of the Cemetery Act.[106]

Through battles similar to those waged by the Board of Funeral Directors and Embalmers, Telophase's crematory is now subject to the jurisdiction of the Cemetery Board. Consequently, Telophase is now licensed as a funeral director by the Board of Funeral Directors and Embalmers and its crematory is licensed by the Cemetery Board.

THE INTERNECINE WAR: FUNERALS VS. CEMETERIES

Historically, jurisdiction of the Cemetery Board was clearly distinguishable from jurisdiction of the Board of Funeral Directors and Embalmers. However, Hubert Eaton, the founder of Forest Lawn, realized consolidation of all forms of interment with a mortuary and a cemetery under one management with reduced overhead would give him a tremendous advantage over his competitors. But on December 20, 1932, when he filed an application with the Board of Funeral Directors and Embalmers for a license to operate a mortuary, he encountered the powerful opposition of the funeral directors, who saw this as another threat to their business. Cooperating with the industry in an attempt to frustrate Forest Lawn's plans, the Board decided not to

consider the application until the mortuary was constructed and ready for operation.

Eaton had just begun construction of his $150,000.00 mortuary when the industry introduced AB 1044 in January of 1933 prohibiting mortuaries within a cemetery. In Sacramento, both the California Funeral Directors Association and the National Funeral Directors Association had considerable power and a strong lobby. Forest Lawn claims that $1.00 of the price of every casket sold in the United States in 1933 was deposited into a legislative fund to support passage of the bill. Although AB 1044 passed the Assembly in May, it failed to pass the Senate.

Forest Lawn further claimed that as the result of pressure by the funeral industry, local and national casket makers refused to sell to Forest Lawn. Although an Oregon company finally agreed to supply Eaton, it later maintained that if it did, it would be boycotted by every other funeral director.[107]

In March, claiming that the mortuary did not have a specific address and location devoted exclusively to funeral directing, and that a mortuary could not be located upon land dedicated for cemetery purposes, the Funeral Board administratively denied Forest Lawn's application. Eaton immediately appealed.

On appeal,[108] the Court observed that the Board denied the license because the proposed place of business would not be conducted at a specific street address or location devoted exclusively to the care and preparation for burial or transportation of human dead bodies, as statutorily required, because the mortuary was to be located approximately 500 feet from a public thoroughfare on land controlled by Forest Lawn and within its cemetery. The place of business was not accessible to the public because a high wall surrounded the cemetery and the entrance gates may be closed to the general public at certain times. And merely numbering the building 1716 South Glendale Avenue did not, in the Board's opinion, give the business a specific address, since the building was not situated on South Glendale Avenue, but approximately 500 feet from it.

The Court rejected all of the Board's rationales. The Glendale engineering department, in the usual course of its duties, assigned the number 1716 South Glendale Avenue to the building, which is approximately 300 feet from the Glendale Avenue property line, and directly opposite the entrance. The area between the building and the entrance is open, and drives and walks lead directly from the entrance to the mortuary, a large and imposing structure separate and distinct from other buildings. All 5 entrances open onto the driveway leading directly to the Avenue. Floodlights were installed in the area between the building and Glendale Avenue. Entrance gates to the mortuary building were to remain open 24 hours each day.

The Court considered the fact that the proposed mortuary building was not immediately adjacent to the avenue of little significance. Many mortuaries are set back various distances from the property line. Some are even enclosed by iron or masonry walls. Carrying the Board's argument to its logical conclusion would mean that even the front doors of a mortuary must always remain open and unlocked. Moreover, one may have a designated street number on a building that does not abut the street. The statute intended merely that the business would be conducted at a fixed and designated place where it could be easily located. The statute only requires either a specific address or a specific location. And even assuming that the mortuary had no specific address, it cannot be claimed that it had no specific location.

The Board further objected that the proposed place of business would not be devoted exclusively to the care and preparation of human dead bodies because the land upon which the mortuary was located had been dedicated exclusively for cemetery purposes and thus could not be used for mortuary purposes. However, the Court concluded that the mortuary itself would be devoted exclusively to the business of a funeral director. Further, because the Board could not enforce the Cemetery Act, it lacked power to deny an application for a mortuary merely because it is located upon land dedicated for cemetery purposes. Although determining that the Board of Funeral Directors and Embalmers must issue a license to Forest Lawn, the Court did not decide whether establishment of a mortuary was consistent with dedication of the land to cemetery purposes (see infra).

The Board appealed to the Supreme Court, which declined to hear the case on October 26, 1933. After the Court's decision, the Board delayed the granting of the license while the National Funeral Directors Association requested the National Recovery Administration to prohibit Forest Lawn from advertising that "One call does it all." When Eaton travelled to Washington and met with the NRA's General Hugh Johnson, the National Funeral Directors Association's request was denied. The State Board finally issued Forest Lawn's license in December, 1933, 1 year after the application was submitted.[109]

At this point, an owner of interment space in Forest Lawn sought an injunction prohibiting operation of the mortuary because the land had been dedicated to "cemetery" purposes.[110] The Court sidestepped the issue of the legality of using land dedicated for cemetery purposes for another use, considering it outside of the immediate scope of the action. Instead, the Court determined that the plaintiff could not allege injury. The Supreme Court later determined that operation of a mortuary upon cemetery property is not inconsistent with the holding and occupying of land exclusively as a cemetery for the burial of the dead.[111] The decision that a mortuary can be conducted on land dedicated for cemetery purposes was later reaffirmed.[112]

However, the Funeral Board did not abandon its attempts to prohibit funeral directing by cemeterians. It brought suit to enjoin Westminster Memorial Park and Mortuary in Westminster Memorial Park from jointly engaging in false and misleading advertising.[113] Specifically, the Board objected to advertisements using the name Westminster Memorial Park and indicating a mortuary and cemetery were located in one place. The Board claimed use of only 1 name misled the public and concealed the fact that there were 2 separately owned and operated corporations on the premises, each licensed by a separate licensing agency and authorized to perform only the services permissible under their respective licenses. The Court held that the Board's arguments were "tenuous and required strained and unjustified interpretation of the advertisements," that no one was likely to be deceived and that nothing in the advertisements gave the false impression of sole ownership or of 1 entity offering both mortuary and cemetery services. Rather, the Court noted, it was doubtful that any person reading the advertisements would think about these matters one way or the other. What anyone of ordinary intelligence would imply is that both mortuary and cemetery services are available at the same location.

As a result of these decisions, a number of firms are now "dual licensees," a single entity licensed by both the Board of Funeral Directors and Embalmers and by the Cemetery Board.

PRE-NEED MONEY: WILL IT BE THERE?

Prior to 1965, the Funeral Directors and Embalmers law did not expressly regulate the receipt of money for funeral services in advance of need. A funeral director could accept such money so long as he obeyed general rules and avoided criminal liability for misrepresentation,

fraud, gross negligence, gross incompetence, or unprofessional conduct. Such consequences could be avoided by placing the money in trust.[114] Since most funeral directors, who were also licensed cemetery authorities, had established special endowment care funds (regulated by the Cemetery Board),[115] they deposited (and commingled) money received for preneed funeral services into their already existing cemetery trust fund, relying on the authority and the less restrictive regulations of the Cemetery Board.[116]

In 1965, the Legislature enacted the Short Act[117] governing preneed funeral contracts entered into by licensed funeral directors. No funeral director could enter into a preneed contract unless all money collected thereunder was held in trust.[118] All money must be placed in trust within 30 days of receipt.[119] None of the corpus may be used to pay a sales commission or other administrative expenses.[120] The income from the trust may be used to pay a trustee fee[121] limited to 2.5% of the trust corpus.[122] Income may also be used to pay a revocation fee not to exceed 10% of the trust corpus.[123] Recognizing that dual licensees had been depositing preneed funeral money into their special endowment (cemetery plot) care fund, the Short Act allowed a licensed funeral director who is also a licensed cemetery authority to deposit money received from a preneed contract for funeral services into the special endowment (cemetery plot) care fund.[124] Such funds were nevertheless reportable to the Board of Funeral Directors and Embalmers.[125] Thus, a preneed funeral contract entered into by a licensed funeral director who is also a licensed cemetery authority must comply with the Short Act, "with the exception that any money or securities received in connection therewith may be deposited into its special endowment care funds."[126] The only advantage to a dual licensee was the ability to use an existing trust fund and not establish and maintain a second one.

Nevertheless, relying upon the statute[127] and regulations adopted by the Cemetery Board prior to passage of the Short Act,[128] dual licensees still adamantly maintain that preneed funeral contracts of licensees of both boards are to be regulated solely by the less restrictive regulations of the Cemetery Board which, unlike those of the Board of Funeral Directors and Embalmers, permit money paid under a preneed contract to be used for commissions and expenses *and do not require that any trust interest be credited to the trust corpus.* Because dual licensees are able to use conflicting statutory provisions to take much of the trust as "sales commissions" and all of the trust income for "administrative" and other expenses, they have increasingly used high pressure tactics to convince consumers to enter into a preneed contract.

This continues to be a major dispute between the 2 boards. Last legislative session, at the request of the California Mortuary Alliance (a lobbying group allegedly composed of the 20 largest dual licensees) Assemblyman Papan introduced AB 201, to permit dual licensees to profit from their funeral preneed funds. The bill, opposed by the Board of Funeral Directors and Embalmers and various consumer groups, passed both houses of the legislature only after its most controversial provisions were eliminated. As amended and chaptered (Chapter 655, Statutes of 1981) the most significant provision of AB 201 rewrites Business and Professions Code section 7738 which formerly permitted funeral directors to commingle preneed trust money collected as funeral directors with special endowment care trust money collected as licensees of the Cemetery Board. AB 201 outlaws commingling.

The Board of Funeral Directors and Embalmers is working for the enactment of legislation prohibiting collection of preneed money by a licensed funeral director. The Board hopes to eliminate the widespread abuses occurring under existing legislation by letting the bankers do the banking (see *infra*). It is the Board's position that nothing in the training or experience of a funeral director qualifies him to invest preneed funeral funds. All preneed money should be in the form of "Totten trusts" and administered by licensed banking institutions. The Mortuary Alliance, witnessing the evaporation of a previously unregulated source of profit, opposes such legislation.

In the meantime, the Board of Funeral Directors and Embalmers is attempting to provide the consumer with as much protection as possible under existing law. It encourages its licensees to use totten trusts for all preneeds. It continually limits the amount of trust income which can be retained for trustee's fees, and now requires that all but 2.5% of the annual interest be credited to the trust principal. Current law allows a funeral director and 2 others chosen by him to act as a trustee. The Board is in the process of drafting fiduciary standards applicable to the 2 other trustees. It also intends as part of its AB 1111 review to require all preneed contracts to clearly indicate whether or not the price is guaranteed.

TODAY'S FUNERAL BOARD

The Board of Funeral Directors and Embalmers currently consists of 5 public and 4 industry members. Its responsibilities include licensing of funeral directors, inspection of funeral establishments, licensing of embalmers, development and administration of licensing examinations, registration of apprentice embalmers, receipt and investigation of complaints against licensees, initiation of disciplinary actions, enforcement of laws governing preneed funeral trusts, and audit of the preneed trust funds of a licensed funeral establishment prior to transfer or cancellation of a funeral director's license.

The Board's activities center around licensing, (15% of the Board's total budget), consumer protection and enforcement, (34% of the budget), and preneed trust fund regulation (51% of the budget).

Kathleen Callanan has been the Board's Executive Secretary since July, 1979, when she replaced David T. Buck, who served as Executive Secretary from October 1, 1969, until July 6, 1979. For the 2 years prior to that, Buck had been a field representative for the Board.

During Buck's tenure as Executive Secretary, the Fair Political Practices Commission filed 4 separate conflict of interest charges against him, after it discovered that he borrowed money from an Anaheim funeral director licensed by the Board, Melvin D. Hilgenfeld, and used the money to buy a ½ interest in the Brune-Talmage funeral home in Bishop. He also received a loan from the endowment care trust fund of a Northern California cemetery to purchase a home in Bishop. Buck resigned on April 18, 1979, and was fined $2,000.00 in November, 1980. Until Buck's resignation, the Board had always retained its own private counsel, Frank C. Bottaro.

The current Executive Secretary, a strong consumer advocate, is a third generation member of a Hollywood funeral home family. The Board itself is aggressive in its attempts to protect the public and to discover evidence of violations by its licensees. It has adopted several important disclosure regulations and is considering 2 others. It is trying to eliminate the abuses associated with preneed trusts. The Board demands auditing and full funding of preneed accounts prior to license transfer and refuses to routinely grant licenses to individuals who have violated the law in the past. It is not content to allow licensees to correct past abuses, but believes disciplinary action is appropriate when a violation of law occurs.

The Board's 2 field representatives conduct sanitary and itemization inspections of its 850 licensees. During sanitary inspections the representative determines whether premises and personnel are cur-

rently licensed, whether licenses are displayed, whether sanitary laws and regulations are being complied with, whether apprenticeship training requirements are being complied with, whether doors are properly posted and windows screened, whether construction and maintenance laws are being complied with, whether a follow-up inspection is required for compliance, or whether more drastic action is necessary.

Itemization inspections are conducted to determine whether and the manner in which proper disclosure is made to the consumer before he enters into a contract with the funeral director, whether the contract contains the same information as the disclosure sheet, whether the range of caskets offered for sale is disclosed, whether the items for which a service charge is made are listed, whether cash advances are itemized, and whether the caskets are priced independently of the service charges.

The field representatives also investigate complaints made by the public, other licensees, or the Board and its staff. Complaints about contractual transactions, price disclosure, preneed trust funds, and sanitary conditions are given priority.

When a school, funeral establishment, or individual receives a first notice of violation for an offense, a citation letter is sent and a follow-up inspection is conducted at a future, undisclosed date. If the licensee fails to comply, the Board initiates disciplinary action.

During the fiscal year 1978-1979, the Board's representatives conducted 372 sanitary and special inspections. 355 were conducted in 1979-1980, and 75 in 1980-1981. 376 preneed fund inspections were conducted in 1978-1979, 48 in 1979-1980, and 3 in 1980-1981. 357 price disclosure inspections were made in 1978-1979, 270 in 1979-1980, and 47 in 1980-1981. 114 formal investigations were conducted in 1978-1979, 86 in 1979-1980, and 73 in 1980-1981. 135 informal investigations were conducted in 1978-1979, 59 in 1979-1980, and 44 in 1980-1981.

The Board has begun to place greater emphasis on enforcing compliance with the law requiring a funeral director to provide consumers with an itemized list of costs prior to entering into a contract,[129] and the regulations prohibiting embalming without authorization.[130] Less staff time is being devoted to routine premises inspections and more to investigation and resolution of consumer complaints. Because the State Personnel Board experienced scheduling problems in developing a civil service list, 1 of the Board's field representative positions was vacant for over a year. The position was filled with the appointment of James B. Allen last October. Consequently, the number of inspections made by the Board should increase to the level of inspections conducted in previous years.

The majority of the Board's efforts are directed toward enforcement of preneed funeral trust funds. 339 firms administer 452 separate reportable trusts totaling more than $54 million. The Board is uncertain whether the remaining 518 firms maintain reportable trusts. Until the Board performs an examination of their preneed arrangements, their reporting status cannot be determined. However, examinations of non-reporting firms have revealed that previoiusly unreported trusts should have been reported. These firms must then begin reporting to the Board or convert their trust funds to non-reportable totten trusts. An audit of a firm's preneed trust funds must be performed before a funeral director's license can be assigned, transferred, or cancelled. Firms with reportable preneeds trusts must file an annual report with the Board.[131] Each report must be examined by an auditor to ensure that all money received is properly deposited with the trustees, that the trustees are properly investing the funds, that the income is properly credited to the account. In addition, the Board's 2 auditors periodically perform audits to insure continued compliance with the preneed law. $266,340 in previously discovered trust fund deficits was funded in 1981. As a result of current preneed audits, trust fund deficits of $157,866 have been discovered. 5 firms have deposited $58,866 of the deficits into trust accounts. Disposition of the remaining $96,000 will be determined after hearing. 6 accusations were filed by the Attorney General in 1981, representing $38,000 in audit findings. 5 accusations, representing $61,000 in audit findings, have been forwarded to the Attorney General for formal action. 5 hearings were completed, and the Board is awaiting the Administrative Law Judge's decision. During the fiscal year 1978-1979, the Board's auditors conducted 53 field audits. 88 were conducted in 1979-1980, and 54 in 1980-1981. 40 desk audits were conducted in 1978-1979, 350 in 1979-1980, and 375 in 1980-1981. 63 informal hearings were held in 1978-1979, 10 in 1979-1980, and 15 in 1980-1981. 2 formal hearings were held in 1978-1979, 2 in 1979-1980, and 5 in 1980-1981. $175,000 in underfunded trusts was recovered in 1978-1979, $1,058,629 in 1979-1980, and $325,068 in 1980-1981.

The Board currently has only 2 auditors to monitor the estimated 88,000 individual preneed contracts held by its licensees. Since hiring its first auditor in 1975, the Board has *discovered more than $2.5 million in prepaid funeral trust funds that have been either misappropriated or mishandled.* In 2 cases alone, the Board discovered that more than $1.3 million in trust funds was missing. 1 check of 31 funeral homes throughout the state showed that of $4.3 million required to be reported, only $2.6 million actually was in trust.

In June of 1980, the Board discovered $60,925 missing from preneed contracts for mortuary services which had been sold by Ocean View Cemetery. There is no way to tell what the income from the preneed funds at Sacramento Memorial Lawn is or should be because of the condition of its books. The expenses being charged consumers do not appear to be directly related to the administration of the trusts. Approximately $800,000 to $1,000,000 collected prior to enactment of the Short Act was never placed in trust.

Over $500,000 was embezzled from preneeds at Crestlawn Mortuary in Riverside; approximately $200,000 from Frisbee & Warren in Stockton; another $200,000 from Jaroch & Carmody in Modesto.

At another Stockton mortuary, a trust fund balance of $49,248 was reported to the Board. However, the Board's auditor found only a $1.00 balance in the account.

In 1978, the Board discovered trust fund shortages of $196,000 at Sunnyside Mausoleum in Long Beach. $22,538 was discovered missing from a trust fund operated by an improperly licensed person, who failed for 2 years to report the death of the firm's licensed funeral director.

A cremation society accepted $453,814 from 2,800 people. That money is now missing.

An $800,000 shortage was discovered at Mount Vernon Memorial Park near Sacramento. Another Southern California mortuary reported purchasing government securities and various stocks and bonds with a face value of $851,964. When the Board audited them in 1980, the market value of those investments had dropped to $623,112, a shortage of $228,852.

The Board also discovered numerous cases of smaller deficits, fiduciary mismanagement, and investment losses. However, the Board has never audited most mortuaries in California. The present auditing staff would have to be increased 9 times to even begin to be adequate.

CONCLUSION: TOO MUCH REGULATION + TOO LITTLE REGULATION = WRONG REGULATION

At present, the funeral industry is 1 area where some rules to protect the consumer may be necessary. Vigorous bargaining between knowledgeable buyers and sellers, characteristic of a free market, does not generally occur. Yet, with the average cost of a funeral over $2,000 this will be the third largest expenditure, after a home and a car, many families will ever make. The average consumer of funeral goods and services is forced into the purchase by the death of a spouse, parent, child, close friend, or relative. Many are unable to make rational and reasonable decisions following the news of a death, are overcome with grief or guilt, are looking for someone to take the initiative, and are extremely vulnerable.

Even where the funeral purchaser is not emotionally vulnerable, as where the arrangements are for an elderly relative who has died after a long and painful illness, or are being made by an unrelated executor, another factor reduces the purchaser's bargaining effectiveness. Most individuals make funeral purchases only once or twice in their lifetimes, or only an average of once in fifteen years. As a result they are unaware of the practical and legal requirements involved in the disposition of the dead. Some in the funeral industry have exploited this ignorance by misstating legal requirements to imply that certain practices are required by law. Since the victim may never learn the truth, detection of the violation and traditional Court remedies are problematical.

Unlike the purchase of any other product, most people really do not know what the funeral director sells. There is widespread ignorance of what to expect from a funeral director, what his business methods are, what to look for, what to avoid, how prices are determined, and how much he should spend. Most are concerned with "doing the right thing" and what friends and other family members will expect. They are not disposed to inquire into the advantages and disadvantages of the various products offered, or to compare prices and quality. Therefore, full responsibility for making the necessary decisions is left to the funeral director as an almost fiduciary trustee, without a ceiling on costs. Sometimes both the purchaser and the funeral director know that insurance and death benefit payments will be available to cover the costs, imposing the cost of excess profits on the faceless mass of the living.

Finally, unlike most transactions where impulse buying can be avoided, the funeral purchaser may feel the need to make an immediate decision. He is not in a position and generally not inclinded to go to one funeral home, look over the merchandise offered, and then go to another to compare prices. Before the consumer even begins discussions with the funeral director, he has already given up his greatest bargaining asset, the right to make his purchase elsewhere. Many die in hospitals. Others are taken to a hospital to have their death confirmed. Hospitals insist that the body be removed to a funeral home as soon as possible. Likewise, if a death occurs in the home, the family may feel a sense of urgency to have the body quickly removed. The result is pressure to find a funeral director at once. The choice is often a haphazard one. Upon selecting a particular funeral director and releasing the body to him, the consumer must deal with that particular individual and choose the casket and other necessary merchandise from among those he is willing to make available. It is rare for the body to be taken to another funeral director as the result of dissatisfaction with prices or terms. The funeral director will discourage the family from removing the body. Further, it is likely that he has already begun embalming the remains, making it almost impossible for the customer to go elsewhere. And if the family insists on dealing with another firm, the funeral director may demand immediate payment for services already performed. Since the consumer knows the charges will begin accruing anew at the second funeral home, he is often persuaded to deal with the current funeral director.

Many of the abuses found within the funeral industry parallel those occurring in other industries. As such, they can be redressed under existing law prohibiting unfair, deceptive, or misleading practices, and including the imposition of civil penalties.

Defining "Incompetence" and "Unprofessional Conduct"

Licensees can now be disciplined by the Board for fraud or misrepresentation and "incompetence" or "unprofessional conduct." But these later terms are vague. Establishing minimum professional standards with which all funeral directors and embalmers must comply, may deter unscrupulous and exploitative practices and enable the consumer to determine what to expect in the transaction. Such standards might involve a duty to give itemized prices, to disclose the existence or non-existence of warranties or guarantees; to refrain from services before a contract has actually been entered into; to disclose health factors and legal requirements accurately; to follow the decedent's prior instructions; and to prohibit agreements restraining trade (e.g. price advertising prohibitions).

Since the average consumer is unaware of the legal requirements applicable to disposition of human remains, his bargaining position would be greatly improved if the funeral director were required to provide him with a short printed statement indicating what the law does and does not require. Such a statement should be prepared by the Board of Funeral Directors and Embalmers and available from the Board and all licensees.

Required Disclosure

And required Board disclosure should include other information.

Many purchasers of funeral goods and services place great emphasis upon protection of the remains of the deceased from decomposition. Because embalming and open-casket viewing of the remains forms the basis for the sale of other profitable merchandise, and because the desired effects of embalming are more difficult to accomplish as the time after death increases, funeral directors routinely embalm as soon as they receive the body, and have led customers to believe that embalming will protect the body from decay. However, the embalming performed in funeral homes today is only designed to create a life-like and natural appearance, and preserve the body for a short period of time, generally only the 2 to 3 days prior to final disposition. Although a body can be preserved for a long time, long-term preservation is only possible if large amounts of strong embalming fluid are used, but the skin appears leathery and unnatural.[132]

Recognizing this problem, the Board adopted regulations effective July 22, 1979, and amended effective August 2, 1980. The funeral director must get advance permission to embalm from the person controlling disposition of the remains. To minimize the chances for confusion, this authorization is separate from the general authorization to release the body to the funeral director. Moreover, prior to obtaining authorization, the funeral director must inform the customer that embalming is for the temporary preservation of the body and is not required by law. Such regulations are imperative if funeral directors are to be prevented from taking advantage of the consumer's lack of information about embalming.

Similar allegations have been made by funeral directors as to the value of expensive sealer caskets. As a result, effective March 16, 1980, the Board adopted a regulation requiring a notice to be prominently displayed on each casket represented as having a sealing device of any kind stating that there is no scientific or other evidence that any casket with a sealing device will preserve human remains. This regulation is likewise

essential to eliminate the funeral director's bargaining advantage. It might also be advisable to require this statement on a casket price list given to customers.

Since the casket is the most expensive item purchased for the funeral, and since funeral homes earn a substantial commission from the sale of the casket, funeral directors give careful consideration to the manner in which caskets are displayed. Lower priced caskets are often unavailable or made physically or psychologically unattractive. Consumers are often misled as to the qualities of the expensive caskets. Funeral directors play upon the consumer's feelings of guilt and remorse to sell customers expensive caskets.

Selection rooms are designed to encourage purchase of high-priced caskets and to discourage selection of inexpensive ones. Most rooms contain 15 to 30 caskets which are not arranged in any apparent order. Price cards are sometimes placed inside closed caskets. Even if the lids are open, the apparently random arrangement of the caskets makes it difficult for the consumer to understand and remember the different prices or to compare quality with price. Failure to display inexpensive caskets in the main selection room is common. Often they are kept in a separate room and customers are not told that less expensive caskets are available unless it becomes obvious that they are not going to purchase a more expensive one. When inexpensive caskets are available, they are often in undesirable colors, or they look shabby or dirty. Such caskets are chosen by the funeral director because he believes not many people would choose an ugly casket. In fact, manufacturers often have trouble making inexpensive caskets look cheap enough. Funeral directors may make disparaging remarks about the casket or indicate that choice of an inexpensive casket indicates disrespect for the dead.[133] Comments that "He deserves better than that," "this is the last thing you can do for him," or "what will his friends think" are not uncommon. Any concern at all about price by the customer may be treated as inappropriate. The customer is then persuaded to purchase a more expensive casket. California law requires that prior to entering into an agreement for funeral services, the funeral director shall provide a list of the price range of all caskets offered for sale.[134]

But many funeral directors view the growing trend towards cremation as a significant threat to their business. However, they realize that if they fail to provide cremation services to consumers desiring them, they will lose the business to another funeral director or to a low-cost cremation service. Many funeral directors attempt to discourage purchase of cremations or to increase their profit on each cremation service. Both objectives are accomplished if purchase of a casket is required for cremation.[135]

California specifically prohibits a crematory from requiring a casket for cremation, although some type of container may be required. Nevertheless, funeral directors should be required to affirmatively disclose this fact to their customers and be prohibited from requiring a casket as part of their own policy.[136]

Funeral directors have been known to overstate the amount of cash advances made on behalf of the customer for transportation, flowers, newspaper notices, crematory or cemetery charges, long distance telephone calls, and similar expenses incurred for the funeral. Sometimes the funeral director will increase the charges made by the third party. More often the overcharge consists instead of failing to pass on trade discounts which the funeral director receives as the result of his volume purchases. Under either method, the funeral director is actually seeking reimbursement for more than he actually paid. Some funeral directors attempt to justify this by claiming that the additional amount they collect compensates them for arranging for these services. However the funeral director is already billing the consumer for his professional services and should not be paid twice for the same services by charging for them under two different categories.

Funeral directors claim that the customer is not hurt by failure to pass on trade discounts because the customer would pay the higher charge if he arranged for the services himself. However, when a customer makes a funeral arrangement, he has the right to expect an accurate, itemized statement.[137]

California requires the funeral director to provide "an itemization of fees or charges and the total amount of cash advances made by the funeral director for transportation, flowers, cemetery or crematory charges, newspaper notices, clergy honorarium, transcripts, telegrams, long distance telephone calls, music, and such other advances as authorized by the purchaser."[138] However, charging in excess of the amount advanced or owed, or failing to pass on trade discounts should be expressly prohibited by statute.

Funeral prices generally involve 5 major components:[139]

1. services provided by the funeral director and his staff, such as embalming, transportation, obtaining the necessary permits;
2. funeral home facilities, including chapel and viewing rooms;
3. special equipment, such as limousine, hearse, casket stand, embalming equipment;
4. merchandise, including the casket and vault and burial clothes; and
5. cash advances.

Funeral directors should be required to give a complete itemized price breakdown in each category and inform customers of their right to decline certain goods and services and obtain a corresponding price reduction.

California requires that prior to entering into an agreement, the funeral director must provide a written list of the charge for professional services, enumerating the services included, and the price of all caskets offered.[140] The components need not be separately priced. Upon entering into a contact, the funeral director must provide a written memorandum containing the total charge for the funeral director's services and the use of his facilities and equipment; charges for the casket, vault, and burial clothing; cash advances.[141]

However, the funeral director is not required to provide a statement of all goods and services available. The charge for items that the customer might decline, such as embalming, viewing, and use of the chapel, need not be separately indicated. Nor is the funeral director required to inform the customer that he may decline certain services and receive a corresponding price reduction. Such a requirement would give funeral industry customers the same basic information on prices and choices which is available to them when making any other consumer purchase. It will help to assure that buyers who must make quick decisions with little knowledge or experience will have the information necessary to make informed choices. Moreover, such an itemization should be available to any consumer upon request.

Funeral industry prices are rarely advertised. Often they will not be volunteered on the telephone unless the caller is persistent and aggressive. However, since most consumers are unaware of the available options, it is difficult for them to ask the questions necessary to obtain complete information. Moreover, the consumer often does not realize that the price quoted by different firms may include different items. Even when the consumer goes to a funeral home to discuss arrangements it is difficult to obtain component price information. Price disclosure requirements will allow the consumer to comparison shop, making the funeral transaction approximate more closely the way a competitive market should operate, and

encourage competition, as funeral directors attempt to bring their costs down to competitive levels. In particular, funeral directors should be required to quote specific itemized and standardized prices over the telephone. Consumers will then be able to obtain the prices charged by several different funeral directors before they commit themselves to 1 funeral home. The resulting increased competition will eliminate inefficient firms from the marketplace.[142]

Funeral directors should only be permitted to maintain totten trusts for their preneed accounts. This deregulatory measure would eliminate the substantial regulatory burden of having to audit each funeral director's trust fund books. However, while the Short Act remains in effect, funeral directors with reportable preneed funds should be required to post a bond commensurate with the amount of funds held in trust. Although the Board has been unable to determine exactly how much a licensee holds in trust, thus making the appropriate bond amount difficult to determine in some instances, the consumer must be protected in the interim.

Where disclosure requirements are imposed, they should be buttressed by statutory expression and misdemeanor criminal and private civil remedy.

Other Requirements

During his lifetime, any individual may direct the disposition of his remains and those directions must be faithfully carried out.[143] While a funeral home is not subject to liability for carrying out the decedent's wishes, there is no penalty imposed upon a funeral director or cemetery authority who fails to carry out a decedent's instructions. Moreover, willful failure to follow the instructions is not even listed as an express ground for discipline. Therefore, the funeral director may be tempted to frustrate the decedent's prearrangements, and suggest a more expensive funeral to the family. Rules should be adopted to declare such failure to be "unprofessional conduct." Violation should subject the funeral director to disciplinary action. Enforcement could easily be accomplished by requiring the funeral director to retain a copy of the instructions, as well as an itemization of the actual services provided, and make them available to the Board's field representatives.

Deregulation

It does not appear that the public health or safety mandate licensure of funeral directors and embalmers. Licensing has obviously not prevented abuse within the funeral industry. However, most of these abuses involve unfair and deceptive practices. The solution lies in disclosure and similar consumer protection laws which will result in more competition within the funeral industry. Violators should be subject to criminal prosecution and civil penalties. One victimized by an unscrupulous practitioner can usually obtain adequate redress through the legal system.

However, the public interest would not be served by complete deregulation of funeral directors and embalmers at this time. Because a funeral purchase is made infrequently and involves a substantial expense, consumers cannot "try out" the services of a funeral director to determine if they are satisfactory. Instead, all funeral directors should be required to register with the Board. If an inordinate number of complaints were received against a funeral director, the Board could suspend or revoke his registration, thus driving out the bad without keeping out or inhibiting those who may well be good. If desired, the industry could initiate optional certification, with those meeting certain performance standards so "certified" by the California Funeral Directors Association, or any consumer or other group who wishes to evaluate and certify funeral establishments. Such approval would not limit entry into the occupation.

The public welfare does not demand even registration of embalmers. Again, an embalmer could be certified as competent by an industry or consumer organization if appropriate. However, because embalming is such an integral part of the sale of the traditional funeral, the funeral director is interested in hiring and retaining only qualified and competent embalmers. Even when the embalmer is not an employee of the funeral director but is an independent contractor, the consumer still considers the funeral director the one ultimately responsible for the funeral service. If the remains are not natural and lifelike, the reputation of the funeral director will suffer. Moreover, the fact that the funeral director is not trained in specialized embalming techniques does not preclude him from supervising the embalmer and his work.

In addition, embalming rooms would be subject to inspections by both Board representatives and the local health department, thus insuring they are maintained in a sanitary condition.

Finally, the Cemetery Board and the Board of Funeral Directors and Embalmers should be merged. The historically recognized distinctions between the 2 types of services provided are no longer valid. Their divided yet overlapping jurisdiction hinders attempts to protect the public and imposes another level of bureaucracy on the licensee. In the area of preneed, the laws are conflicting. Moreover, much effort is duplicated. Many licensed funeral directors who have been providing traditional funeral services are now installing crematories in their funeral homes. To prepare the remains for cremation, they must be licensed by the Board of Funeral Directors and Embalmers. But the crematory itself, even located within a funeral home, is considered a cemetery, and thus licensed by the Cemetery Board. A similar situation exists with Cemetery-Mortuary combinations which must be licensed by both Boards. The problems generated by preneed trust funds evidence the jurisdictional disputes. Consumers often direct their complaints to the wrong board, resulting in relatively insignificant yet nevertheless unproductive staff time in forwarding the complaint to the correct board. The Board of Funeral Directors and Embalmers is currently investigating serious charges made against 2 of its licensees in their capacity as funeral directors. However, the Cemetery Board continues to grant them licenses. Further, the jurisdiction of the Cemetery Board is limited. It licenses only 185 cemeteries and has 4 staff members. Transferring its functions to the Board of Funeral Directors and Embalmers, which also has few employees, would not create an unmanageable bureaucracy, but would result in a single, more efficient agency.

The Cemetery Board was established in 1949, and its jurisdiction only extends to private cemeteries. Religious, public, and private cemeteries established before 1939 and less than 10 acres in size are not regulated by the Board. The Board's functions involve licensing, auditing, inspecting, and investigation. Many of the limitations placed upon private cemeteries are imposed by local government agencies, when determining where cemeteries should be located and the manner in which they must be maintained. Building and sanitary codes are enforced by local departments.

Current licensees of the Cemetery Board (cemetery authorities, cemetery brokers, and cemetery salespeople) should be required to register with the Board of Funeral Directors and Embalmers, whose name would be changed accordingly. Their activities should be subject to disclosure and consumer protection legislation similar to those which would be imposed on funeral directors and embalmers.

Although most people avoid the subject of death, an increasing number of consumers are assuming the responsibility for funeral purchases, rather than leaving all the decisions to the funeral director. Direct disposal services have provided alternatives to the consumer. In September, Richard Jongordon, Director

of the Neptune Society, opened a retail coffin store in San Francisco. Prices range from $75.00 to $225.00. At its July 11, 1981, meeting, the Board determined that arrangement offices and storage facilities need not be at the same location. Thus a funeral director can maintain several offices while using just 1 storage facility, thus limiting costs. Funeral directors had previously been required to maintain their business office, display rooms, viewing rooms, and preparation room at a single location.

Memorial societies have been organized to enter into agreements with funeral directors who will provide simple, moderately priced funerals to the society's members. Prearrangement, whether for an alternative, or a traditional funeral, is becoming more and more common. As these developments become widespread, as consumers become more knowledgeable, as price advertising and competition correspondingly increase, and the bargaining position of the funeral director and his customer is equalized, there will be no need for governmental regulation of the funeral industry, apart from that provided by general law.

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24. Consumer Reports, *supra*, p. 921 Reese, *supra*, p. 507.
25. Mitford, *supra*, pp. 82-83.
26. Consumer Reports, *supra*, p. 94.
27. *Id.*, pp. 94-95.
28. *Id.*, p. 91.
29. Reese, *supra*, FTC, *supra*.
30. Health and Safety Code section 7355.
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32. Reese, *supra*, p. 506.
33. Business and Professions Code section 7615.
34. Business and Professions Code section 7617.
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36. Business and Professions Code section 7617.
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133. FTC, *supra*, pp. 49-53, 64-66.
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COMMENTARY SECTION

IS THIS REALLY NECESSARY?

1. An Arbitrary Hiring Freeze

On March 11, the Governor issued EXECUTIVE ORDER B97-82. This order bans all new hiring, all promotions and the transfer of any employees between departments. This order changes the irrational freeze order previously in effect (which had allowed for lateral transfers within State government). In the last issue we described the actual impact of previous policy. The new policy will be even worse. Agencies will be depleted based upon the arbitrary factor of illness, death and retirement. Small governmental functions requiring *some* staff may be jeopardized.

There is no question about the fiscal crisis before State government. But is this a rational way to cut the expense of government? Why not pick the governmental functions or government employees we can best do without in thoughtful, purposeful and public manner?

2. OAL Again

The alleged red tape fighters are at it again. The Physician's Assistant Examining Committee has the right to adjust its fees within maximum figures set by statute. The Committee, as with most special funded entities, must adjust the fees to cover projected expenses year by year — it is not allowed to have a deficiency or a surplus for any extended period of time.

The Committee noticed its routine hearing on the subject for November 11, 1981. The notice included the information that the issue of fee increases would be discussed and even mentioned some proposed figures. At the meeting it was decided to amend the proposal to figures somewhat higher, although still within the statutory guideline. OAL rejected the rule change on the grounds that the final numbers selected did not exactly match the numbers included in the notice, contending the notice was "deficient." It is unclear what theory the OAL uses to contend that subject matter notice is not enough, the precise final decision must be pre-published in the agenda and it can thereafter not be altered without another notice. Why have the hearing if no changes are possible? Does this mean *another* six week delay for a second or third public hearing before submitting the matter to OAL? And then does this mean OAL will sit on the matter for their de rigeur 30 days and return the matter again to start anew the double hearing requirement now implied from OAL? It is unclear how OAL is cutting red tape.

3. Food and Agriculture

Under AB 960 (Hallett), just introduced, the California Beef Council is going to raise its levy on cattle from 25¢ a head to $1 a head. Where does this money go? To pay for the Beef Council's increased campaign on behalf of the ingestion of beef. Beef may be a very nice food, but why do we have to pay, now, a $1 per head tax to be told it is?

And is it true that out-of-state meatpackers who ship beef into the state are levied a greater fee than indigenous California cattle interests? This is what a recently filed lawsuit contends. Why should Californians pay to subsidize California cattle *vis-a-vis* Arizona?

Cattle is not the only area of concern. There are some 14 so-called "marketing orders" now operating, allowing agricultural interests to get together to set joint policies immune from antitrust vulnerability. In addition to these State marketing orders, there are a similar number of federal marketing orders. The federal law (the Capper Volstead Act) provides that an agricultural association may be exempt from antitrust law and set policies and even prices in concert. However, any action which "unduly enhances" prices is subject to review and revision by the Secretary of Agriculture. Does such a review take place? Has a decision of any such agricultural co-op ever been reversed on these grounds? No. At the state level there is not even provision for review.

Meanwhile, specific marketing order rules specify the precise size and characteristics of cartons which must be employed in packing various vegetables and fruits. A San Diego prosecutor was approached by Food and Agriculture inspectors and asked to prosecute some farmers producing oranges because they put oranges in a truck and then wrapped them in required plastic bags rather than wrapping them in plastic bags and then putting them in the truck. Is there some health and safety reason for these minutiae? If not, is it really necessary?

4. Dental Auxiliaries

Is it really necessary for us to license "dental auxiliaries"? These are the people who help the dentist, some clean your teeth, some do x-rays, and some put on your bib. All are licensed in complex categories. Why? These are all dentist employees. The dentist is licensed and can be held responsible for his employees. The dentist cannot have more than two offices under existing rules, so he or she is bound to be near. Who are we protecting? The labor code and Cal Osha handle worker safety. Does the dentist need a licensing system so he or she can be sure about qualified help? Cannot the dentist make this decision without state pre-screening with attendant barriers to entry? And is it really necessary for those who are licensed to have to take specific courses? Why must one who cleans teeth have to take "psychology?" Why "speech?" We have attempted for the past year to obtain some justification for the dental auxiliary licensing system to little avail.

NEXT ISSUE: PROFESSIONAL ENGINEERS, DRYCLEANERS, and the NEW MOTOR VEHICLE BOARD.

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 present 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 is concerned with the prevention and control of lung disease and the associated effects of air pollution. Any respiratory care legislative bill is of major concern. The Association monitors the Air Resources Board and testifies at Board meetings.

MAJOR PROJECTS:

The Association supports HR 252 (Lewis), a resolution purporting to support the existing Clean Air Act and reauthorize it in its present form. Local Associations are soliciting approval from their Congressmen. The Association hopes California Congressmen will co-author the resolution, thereby publicly proclaiming support for a Clean Air Act.

The Association supports HR 5555 (Waxman) which purports to maintain the strong provisions of the Clean Air Act and opposes HR 5252 (Luken) which allegedly would render the Clean Air Act ineffective.

The Association favors SB 118 (Craven) which exempts from sales tax oxygen used in the home (i.e. by heart and respiratory patients).

The Association backs AB 1156 (Levine) which provides for annual inspection of all stationary (industrial) facilities.

The Association supports SB 33 (Presley) which, it contends, would require annual inspection and maintenance of vehicles.

The Association encourages the media and general public to understand and be aware of each day's PSI (pollutant standard index), the EPA's index for hazardous air conditions.

Please refer questions to Gladys Meade in Los Angeles.

CALIFORNIANS AGAINST WASTE
(916) 443-5422

Californians Against Waste (CAW) supports and lobbies for a "can and bottle bill" requiring a deposit of at least 5¢ on all soft drink and beer containers. 8 states have passed such a bill and CAW focuses its efforts on the Legislature.

MAJOR PROJECTS:

CAW's initiative campaign is underway. It has gathered 500,000 signatures and expects the Secretary of State to qualify the initiative for the November 1, 1982 ballot within the next month. The can and bottle recycling initiative would allegedly reduce solid waste by 6%. CAW contends California is faced with an impending garbage crisis since the landfills of California will fill up within the next decade if action is not taken. A copy of the Solid Waste Management Board's pamphlet, "The Garbage Crisis is Real" may be obtained by calling the Board at (916) 332-3330.

CAW is embarking on an educational campaign and a many-faceted fundraising campaign to gather support for the initiative, including a state-wide raffle. The Solid Waste Management Board is expected to endorse the initiative but will not do so until the initiative qualifies. 3 other states, Arizona, Colorado, and Washington will have a similar initiative on their November, 1982 ballots.

CALIFORNIA CONSUMER AFFAIRS ASSOCIATION
(209) 453-5904

The CCAA is an affiliation of those local governments having consumer affairs programs. Representatives from each participating city or county exchange information and decide what issues to address. CCAA encourages its members to apply as public members to various boards. Members have served on the Bureau of Home Furnishings, Bureau of Electronic and Appliance Repair and the Bureau of Collection and Investigative Services.

Of primary concern to CCAA is the continued existence of local agencies in light of federal and state cutbacks. Since bailout funding is not foreseeable, some local agencies have been lost while others have merged to continue serving the public.

Fulfilling the spirit of the Public Member Act is another major goal of the CCAA. Many public positions on state boards and commissions are still vacant. This goal is part of a continuing effort to find new avenues of access to government agencies. CCAA would like to gain public access beyond boards and bureaus, actually placing public members in state departments.

CCAA is exploring ways to improve and expand consumer education for more informed consumption. Eventually, CCAA would like to see consumer education expanded to include junior and senior high schools as well as colleges. It hopes consumer education will become interdisciplinary.

Currently CCAA is commenting on regulations of approximately 38 boards and bureaus as part of the AB 1111 process.

CCAA monitors the Contractors State License Board and advertising by contractors on the local level.

MAJOR PROJECTS:

Legislative projects will be of particular importance to CCAA advocacy for 1982. (See CRLR Vol. 2, No. 1 (Winter, 1982) pp. 7-8 for CCAA's priorities.)

CALIFORNIA PUBLIC INTEREST RESEARCH GROUP OF SAN DIEGO
(714) 236-1508

CalPIRG is a nonprofit and nonpartisan organization founded and staffed by students from San Diego's three largest universities. It is the largest student funded organization of its kind in the state. CalPIRG helps San Diego residents

with consumer issues through the Consumer Assistance Line at 236-1535.

MAJOR PROJECTS:

In February CalPIRG and Massachusetts PIRG drafted a proposal significantly affecting the future of the California organization. Beginning in September, 1982 all CalPIRG money will go directly to a central state corporation, making CalPIRG's structure the same as MassPIRG and NYPIRG. Representatives to the state wide organization will still come from participating schools. Until the transition is complete, 90% of this funding will continue to be funneled back to local and regional projects. As part of the agreement, MassPIRG will contribute seed money into major campus organization drives, probably beginning with UCLA this semester.

MassPIRG and CalPIRG will also set up a canvas operation in San Diego and San Francisco to recruit community sponsors.

In Berkeley in mid-February, the State Board voted to work on the bottle initiative and the Consumer's Utility Board (CUB). The latter is currently before the state legislature. CalPIRG also voted to support the San Diego Utility Consumer's Action Network (UCAN), a regional variation of the CUB proposal. Dave Durkin of CalPIRG San Diego supports an independent consumer supported advocate, even though he currently represents the ratepayers before the PUC. According to Durkin, the nature of CalPIRG involvement in PUC advocacy is restricted by funding. It is too difficult to do the work and then try to retrieve costs. UCAN's advantage is that its funding is ongoing and guaranteed. According to Durkin, UCAN will free CalPIRG to work on other consumer areas.

The CalPIRG staff has just taped the fifth and sixth television shows for Southwest Cable and Cox Cable Networks. Southwest airs the programs on Fridays at 5:30 p.m. and Sundays at 8 p.m. Cox airs the show on Mondays at 8 p.m. 4 programs are scheduled in March and April on environmental pollution and the Clean Air Act; auto warranties; ratepayer advocacy through UCAN; and tenant's legal rights.

The first 2 programs were on food and nutrition and toxic waste dumps. While the first 4 shows were taped in a studio, in the future, student teams from UC San Diego, San Diego State University, and Palomar College will assist news teams covering on location events and interviews.

Southwest Cable submitted the toxic waste program to the Television Academy for Emmy award consideration. The program concerned the discovery of a toxic waste dump in southwest San Diego, the subsequent reaction of government agencies, and efforts of community groups. It included an assessment of the health effects of toxic contamination.

CalPIRG's reaction to the January, 1982 PUC rate decision was mixed. CalPIRG staff attorney Dave Durkin, who testified before the PUC on behalf of San Diego ratepayers, applauded the Commission's decision not to include Construction Work In Progress (CWIP) in the San Diego Gas & Electric rate base. But Durkin strongly objected to the $166 million, 16.25% rate of return on equity awarded SDG&E.

The CalPIRG Nursing Home Study has been delayed until May so funding can be raised to finance publication.

CalPIRG is surveying condominium conversion displacement among senior citizens. As of March 1, 40–50 of 200 seniors were interviewed. The survey has been distributed, and CalPIRG is phoning to collect the data. Compilation and analysis of the data will take place in April and May and the report should be ready by June 1.

University of San Diego Law School intern Bert Guerra is currently compiling 15 different San Diego County Condominium Conversion Ordinances from various municipalities for a handbook on condominium conversion, which will be released in conjunction with the Senior Displacement Study.

CalPIRG continues to negotiate a fee mechanism for San Diego State University, where more than 60% of the students voted to create a CalPIRG organization on campus.

1982 marks CalPIRG's 10th Anniversary. Copies of the special "CalPIRG Reports" 10-year anniversary issue are available upon request. Festivities are planned for August which marks the actual 10th year of incorporation.

THE CALIFORNIA TAX REFORM ASSOCIATION

(916) 446-0145

The California Tax Reform Association (CTRA) is a non-profit membership organization lobbying at the state level for equity, simplicity and progressivity in California's tax system. CTRA works for a tax system where the tax burden is more fairly distributed among all California taxpayers, based on ability to pay, with less special interest tax relief for corporations and the wealthy.

MAJOR PROJECTS:

CTRA's major priorities for 1982 are:

1. To place the Split Roll Property Tax Initiative on the November, 1982 ballot. The Split Roll Property Tax Initiative will allegedly clean up Proposition 13 by lowering the property tax increase on the resale of homes; increasing the renters' tax credit, so renters share Proposition 13 benefits; increasing commercial/industrial property taxes to 50% of their pre-Proposition 13 amount; and raising $1.6 billion dollars for local services such as police, fire protection, and education.
2. To lobby against enactment of any new special interest tax expenditure (loopholes). According to CTRA, tax expenditures tend to complicate and erode the state tax base and shift the burden of taxation.
3. To close existing tax expenditures (loopholes) which reduce state revenues, shift tax burdens, and complicate the tax system and tax forms.
4. To advocate and educate Californians about a statewide oil severance tax. California is the fourth largest producer of oil in the United States, yet does not have a state oil severance tax.
5. To strengthen the progressivity of our state income tax.

To contact CTRA, write 1228½ H Street, Sacramento, 95814.

CAMPAIGN FOR ECONOMIC DEMOCRACY

(213) 393-3701

The Campaign for Economic Democracy (CED) is a grassroots political organization dedicated to "increasing public participation in the basic economic decisions which affect people's daily lives in the workplace, the market and the neighborhood." CED is committed to building power at the community level by developing local CED chapters and electing a "new generation of leadership of accountable progressive candidates to local and state office."

MAJOR PROJECTS:

CED Chairman Tom Hayden recently testified before the Government Operations Committee of the Los Angeles City Council on the need to extend and strengthen the city's rent control ordinance scheduled to expire on May 15. He noted that landlords are working to ban rent control through Californians Against Government Controls.

CED's Steering Committee has endorsed the split roll tax initiative, which would require the reassessment of large agricultural, commercial and industrial property to market value and increase the maximum tax rate on those properties from 1% to 1.33%. Renters' tax credits would be increased to $100 for individ-

uals and $200 for couples. The initiative would also exempt 50% of the assessment increase when a home is purchased by a new buyer.

CED Reproductive Rights Project is now involved in Pro-Choice Advocates, a lobbying coalition in Sacramento designed to prevent passage of legislation threatening the freedom of women to "control their own lives." Pro-Choice issues include working to insure the right to safe and legal abortions.

CENTER FOR PUBLIC INTEREST LAW
(714) 293-4806

The Center for Public Interest Law was formed after approval by the faculty of the University of San Diego School of Law in 1980. It is funded by the University and by private grants from foundations.

The Center is run by 4 full-time staff members, including an attorney in Sacramento, and approximately 40 graduate and law students. The faculty selected Robert C. Fellmeth, a member of the faculty, as Director of the Center.

It is the goal of the Center to make the regulatory functions of State government more efficient and more visible by serving as a public monitor of state regulatory agencies. The center has covered approximately 60 agencies, including most boards, commissions and departments with entry control, rate regulation or related regulatory powers over business and trades.

Students in the Center attend courses in regulated industries, administrative law, environmental law and consumer law and attend meetings and monitor activities of their respective agencies. Each student also contributes updates of his/her agencies to the *California Regulatory Law Reporter* quarterly.

It is the intention of the Center to fully participate in the opportunities for public input offered by AB 1111 review and the Office of Administrative Law. Students have critiqued agency regulations in writing and in person. It is expected that a substantially greater student involvement in the AB 1111 process will take place in the coming year.

Thus far, the Center has testified or commented in detail on the comprehensive rules review before seven regulatory agencies including: Board of Solid Waste Management, Board of Dental Examiners, Acupuncture Advisory Committee, Psychology Examining Committee, Board of Registration for Professional Engineers, Cemetery Board and Board of Fabric Care.

The Center has recently hired its fourth full-time staffer, attorney Elizabeth Mulroy. Ms. Mulroy will serve as Managing Editor of the Reporter. Her article on the regulation of the funeral industry appears in this issue.

MAJOR PROJECTS:

The Center has filed a petition before the PUC critical of the balance of information and advocacy in the regulation of utilities. The petition proposes that the imbalance be corrected by allowing ratepayers to organize and represent their own interests through voluntary contributions enhanced through ratepayer access to the unused portions of utility billing mailings. The petition proposes a pilot project *vis-a-vis* San Diego Gas and Electric ratepayers to test the concept.

The Center intends to increase its agency critique activities substantially. Rule critiques of the Bureau of Collections, Board of Landscape Architects, Board of Barber Examiners, Contractor's State Licensing Board, and the Office of Statewide Health Planning and agency performance critiques of the Water Resources Control Board, the Structural Pest Control Board, New Motor Vehicle Board, Acupuncture Examining Committee and the Coastal Commission are all expected before the end of 1982.

CITIZENS ASSERTING SUPREMACY OVER TAXATION
(213) 786-5977

CAST is a nonpartisan, nonprofit organization of California taxpayers working to "reclaim the power of taxation" by the initiative process. CAST believes citizens should not give the state complete discretion to set tax levels "because waste and abuse inevitably ensue."

MAJOR PROJECTS:

CAST failed in its recent initiative to amend Article XIII, section 29 of the California State Constitution. The group only obtained about 400,000 of the 550,000 signatures necessary to place the initiative on the ballot. The effort was hampered by receipt of few contributions and little media attention.

The group plans to reorganize with emphasis on raising more funds for initiative efforts.

CAST claims its proposed amendment would take the power to tax away from the Legislature. No new tax, fee or levy could be imposed, or any existing tax increased, without the consent of two-thirds of the affected taxpayers. Fines, court judgments, court costs or fees collected to cover "reasonable government service" would be exempt. Additionally, the amendment has a 6-year sunset clause on any voter approved tax measure.

CITIZEN'S ACTION LEAGUE
(415) 647-8450

The Citizen's Action League (CAL) is a nonprofit organization working for concrete improvements in neighborhoods and cities. Local neighborhood chapters elect officers and send representatives to either the Southern or Northern regional board and a statewide board. CAL emphasizes local issues around which the neighborhood chapters build.

MAJOR PROJECTS:

CAL supports legislation requiring automotive insurance companies to disclose their profits, claim payoffs, premium costs and investments and providing penalties when an insurance company acts in bad faith.

This legislation includes AB 1010, 1912 and 1669, sponsored by Assemblywoman Waters and Assemblyman Torries, which CAL claims requires statistical reporting by insurance companies of premiums, investments, profits and claims. AB 96, sponsored by Assemblyman Harris, purportedly requires insurance companies to write policies in clear and precise language. AB 1909, sponsored by Assemblywoman Waters and Assemblyman Torries, allows Insurance Consumers Action Group to enclose in insurance premium bills requests for membership in the organization, an insurance watchdog group.

AB 1908, allegedly forbids insurance companies required to pay punitive damages from passing those costs on to the consumer through increased premiums. AB 2159, the "so-called" Underinsured Motorists Coverage provision sponsored by Assemblyman Moore, requires insurance companies to offer coverage at a reasonable rate for accidents with an underinsured or uninsured motorist.

SB 1176, a prejudgment interest bill, sponsored by Senator Petris, purports to remove an insurance company's incentive to delay trials by awarding prejudgment interest. AB 188, sponsored by Assemblyman Statham, allegedly encourages early settlement by imposing postjudgment interest of 10%, rather than the current 7%. CAL claims AB 2155, sponsored by Assemblyman Imbrecht, allows nonprofit organizations successful in a lawsuit seeking insurance reform to collect up to 25% of the judgment from the insurance companies.

In addition to supporting insurance reform legislation, CAL is continuing its efforts to demand accountability from Standard Oil of California in Richmond

for disposal and release of toxic wastes and recent chemical explosions. CAL intends to seek support for right-to-know legislation on both the local and state levels to force the oil company to reveal the quantity and kinds of chemicals disposed of.

CAL, along with Citizens Labor Energy Coalition, is currently lobbying Congress against the decontrol of natural gas and elimination of the windfall profits tax. CAL claims 220 Congressmen have already pledged support for the group. CAL is attempting to obtain support of another 40 Congressmen.

CAL continues to forcefully oppose utility rate increases. The group works with the Public Utilities Commission and the utility companies, including San Diego Gas and Electric and Pacific Gas and Electric.

CAL is currently attempting to open new offices in San Diego and Sacramento.

For further information, contact CAL at 2988 Mission Street, San Francisco 94110.

COMMON CAUSE
(213) 387-2017

Common Cause (CC) enters its second decade in pursuit of a "more open, accountable and responsive government." CC is involved in legislative advocacy and supports many bills affecting the regulatory agencies.

MAJOR PROJECTS:

Common Cause is lobbying against 2 bills. SB 165 (Ellis) which the State Board of Architectural Examiners (BAE) also opposes, seeks to change the membership balance of the BAE from the current 5 public members, 3 architects and 1 building designer, to 13 members including 5 public members, 7 architects and 1 building designer.

CC also opposes AB 429 which allegedly would prohibit a beer wholesaler from offering a quantity discount to any retailer. (see CRLR Vol. 2, No. 1 (Winter, 1982) p. 9.) The Governor has not yet established a Commission to consider the effects and benefits of deregulation.

CC is currently conducting an intensive survey, polling all members of State Boards and Commissions to determine the impact of public members. CC expects the survey to be completed soon.

CC opposes Senate Constitution Amendment 27 which it claims would subject all Supreme Court and Court of Appeal nominations to confirmation by the Senate. If the Senate takes no action within 60 days, the nomination will be deemed confirmed. CC believes this will further politicize the judicial appointment process.

CC is sponsoring an initiative amending the State Constitution, creating an independent, nonpartisan, reapportionment Committee. Any vote requires a substantial majority. If the Committee fails to reach this majority, the Supreme Court automatically determines reapportionment.

CONSUMER FEDERATION OF CALIFORNIA
(213) 388-7676

The Consumer Federation of California (CFC) is composed of 60 nonprofit state and local organizations and private individuals. It strives to educate consumers in such areas as food, credit, nutrition, insurance, housing, health care, energy, utilities and transportation. The organization serves as a consumer advocate before state and local regulatory agencies and legislative bodies.

MAJOR PROJECTS:

CFC has actively supported the "Lemon Bill" (AB 1787), which allegedly provides additional protection to consumers purchasing a defective automobile.

CFC also supports AB 256 (McCarthy) which purports to prohibit discrimination against renters with children. Notwithstanding the recent Supreme Court ruling on this point, CFC supports legislative action as a statement of support.

A major concern of the CFC is skyrocketing utility rates. CFC will support measures alleviating the rising cost of energy.

The conclusions of the Los Angeles test on item pricing have been submitted to the city council.

In this legislative session, CFC plans to concentrate on mortgage legislation and efforts to eliminate consumer credit ceilings. It supports ACA 22, the split-roll tax initiative which it considers a more equitable approach to property taxes than the current Proposition 13 system.

CONSUMERS UNION
(415) 431-6747

The Consumers Union, the largest consumer organization in the nation, publishes "Consumer Reports" and finances consumer advocacy on a wide range of issues in both federal and local forums. Historically, CU has filed several major lawsuits or amicus briefs in California lawsuits. CU has opposed milk supply and price fixing and supported termination of "fair trade" liquor laws (vertical price fixing) via court actions.

MAJOR PROJECTS:

The Consumers Union filed a petition with The Food and Drug Administration to seek a ban of Lindane for the treatment of head lice. Lindane is a major ingredient in Quell shampoo, often prescribed for the treatment of lice. CU contends that the drug poses several health hazards and should be relabeled for other uses and its harms clearly articulated.

CU filed another petition with the Department of Agriculture to seek further release of milk, butter and cheese. According to CU, an additional 700 million pounds of cheese, 700 million pounds of nonfat milk and 400 pounds of butter are available for release to needy families.

In legislative matters, CU opposes AB 1079, which it claims prohibits disclosure of complaints against licensees until the period of appeal on the ruling has expired. The Consumers Union also opposed AB 650, which purports to partially deregulate savings and loans in California and AB 429 which allegedly limits competion in wholesale beer sales.

ENVIRONMENTAL DEFENSE FUND
(415) 548-8906

Environmental Defense Fund (EDF) is a national membership organization protecting environmental quality and public health. A small group of scientists and naturalists on Long Island, concerned that DDT was poisoning wild birds, founded the organization in 1967. The original EDF staff helped bring about the 1972 federal ban of DDT. EDF concentrates its efforts in 4 areas: energy, toxic chemicals, water resources and wildlife. EDF strives to bring about the rational use of mineral, land, water and air resources by advocating carefully planned development that is both economically and environmentally sound.

MAJOR PROJECTS:

EDF continues to testify before the PUC and the Energy Commission.

NATIONAL AUDUBON SOCIETY
(916) 481-5332

The National Audubon Society's main goals are to conserve wildlife and 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. A major project is preservation of the remaining California condors.

MAJOR PROJECTS:

The Society is working with the Energy Commission on a "New Energy Plan" which calls for conservation and the use of solary energy, minimizing the need for nuclear energy. The Society is implementing the plan by working with PG&E in the Bay Area.

The Society is the lead plaintiff in a lawsuit against the Los Angeles Department of Water and Power, alleging the depletion of Mono Lake, the breeding ground of 90% of the California gulls. The Society claims this year, 95% of the gulls failed to breed because of the continued decrease in the lake's level. The U. S. Congress is considering a bill to make Mono Lake a National Monument. The Society continues to solicit support from the Water Resources Control Board and the State of California for the bill and the preservation of the gull habitat.

NATURAL RESOURCES DEFENSE COUNCIL
(415) 421-6561

The NRDC is a 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.

MAJOR PROJECTS:

In mid-1980, NRDC published an alternative energy plan for California which advocated the substitution of conservation and renewable energy resources for conventional coal and nuclear power plants. NRDC is now working with state agencies on proceedings directed toward achieving these goals. NRDC is currently involved in cases before the Public Utilities Commission and the Energy Commission.

NRDC recommends saving energy by upgrading energy efficient building standards.

NRDC has urged the Energy Commission to adopt more stringent standards for commercial buildings. The Energy Commission has established advisory committees, including an NRDC staff member, to develop updated non-residential efficiency standards. NRDC is participating in the Commission's formal hearings on the new standards to ensure that they are technically sound and provide for the maximum cost-effective level of energy efficiency.

Utility conservation programs also play an important role for NRDC.

NRDC has been very active in coastal preservation through involvement in the development of local coastal programs required by the Coastal Act. As the original deadline for completion of all local coastal plans approaches, NRDC has been working with the Coastal Commission and state legislature on extension programs for some plans not yet completed.

The Model California Coastal Act is presently under attack in the state legislature. NRDC is cooperating with other environmental groups to ensure that the impact of this legislation is not diminished.

PACIFIC LEGAL FOUNDATION
(916) 444-0154

The Pacific Legal Foundation (PLF) supports free enterprise, private property rights and individual freedom. PLF devotes most of its resources to litigation. Suits are brought throughout the United States. Some California cases having regulatory impact and involving PLF follow.

Nuclear Moratorium Cases:

Pacific Legal Foundation v. State Energy Resources Conservation and Development Commission; Pacific Gas & Electric Company v. State Energy Commission: California laws placing a moratorium on the construction of nuclear power plants were the subject of two cases which the United States Court of Appeals for the Ninth Circuit consolidated on appeal. Representing a coalition of citizen groups, PLF was successful in *Pacific Legal Foundation v. Resources Conservation and Development Commission* when the District Court ruled that the key section of the California nuclear laws indefinitely barring nuclear power plant licensing in California was unconstitutional.

On October 7, 1981 the Court of Appeals for the Ninth Circuit reversed the lower court and held that the California moratorium on new nuclear power plants was constitutional. PLF filed a petition for rehearing, which the Court denied. PLF will appeal the decision to the U.S. Supreme Court.

Alfred Jay Plechner v. California Coastal Commission: On January 23, 1982 PLF successfully represented the owner of an animal relocation preserve at a California Coastal Commission permit application hearing. The owner, a practicing veterinarian, had applied for a permit to construct an animal treatment barn and residence on a 20-acre parcel of land in the Santa Monica Mountains. A preliminary recommendation by the Commission staff proposed dedication of an easement for public hiking and horseback riding as a condition of issuance of the permit. This proposed dedication, based on implied Coastal Act authority, conflicted with other provisions of the Coastal Act which require protection of sensitive wildlife and natural resources, especially where alternative trails are available.

Tahoe-Sierra Preservation Council v. State Water Resources Control Board: Placer County Superior Court has not yet heard PLF's motion for summary adjudication.

PLANNING AND CONSERVATION LEAGUE
(916) 444-8726

The Planning and Conservation League (PCL) is a public interest lobby group aimed at conserving and protecting California's natural resources. It is totally supported by individual and organizational memberships. PCL now represents 1,500 individuals and over 90 civic and conservation organizations. It interacts with numerous state agencies, including the Air Resources Board, Board of Forestry, Coastal Commission, and the Water Resources Control Board.

MAJOR PROJECTS:

PCL recently issued a report on its lobbying work. It compiled a 77% success ratio on the 35 bills lobbied during the 1981 legislative session. The legislature supported PCL's position 60% of the time and opposed PCL's position only 23% of the time. 11% of the bills are still pending, but the actions taken so far are in PCL's favor. In 6% of the cases, PCL was able to get the bills heavily amended in its favor.

PCL supported 14 and opposed 21 bills. PCL was more successful in opposing proposed legislation than in enacting legislation itself.

Of the bills supported by PCL, the following were signed into law:

SB 802 (Garamendi): Allegedly facilitates civil lawsuits after discovery of toxic waste dumps and requires persons transporting hazardous materials to carry papers identifying the chemicals.

ACR 41 (Waters): Authorized a study to help preserve the Bighorn Sheep.

AB 2000 (Sher): Purportedly removed unnecessary restrictions from the civil prosecution of air pollution violations.

SB 321: Authorized tax incentives to employers promoting ride-sharing.

PCL successfully opposed the following bills:

AB 893 (Roos): PCL claimed it would have created a new state commission to oversee the development of five new cities and thereby avoid all local planning. Although AB 893 was passed, the Gover-

nor vetoed the bill after strong lobbying by the PCL and others.

AB 1349 (Bosco): PCL alleged it threatened to destroy much of California's Wild and Scenic Rivers Act by removing from its protected list a total of 4,000 miles of river space. PCL, the Resources Agency, and the Department of Forestry fought this bill until the proposed mileage was reduced to 70 miles of the Smith River. Resources supported this amended bill while PCL remained opposed until it was killed in the Senate Governmental Organization Committee.

AB 1879 (Bosco): According to PCL, it would have relinquished vast areas of public waterways to private interests and denied public access now used for fishing, navigation, commerce, and recreation.

SB 260 (Ellis): PCL argued it would have repealed the California Coastal Act without proposing other means of protecting California's many coastal resources.

In a move to increase its lobbying effectiveness in 1982, on December 8, 1981, PCL announced the formation of a new Environmental Lobbying Network. In January 1982, the Network began sending weekly computer readouts on legislative action affecting the subscriber's area of interest. Each readout contains a concise summary of newly introduced bills and any amendments. It also provides a listing of committee assignments and the latest hearing dates. A full-text mailing of a particular bill may be ordered through the Legislative Bill Room.

PUBLIC ADVOCATES
(415) 431-7430

Public Advocates is a non-profit, public interest law firm founded in 1971. It concentrates on issues of concern to the poor, racial minorities, aged, women, and other legally under-represented groups. The firm has filed more than one hundred class action suits and has represented over seventy diverse organizations, including the NAACP, the League of United Latin American Citizens, the National Organization for Women, and the Gray Panthers.

The Public Advocates staff includes 5 attorneys and 5 support staff. They provide legal representation in education, employment, health, housing, and consumer affairs to those lacking power and money.

MAJOR PROJECTS:

In the area of education, Public Advocates is best known for its successful challenge of California's school financing system (*Serrano v. Priest*). The firm continues to litigate to ensure legislative compliance with the California Supreme Court redistribution order.

In *Larry P. v. Riles*, Public Advocates argued successfully against racially and culturally biased I.Q. tests disproportionately placing Black children in classes for the mentally retarded.

Children of the California School for the Blind v. Riles seeks to prevent isolation of physically disabled children in residential schools which do little more than prepare them for a life of institutional care.

In the area of health and consumer affairs, Public Advocates has successfully litigated for the elderly in nursing homes; obtained protection for all women in California from sterilization without consent; convinced the federal government to regulate the marketing and distribution of intrauterine devices; petitioned the state Department of Health to force laboratories to more carefully analyze PAP smear tests; and, in ending retail milk price-fixing in California (*Consumers Co-op v. Wallace*), claim to have saved California consumers over $100 million.

Recently, the firm filed a rulemaking petition with 4 federal agencies to prevent alleged widespread misuse of infant formula in the U.S. and heavy handed influence of formula companies on low income families. In *Freitas v. Baker-Beechnut* Public Advocates stopped a national care campaign discouraging homemade baby food.

Currently, the firm is involved in litigation against General Foods and Mattel to prevent deceptive television advertising aimed at children.

Another area of concern is the condition of California's inner cities. In a series of actions against savings and loans, the firm has helped inner city residents gain greater access to mortgages and rehabilitation loans. It blocked mergers of savings and loans pending compliance with the 1977 Community Reinvestment Act. This was the first time the Act was employed to block major mergers, fulfilling its intent of encouraging institutional investment in surrounding communities.

Public Advocates halted a freeway which allegedly would have destroyed a minority residential area in the East Bay (*La Raza Unida v. Volpe*). In *Toor v. HUD,* the firm obtained a court order mandating new housing for seniors displaced by the demolition of residential hotels.

The firm claims its actions challenging the exclusion of minorities and women from entry level, supervisory, and management positions have affected one of every five white collar workers in California. In *NOW v. Bank of California* and *Sebastion v. J.C. Penney Company*, Public Advocates gained significant increases in management opportunities for women and minorities. *Officers for Justice v. San Francisco Civil Service Commission* resulted in an affirmative action hiring policy. Finally, Public Advocates successfully challenged the use of state licensing tests which effectively discriminate against foreign-trained professionals (*Filipino C.P.A.s v. State Board of Accountancy*). The firm has intervened to protect foreign licensed nurses from discrimination.

PUBLIC INTEREST CLEARINGHOUSE
(415) 557-4014

The Public Interest Clearinghouse is a resource and coordination center for public interest law focusing on the San Francisco Bay area. It is a cooperative venture of Bay area law schools, including Hastings, Santa Clara and San Francisco. The Clearinghouse publishes a directory of public interest organizations.

The Clearinghouse places students in California's regulatory agencies to work on the AB 1111 review process. It publishes a regulatory and legislative alert to inform the public of recent developments in public interest issues.

MAJOR PROJECTS:

The December *Impact* newsletter focused on 4 pieces of legislation:

AB 2185 (Vasconcellos) passed in September, 1981 as an emergency measure, purports to distribute block grants in California on a pro rata basis to avoid divisiveness among competing social services. No program will be sacrificed to save another. The bill also established an Advisory Block Grant Task Force as of January 30, 1982 to determine the method of block grant allocations, monitor local and state compliance, hold hearings on program performance and community needs and prepare recommendations for legislative policy deliberations.

SB 267 (Watson) allegedly would prohibit extremist groups such as the Ku Klux Klan by making it unlawful for such groups to meet or display symbols on other's private property for the purpose of intimidation or terrorism. It would also allow injunctions to prevent the advocacy or encouragement of serious unlawful violence. Senator Watson is confident that the bill will survive the attack of unconstitutionality from civil liberty organizations. The bill is supported by the Attorney General, American Bar Association, California Association of Black Lawyers, and the La Raza Lawyers.

AB 1933 (Torres) allegedly would

place limitations on consumer lawsuits involving civil conspiracy to defraud. This bill is in response to *Wyatt v. Union Mortgage Co.*, which ruled that the three-year-statute of limitations in civil conspiracies does not begin to run until the last overt conspiratorial act. Under AB 1933, the statute of limitations would begin to run on the date the fraud was discovered, even though other acts continue in furtherance of the fraud, and the consumer does not realize the extent of the damage. *Wyatt* forced Union Mortgage to pay over $1 million in damages to defrauded customers. AB 1933 would have prevented many of the awards because the statute of limitations would have expired.

SB 228 (Davis) would require plaintiffs to name the specific manufacturer of a product alleged to have caused harm, regardless of how much time has passed or how many companies produced identical products. This bill is in response to the 1980 *Sindell* ruling that DES victims could sue a manufacturer without specifying the manufacturer of the DES to which they were exposed. The bill would also establish a "latent injury study committee" to examine plans for compensation of unidentified product users. This bill is sponsored by manufacturers' organizations including the California Manufacturer's Association.

The March *Impact* focuses on *Consumer Alert et.al. v. Mothers for Peace*, a Pacific Legal Foundation action against anti-nuclear groups for reimbursement of the costs of the recent demonstrations at Diablo Canyon. The defendants have moved to dismiss this action because the plaintiffs lack standing. San Luis Obispo County, the governmental entity involved in the arrests and incarcerations, is not a plaintiff.

The March *Impact* also discusses AB 2947 (Bates) which succeeds AB 1597. The new bill allegedly would tax only major oil producers in California. Producers of 100 barrels a day or less (approximately 90% of the oil producers) would be exempt. Every other major oil state has an oil severance tax. The proposed 6% tax could raise $500 million in the first year.

Under the new bill these revenues would no longer be earmarked for education. AB 2947 is supported by police, fire, women, teachers, and other groups threatened by cutbacks in social services.

The cover article in the March *Impact* is written by Richard E. Blumberg. He advocates aggressive rather than traditional defensive tactics by attorneys who represent tenants in suits against landlords. Suing for damages in tort and under consumer protection statutes are more effective in forcing landlords to make necessary repairs and preventing eviction of the tenant.

SIERRA CLUB
(916) 444-6906

Sierra Club volunteers are active before many boards, including the Energy Commission, Air Resources Board, Board of Forestry and the Coastal Commission. The Club publishes "Energy Clearinghouse," a newsletter dealing with energy issues and legislation.

MAJOR PROJECTS:

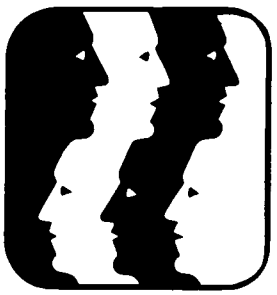
The Club worked with the Energy Commission to revise energy efficient building standards which the Energy Commission adopted June 30, 1981. The Building Standards Commission approved the standards, effective July, 1982. The building industry is lobbying for legislation to weaken or delete the approved standards.

The Sierra Club will participate in hearings through October on the Energy Commission's biennial report evaluating future energy needs and determining energy doctrines for the State. The Commission will approve the report late in the year. Sierra Club is also active in PUC hearings on general utility rate increases for Southern California Edison and Southern California Gas Company. The Sierra Club will ask that resources be directed toward conservation rather than development of coal and nuclear facilities.

The Club produced a report on the PUC, "The California Public Utilities Commission: Towards a Least Cost or Least Political Cost Energy Strategy?", which may be obtained for $5.00 by writing the Sierra Club, 1228 "N" Street, No. 31, Sacramento, 95814.

Legislatively, the Club is involved in utility rate legislation. It opposes that portion of SB 1380 (Montoya) alleging it limits the Energy Commission's jurisdiction and PUC proceedings by preventing participation in out-of-state energy issues.

INTERNAL GOVERNMENT REVIEW OF AGENCIES



The Reporter summarizes below the activities of those entities within State government which regularly review, monitor, investigate, intervene or oversee the regulatory boards, commissions and departments of California.

THE OFFICE OF ADMINISTRATIVE LAW (OAL)

Director: Gene Livingston
1414 K Street, Suite 600
Sacramento, CA 95814
(916) 323-6221

LEGISLATION:

The following are the major pieces of legislation affecting OAL. Legislation regarding OAL has been introduced in 1982 but, as of March 1, 1982 few bills were available.

AB 1013 (McCarthy; Chapter 61, Statutes of 1982). This bill is directed at "underground" regulations and prohibits a state agency from issuing, utilizing, enforcing, or attempting to enforce any "guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule" unless such item has first been adopted as a regulation.

The law empowers OAL to issue determinations as to whether the guideline or policy must be adopted as a regulation. The determination will be made known to the agency, Legislature, Governor and public.

AB 2165 (Costa). AB 2165 is a large piece of legislation but its 4 chief provisions are:

1. Deletes the sentence in section 11344(b) which states: "The office may prescribe those regulations which are necessary for carrying out the provisions of this chapter."

It should be noted that the law as originally written required OAL to prescribe regulation. In 1981, the law (section 11344) was amended to state that OAL "may prescribe" regulation. Now, AB 2165 has stricken the entire provision from the law. (See AB 2820 below.)

2. Amends section 11349.7(f) to permit OAL to "make periodic recommendations directly to the Legislature for the repeal or amendment of statutory provisions that affect the operations of regulatory agencies."

3. Amends section 11349.5 to give the Governor the express authority to overrule OAL's orders repealing emergency regulations. This amendment is an outgrowth of the AFDC controversy and decisively settles that court dispute and the similar dispute between OAL and the Governor over the Commission for Teacher Preparation and Licensing appeal. (See CRLR Vol. 2, No. 1 (Winter, 1982) p.16, for further information.)

4. Adds subdivisions (m) and (n) to section 11349.7 to provide that OAL "at the request of any standing, select, or joint committee of the Legislature, shall initiate a priority review of any regulation, or series of regulations which the committee believes does not meet the standards set forth in section 11349.1."

As amended, AB 2165 now requires OAL to inform interested persons that a priority review has been requested and to consider any written comments when making its determination to retain or repeal the targeted regulation.

It should be noted that there is no provision for an agency to appeal to the Governor when OAL repeals a regulation pursuant to a priority request. Many individuals question the wisdom of this quasi-legislative veto provision. Critics of OAL believe that OAL will quickly succumb to legislative and political pressure and routinely invalidate regulations referred to it pursuant to this section. Critics of the Legislature denounce committee requests as too arbitrary and subject to special interest pressure. A full vote of at least 1 house should be required. At the very least, regulations repealed by OAL pursuant to a "request of a committee" should be appealable to the Governor.

AB 2820 (Vicencia) proposes a number of substantial changes in OAL's operations. Chief among these are:

1. A requirement that OAL "adopt regulations governing review procedures and defining the level and quality of evidence required to establish compliance with the review standards...";

2. A requirement that OAL approve or disapprove a regulation resubmitted to it without substantive change within 15 days; and

3. A provision giving the Governor 48 hours in which to overrule OAL's disapproval of an emergency regulation.

PENDING LEGISLATION:

One piece of legislation soon to be introduced will attempt to redefine the "necessity" and "authority" standards.

Necessity will be redefined to require OAL to consider "facts, credible testimony, and other informed assessments" when deciding if there are "fair and substantial reasons" that support the need for the regulation.

Authority will be redefined to require OAL to apply the same methods, presumptions, and standards of review that a court would employ when hearing a declaratory relief action brought pursuant to section 11350; in no instance could OAL apply more rigorous presumptions.

Proponents of these redefinitions are desirous that OAL acknowledge some degree of agency expertise and consider something more than just demonstrable fact when determining if a regulation is necessary. At the same time, they are attempting to restrict OAL to a more reasonable, less stringent, standard of review; the standard originally envisioned by supporters of AB 1111.

APPEALS:

Under Government Code sections 11110-11113, the Attorney General (AG) is authorized to promulgate bond form regulations. On June 9, 1981 pursuant to this authority the AG promulgated and forwarded to OAL for filing with the Secretary of State 2 bond form regulations.

On July 13, 1981 OAL rejected the proposed bond form regulations for failure of the AG to comply with the notice and hearing requirements of the APA.

On October 7, 1981 the AG again filed the same bond forms with OAL without complying with APA notice and hearing requirements. The AG asserted that section 11342 which states " 'regulation' does not mean or include any *form* prescribed by a state agency" exempts its forms from APA requirements. The AG also relied on section 11346.1 which states "The provisions of this article (Article 5, Chapter 3.5) shall not apply to any regulation not required to be filed under this Chapter."

Government Code section 11112 *(Chapter 1)* requires the AG to file bond form regulations with the Secretary of

State, and therefore, Chapter 1 bond form regulations are exempt from Chapter 3.5 notice and hearing requirements.

Unpersuaded by these arguments, OAL on November 5, 1981 again rejected the bond form regulations for failure to comply with APA provisions. OAL relied on Government Code section 11112 which requires all surety bond forms to be adopted "by regulation."

On November 12, 1981 the AG appealed OAL's rejection to the Governor. On December 7, 1981 the Governor granted the AG's appeal and ordered OAL to reinstate the regulation. The Governor ruled that the more recent provision — section 11342 — must control over the older provision — section 11112. The order states that the Legislature, in spite of the language contained in section 11112, clearly intended to exempt forms, including bond forms, from formal notice and hearing requirements when it adopted section 11342.

However, the Governor's December 7 ruling did not lay this matter to rest.

On December 24, 1981 the AG filed 2 new bond form regulations with OAL. On January 22, 1982 in defiance of the Governor's ruling and to the utter "bemusement and befuddlement" of the AG, OAL rejected the proposed bond form regulations for failure to comply with the notice and hearing requirements of the APA.

Having no alternative, and in reliance on the Governor's just-issued ruling, the AG filed an appeal with the Governor. OAL, in its correspondence with the Governor's Office, relied on the same reasoning that had been rejected by the Governor in the first bond form regulation case. Unmoved by OAL's suggestion "to consider" his first ruling, the Governor, in a cursory order that incorporated his previous ruling, ordered OAL to reinstate the bond form regulations.

Editor's Note: It is interesting to consider OAL's contradictory position. From its inception, OAL has stated that there is no need for it to adopt regulation because its letters of rejection would soon establish recognized precedents. "A body of law" would emerge.

However, it is now obvious, that OAL assigns absolutely no precedential value to the Governor's rulings or appeal; a perplexing double standard, that leaves government and the public wondering what OAL will do next.

Thoughtful critics of government are astounded by OAL's apparently limitless arrogance. Other observers wryly note the bureaucratic delay, expense, and red tape being created by OAL. The now famous (infamous) "AG bond form" case is a classic case of bureaucratic red tape. After taking 6 months to decide the issue, OAL unilaterally decided that the identical issue should be relitigated. One wonders if every future AG bond form will be rejected by OAL only to be followed by a pro forma appeal to the Governor.

DEPARTMENT OF CORRECTIONS APPEAL:

On October 30, 1981 OAL rejected a series of regulations proposed by the Department. The regulations established an inmate point classification system which, among other things, states how the system will be used, defines the classification factors, specifies how a prisoner's score will be computed, establishes a waiver provision, and provides for inmate appearances before the classification commission. (The classification regulations were promulgated in response to 1980 legislation which requires the Department to house inmates at the lowest custody level consistent with their classification.)

However, the regulations did not contain the Department's actual "standardized classification scoring system." The regulations did not indicate how many points would be assigned to each factor. Instead, point values are contained in Department *forms* 839 and 840 and other instructional bulletins. It was the Department's position that actual point values are a matter of "internal procedural management" and thus exempt from APA requirements by virtue of section 11342. Furthermore, section 11342 also excludes "forms" from the definition of regulations, thereby exempting "forms" from APA notice and hearing requirements.

OAL, believing that the "standardized classification scoring system" (the actual point values), should be included in the regulations (and thus subject to APA notice and hearing requirements), rejected the Department's entire regulatory package stating that without the actual scoring system the proposed regulations were "vague and unclear" and, consequently, "unnecessary".

On November 9, 1981 the Department appealed to the Governor stating that the contested forms were a matter of "internal procedural management" and expressly exempted from APA notice and comment requirements.

The Department stressed, however, that the issue on appeal was not whether the forms should be adopted as regulations, but, rather, whether the regulations, as submitted, were "clear" and "necessary". The appeal states that the essence of OAL's position is that the Department must promulgate more regulations to make those already submitted "clear" and "necessary". Is this not "standing the role of OAL on its head?"

The appeal states: "The office (OAL) has no authority to reject a regulation because the agency has failed to demonstrate the *necessity for not enacting more regulations.*"

The only issue on appeal is the clarity and necessity of the submitted regulations not whether more regulations would be desirous or even better.

On November 30, 1981 the Governor agreed, stating that just because regulations could be "more detailed, more comprehensive, or better written" does not make them unclear or unnecessary. Regulations cannot answer all questions and provide all knowledge. While in this case the regulations do not contain "all the information which OAL would like to see made public" they do contain information that the Department uses to interpret relevant sections of the Penal Code.

"The decision of whether the proposed regulation is reasonably necessary is primarily up to the Department. Unless the file lacks substantial evidence supporting the reasons, the Department will be upheld."

Note: The passage of AB 1013 could change the outcome of this appeal. The ball is in OAL's court. AB 1013 gives OAL the authority to issue determinations as to whether bulletins and similar publications are regulations and must be adopted as such.

LITIGATION:

The Acupuncture Advisory Committee's hearing on the contested exam content regulations is scheduled for April 2, 1982. (see CRLR Vol. 1, No. 3 (Fall, 1981) p. 13 and CRLR Vol. 1, No. 2 (Summer, 1981) p. 11 for details.) At that time, the Committee expects to readopt slightly modified regulations and transmit them and a bolstered rulemaking file to OAL. If OAL again rejects the regulations, the Committee will appeal to the Governor and, if that fails, sue OAL.

REGULATIONS:

In a December 11, 1981 memorandum, Director Livingston stated that "early in 1982 we (OAL) plan to adopt regulations and issue a procedures manual..."

As of March 1, 1982 OAL had not yet noticed the adoption of regulations.

(For a penetrating analysis of OAL's complete absence of regulations (and guidance) see the Feature Article in CRLR Vol. 2, No. 1 (Winter, 1982) p. 2 entitled "Rules for the Regulators' Regulator.")

Some skeptics of OAL do not believe OAL has any intention of adopting regulations. The skeptics believe that Mr.

Livingston either wants to leave OAL regulationless when his tenure expires at the end of 1982 (a strange legacy to bequeath state government), or else, secure reappointment to OAL, regardless of which political party wins the governorship in 1982, by virtue of his "unblemished" record. If regulations are noticed, OAL will hold a number of hearings and then quietly dispose of the proposed regulations and hearing transcripts in a bottom desk drawer. Inquiries as to the progress of the regulations will be answered with self-serving statements like "We are carefully considering, responding to, and incorporating all comments into the regulations. Of course, we received many, many comments."

It is also interesting to note the position OAL finds itself in vis-a-vis its procedures manual. Now that AB 1013 is law, will OAL's procedure manual become a regulation? If OAL subjects itself to the same rules that it applied to all other agencies, it would appear that the manual must be treated as a regulation.

THE OFFICE OF THE AUDITOR GENERAL

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RECENTLY RELEASED AUDITS:

The OAG has released a number of audits in recent months (see below), but an audit still in its preliminary stages has generated the most controversy.

On July 1, 1981 Assemblyman Doug Bosco requested that the Speaker of the Assembly form a 5-member Select Investigatory Committee for the purpose of exploring the reasons for cost overruns at Pacific Gas and Electric Company's (PG&E) Helms Creek Pump Storage Project and determining why the Public Utilities Commission (PUC) had failed to effectively monitor the Helms Creek cost overruns.

The Helms Creek Project, located 80 miles east of Fresno, is an electrical generating and pump-back facility. The project consists of two lakes connected by 5 miles of tunnel. At peak demand times, water is released from the upper lake, rushes through the tunnel and turbines and produces electricity. During "off" hours the water from the lower lake is pumped back up to the upper lake and the process repeats itself.

In June, 1976 when the PUC issued a certificate of public convenience and necessity for the Project, PG&E estimated that it would cost $234 million to construct the Project. Within a year the estimate had risen to $381 million. In May, 1981 PG&E reestimated that final construction costs would be between $681-734 million. Some estimate that the ultimate cost may exceed $1 billion.

Speaker Brown approved formation of the Assembly Select Investigatory Committee on PG&E's Helms Creek Project (now known as the Assembly Select Committee on Utility Performance, Rates and Regulations) but instructed Bosco to use existing resources for his investigation.

On July 29, 1981 Bosco requested the OAG's assistance and on September 9, 1981 the JLAC approved the audit request. The purpose of the audit was to determine "the effectiveness of management practices used by the California Public Utilities Commission ... to monitor Pacific Gas and Electric Company's ... techniques to plan and construct major utility projects in general, and the Helms Creek Pumped Storage Project in particular."

The OAG first contacted PG&E about the audit in late October and immediately encountered resistance. PG&E refused to cooperate with the OAG on 4 grounds: (1) the OAG audit would be time-consuming to PG&E personnel and costly to rate payers; (2) PG&E was currently being audited by the PUC (see below); (3) the OAG had no authority to demand access to PG&E's records, and; (4) the OAG audit was premature and would prejudice PG&E's anticipated Helms rate offset application (at which time the PUC would determine which project costs would be added to the rate base). Thus started a 2 month exchange of increasingly hostile letters between PG&E and the OAG which finally culminated in an unprecedented second meeting of the JLAC in January, 1982 (see below).

Meanwhile, the PUC, sensing the Legislature's growing impatience with its seeming inability and/or unwillingness to control escalating utility bills, was conducting a hurried "Preliminary Investigation of Pacific Gas and Electric Company's Helms Pumped Storage Project." The December 29, 1981 preliminary investigation report is unique in PUC history. The PUC has never before investigated or even monitored a large construction project, but, instead, has always waited until the utility files an offset rate base application before it commences its investigation. In an effort to diffuse Bosco's Select Committee's investigation and the OAG's audit, the PUC departed from institutional practice and prepared the preliminary investigation report.

The PUC report is highly critical of PG&E management and the Helms Creek Project. Some of the report's major findings are:

1. PG&E was aware of the fact that its initial estimate of $234 million was unrealistically low but did not inform the PUC before the PUC issued the certificate in 1976. (Of course, one must ask why the PUC was unable to independently determine the validity of PG&E's estimate. Why does the PUC blindly rely on utility estimates?)
2. PG&E knew by 1980 that its 1977 revised estimate of $381 million was, again, inaccurate but waited until July, 1981 to request additional budget increases. (Again, one must ask "What was the PUC doing during this period?" Did it make any effort to find out what was going on? Did it have any idea of what was going on?)
3. PG&E made "a mistake" by entering into a "cost reimbursable" contract with its general contractor, as opposed to a "hand money" contract. (Should the PUC be involved in the actual contract between the utility and contractor? Should the PUC be required to approve cost reimbursable contracts if the utility desires to use that kind of contract?)
4. PG&E made little effort to control its contractor and did not respond efficiently to huge cost overruns by the contractor.

However, in spite of these condemnations, the report concludes that the Helms Project is still capital cost effective even if costs increase to $734,000,000 — a figure some project critics believe has already been exceeded.

Lastly, the report concludes that the PUC's "involvement in monitoring utilities' major construction projects should be intensified".

(The Energy Commission has also prepared a report on the Helms Creek Project. The January 5, 1982 report, prepared at the request of Assemblyman Bosco, is extremely critical of the economic viability of the Helms Creek Project. Some of the report's major findings are:

* The Helms Project will not be an economic component of the PG&E system during the...1980's. On an average basis, Helms is projected...to operate less than 90 hours annually, at least until 1990. Infrequent operations will be due primarily to the high cost of pumping energy, projected to come from oil-fired generation during the 1980s.
* Ultimate economic operation of Helms depends on significant replacement of PG&E's oil-fired generation with lower cost generation alternatives, not likely for at least a decade.
* Final Helms Project costs are likely

to be over $700 million (1980 $) and probably at least $900 million (1982 $) by the time of operation.

* Helms will likely operate at capacity factors well below those needed to economically justify the project, at least for the next decade.

* Helms is not needed to maintain system reliability in the near term.

* It is not clear...when, if ever, PG&E ratepayors will receive a net benefit from this $1 billion investment.)

In January, 1982 at the behest of PG&E, the JLAC reconvened to discuss the audit it had approved on September 9, 1981. The JLAC listened to PG&E's concerns but remained resolute in its determination that the audit must continue. The JLAC allayed PG&E's concerns by stating that the PUC was the main focus on the audit and PG&E was only indirectly involved. The purpose of the audit was to provide the Legislature with information so that it could prepare remedial PUC legislation. The audit findings would not be used to prejudice PG&E's offset rate base application, but, instead, to prepare legislation that would cure the PUC's institutional deficiencies.

Lastly, the JLAC stated quite plainly that the OAG had the authority to demand access to PG&E's records. Recent amendments to Government Code section 10527(b) state:

"the Auditor General...shall have access to the records and property of any public or private entity or person subject to review or regulation by the agency or public entity being audited or investigated to the same extent that employees of that agency or public entity have access."

As of March 1, 1982 the audit is still in its preliminary stages and no release date is available. It is now apparent to all concerned that the PUC, and not PG&E, is the central focus of the audit. (For proposed legislation affecting the PUC, please see the General Legislation Section in this *Reporter*.)

The OAG has released the following audits in the past few months:

1. Report No. P-038 regarding the Department of Rehabilitation (January, 1982). In September, 1980 the Department projected that it would run out of funds before the end of the fiscal year and suspended all rehabilitation services to new clients. The Department ended the fiscal year with a $9.1 million surplus. The audit analyzes the reasons for the multi-million dollar miscalculation.

2. Report No. P-102 relating to the Department of Transportation's administration of excess lands (January, 1982). As of July 31, 1981 DOT's inventory of excess land included approximately 3,300 parcels valued at more than $57 million at time of acquisition.

A 1979 law required DOT to sell 262 residential properties at affordable prices (generally below fair market value) to families of low or moderate income. The report concludes that:

A. If the parcels are sold the net sale loss will be $11.3 million;

B. DOT has "approved extensive holds on excess land and has held certain parcels without adequate documentation";

C. DOT has "inappropriately extended holds for public agencies on 138 parcels worth over $5 million";

D. DOT has "held land worth more than $1.8 million for operational purposes without adequate documentation"; and

E. DOT has failed to "maintain an accurate management information system".

3. Report No. P-045 relating to the Workers' Compensation Appeals Board (February, 1982). The State Constitution requires that the workers' compensation system accomplish justice expeditiously. However, WCAB's ajudication process requires an average of 12 months to complete. The WCAB attributes the delay to understaffing and has requested an additional 28 referee positions at a cost of $4.3 million. The report concludes that the new positions are unneeded and the WCAB could increase the productivity of its existing referees by the equivalent of 33 positions if:

A. The WCAB would schedule referees to hear cases at all available hearing times and not waste hearing time; and,

B. The WCAB would use pro tempore referees to preside at conference hearings, thus freeing regular referees to preside at regular hearings.

The Report also concludes that the WCAB could save $1 million annually by replacing court reporters with electronic recording devices. Finally the report concludes that by expanding the role of the Information and Assistance Bureau, worker's reliance on the litigation process will be reduced and undetermined cost savings will result.

THE COMMISSION ON CALIFORNIA STATE GOVERNMENT ORGANIZATION AND ECONOMY (THE LITTLE HOOVER COMMISSION)

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The Little Hoover Commission was created by the Legislature in 1961 and became operational in the spring of 1962. (*See* Government Code section 8501 et seq.) Although considered to be within the executive branch of state government for budgetary purposes, the law states that "the Commission shall not be subject to the control or direction of any officer or employee of the executive branch except in connection with the appropriation of funds approved by the Legislature." (Government Code section 8502.) This unique formulation enables the Commission to be California's only real, independent watchdog agency. However, in spite of its statutory independence, the Commission remains a purely advisory entity only empowered to make recommendations.

The purpose and duties of the Commission are set forth in Government Code section 8521. The Code states: "It is the purpose of the Legislature in creating the Commission, to secure assistance for the Governor and itself in promoting economy, efficiency and improved service in the transaction of the public business in the various departments, agencies, and instrumentalities, and all expenditures of public funds, more directly responsive to the wishes of the people as expressed by their elected representatives.

MAJOR PROJECTS:

The Commission continues to devote almost all of its efforts to its study of the State Department of Education and California's public school education system.

On January 13, 1982 the Commission held a hearing on the State Department of Education. Among others, testimony was received from Dr. Wilson Riles, State Superintendent of Public Education.

In his opening remarks, Chairman Shapell stated that the Commission was interested in the state's K-12 education system because it constitutes the largest single state expenditure, totaling more than $12 billion in federal, state and local funds in 1981. Today's inquiry would be directed at the Department to see if it is fulfilling its obligation of "providing professional direction and leadership" to the state's 1043 local school districts and 58 county departments of education and "assuring that the California school system [stays] abreast of the times, outstandingly strong, and economically sound."

Chairman Shappel cited statistics that between 1970 and 1980 the state's K-12 student population declined by 12% but that during the same ten year period, the number of school employees per 1,000 students increased from 68 to 87. The Department's budget increased from $20 million to $71 million during the same decade. The number of Department

employees increased from 889 to 1,437.

Faced with these statistics, Shappel asked Dr. Riles what assurances he could give the Commission that the Department and the state's 1043 local school districts were using the $12 billion wisely.

Riles initially responded by citing statistics. California's K-12 schools have 4 million students, 372,000 employees and a $12 billion budget. However, despite the $12 billion figure, California's financial support for its students is slipping. In 1973-74 California ranked 26th among the states in terms of the percentage of personal income devoted to schools. In 1978-79 California had dropped to 44th. Lastly, the Department itself had only grown by 6% in the last three years.

Riles was adamant in his testimony. He stated that the Commission will not find "several billion dollars of waste, quick fixes, or simplistic solutions that change the system for better overnight.... We already have volumes of Education Code filled with mandates, directives, controls, and incentives that were sold as snake oil cures for educational ills." He cautioned the Commission that previous witnesses had "confused" the Commission and that "it would be foolish to rush to judgment."

Commissioners expressed concern about recalcitrant districts, like L.A. Unified School District, and asked, "how can the state withhold money from wasteful districts?"

Riles responded that local control "is the foundation of policy-making for education in this state," and that the Department is essentially powerless to punish wayward districts. If a district requests advice, the Department is willing and capable of helping. However, the Department has no authority to compel districts to close underutilized facilities, sell surplus property or compel counties to combine small, inefficient districts. He suggested that withholding state money from inefficient, poorly-operated districts "only hurts the kids" and rarely has a salutary effect on district administration.

Riles cited the L.A. Unified School District as an example. Individuals campaigned for School Board positions on the exclusive issue of mandatory busing and nothing else. Consequently, the district was mismanaged year in and year out, never closed one underutilized school or sold one acre of surplus property, but, nevertheless, still asked the state for $1 billion each year. Because of the strong component of local control, Riles was virtually powerless to interfere.

At the close of the hearing, it was apparent that the Commission is still groping for a handle in this investigation. However, the issues are becoming somewhat clearer and can be summarized as follows:

How can the state withhold money from inefficient districts without having the cuts entirely passed on to the pupils?

Is it wise to augment the Department's authority and thus violate the fundamental precept of local control? How else can the state exact accountability from the many local districts?

Is there any way to make operations which witnesses uniformly stated were "already cut to the bone" more efficient?

The last question has become the Commission's major focus, with special attention being paid to the possibility of returning greater flexibility to the districts when administering state mandated programs. Questions of underutilized facilities, surplus property, and deferred maintenance are also prevalent.

The Commission is currently preparing a preliminary draft report of its Department of Education Study. It was awaiting mid-March release of a Legislative Analyst's study of the necessity of services provided by county offices of education, including reorganization to improve efficiency and effectiveness, and an Auditor General's study on apportionment, to enable it to consider both reports prior to making its own recommendations. Neither subjects were separately studied by the Commission.

The Commission intends to discuss the first draft at its March 31 meeting in Sacramento. Since Dr. Riles has announced his intention to run for re-election, the Commission hopes to release its final report soon to avoid politicising the issue.

On January 21, 1982 the Commission released its "Report on the San Juan Unified School District." (See CRLR Vol. 2, No. 1 (Winter, 1982) p. 18, for further information.) The report is highly laudatory and states that "[w]hen compared to other school districts studied by the Commission since 1973, the San Juan district is exceptionally well-managed and operated."

The report commends the district for closing underutilized schools (an immediate savings of $450,000 and the sites are valued at $2,275,000) involving the community (and thus avoiding lawsuits) cataloging and preparing to sell surplus property, improving management-union relations and, generally, running an efficient operation in tough economic times. (The district's 1981-82 budget grew by only 3.7%, 5% less than the national average.)

The report recommends that officials from other school districts should use San Juan's planning and procedure documents for school closing as models. The report suggests that these documents will help other districts "to avoid the negative response and active opposition that a number of districts have recently experienced in attempting to close schools."

The report concludes by stating, "[t]he essence of the Commission's recommendations to the district can be summarized in one phrase: Continue to do what you are doing."

At its March 5, 1982 meeting in Los Angeles, the Commission considered legislation proposed by Assemblywoman Marian Bergeson to create a Commission on Educational Quality in the Public Schools. Assemblywoman Bergeson requested the Little Hoover Commission to act as the educational quality commission. While supporting her theory, the Commission unanimously requested its Executive Director, Les Halcomb, to inform her that it was unable to assume this new task.

On January 28, 1982 the Commission released the USC historical study of the Commission. The 80-page study employed an elaborate methodology which, among other things, included: a survey of the other 49 states and their similar institutions, if any; interviews with former Commissioners, legislators, agency personnel and members of the press; a survey of relevant literature; and a review of several Commission reports to determine if Commission recommendations had been considered and/or enacted.

The introductory cover letter to the report states:

> "In our judgment, the Commission since its inception has assumed its obligations in a very responsible and judicious manner, and has made over its twenty year history an outstanding contribution to good government in California. In financial terms alone, Commission recommendations have resulted in major savings which compensate manyfold the modest costs it has expended to perform its work. Equally important, however, are the ways it has focused attention on major problem areas resulting from inadequately structured organizational arrangements, operational weaknesses in the implementation of major State programs, ineffective management practices, and insufficient public accountability.
>
> The very fact that it exists as a watchdog agency, with a broad mandate to search out problems wherever they may be, and the generally high quality of its studies and findings cannot help but exercise a sobering influence on the operations of State Government. In

addition, its independence and sense of public accountability allow it to possess a moral strength which would be difficult if not impossible to duplicate in today's world. As long as that strength and integrity can be maintained, the public's confidence and trust in the Commission will not be misplaced. The continued presence of the Commission should act to reassure citizens that its government has taken responsible steps to ensure its accountability to the public at large."

As of March 1, 1982, the Commission's report on the Horse Racing Board was nearing completion. A public release date was not available. Executive Director Halcomb stated that the report would be "pretty critical" of the Board, and reveal that the Board has been doing a "slipshod job."

A recently released legislative study of the Horse Racing Board indicated several irregularities in the operation of Cal Expo, conflicts of interest between Board members and its licensees, and that the State received $12 million less, while the industry received $58.5 million more. Stating they have no reportable interest, Board members Barbara Brooks and Harvey Furgatch have not filed reports with the Fair Political Practices Commission. Consequently, Commission member Manning Post requested copies of all FPPC filings for all Horse Racing Board members for the last 3 years. Although the Commission looked at Cal Expo as part of its Board study, as a result of the legislative study, it now wants to further consider Cal Expo's organization and operations. At the request of the Commission Ken Cory stated auditors from his office would be available to aid in the review.

At the Commission's March 5, 1982 meeting, Marty Morgenstern, Director of the Department of Personnel Administration, presented the Department's proposed alternative retirement program for state employees. Their plan, mandatory for new employees and voluntary for current employees, would integrate the pension plan with social security, resulting in retirement income comparable to the most liberal in the private sector. Mr. Morgenstern expects the state's savings during the plan's first full year of operation to be $75 million. Eventual savings will be $350 million annually.

Although this plan is similar to that proposed by the Commission in 1977, Chairman Shapell questioned whether 1977 suggestions were applicable in 1982. Other Commissioners wondered whether the plan might be too expensive and whether government retirement plans should compare to the most liberal private plans.

A representative of the California State Employees' Association indicated the proper question should be what is a fair and adequate retirement, not how much can the state save.

The Commission will consider the proposal further.

Dr. Paul R. O'Rourke testified concerning the non-action taken by the Governor, Legislature, and public agencies since completion of the Commission's reports on major State Health Programs 2 years ago. However, most legislators realize they must make some cuts in the medical field this year since large deficits in health programs are projected. There is little agreement within the Legislature as to where cuts should occur, but many are seeking Commission support for their position.

Because the Senate Office of Research thought public hearings by the Commission would be helpful, the Commission plans to hold a hearing in Sacramento on March 31, and another in Los Angeles. Testimony will focus on the impact of various approaches to budget reduction and cost containment.

The Commission was unable to take further action on its report on potential surplus property at Metropolitan State Hospital at Norwalk. Since the Commission's study, a new director of the Department of Mental Health was appointed, who was to write the Commission regarding its study and possible alternatives. Because the Commission had not received his letter as of the March 5 meeting, it will consider this issue at its March 31 meeting.

DIVISION OF CONSUMER SERVICES DEPARTMENT OF CONSUMER AFFAIRS

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RECENT EVENTS:

The Legislature has approved AB 46 (Deddeh; Chapter 282, Statutes of 1981) which restates the Legislature's intentions with regard to the Golden State Senior Citizen Discount Program. (See CRLR Vol. 1, No. 2 (Summer, 1981) p. 17 for more information). AB 46 reaffirms the voluntary nature of the Program and states that its purposes are to:

1. Increase the purchasing power of senior citizens in California.

2. Encourage commitments from private and public sector to assist senior citizens.

3. Assist and instruct local entities, including the private sector, in the implementation of discount programs.

Division spokespersons say AB 46 has had little effect on the Discount Program and the Program continues to be successful.

As of March 1, 1982 the State Board of Equalization still has not ruled on its proposed decision to levy sales tax against the membership fees and in lieu of labor that co-operatives require of their members. The Division opposes the Board's attempt to assess sales tax saying that the imposition of the tax will discourage the formation of co-operatives and unfairly inhibit the ability and right of consumers to organize. In tough economic times (if not at all times) the government should encourage, not discourage, the voluntary efforts of people to help themselves.

Some members of the Legislature have also joined the groundswell of opposition to the Board's proposed ruling. Assemblyman Lockyer has introduced legislation that would overturn the Board's proposed ruling. AB 2314 states: " 'Gross receipts' from the sale of tangible personal property by consumer co-operatives . . . shall not include the value of monthly membership fees and the value of labor performed in lieu of monthly membership fees."

AB 2314 was approved by the Assembly Revenue and Taxation Committee by a vote of 14-0 and is awaiting action in the Assembly Ways and Means Committee. Some contend that AB 2314 is unnecessary, that existing law already prohibits the Board from imposing the sales tax. Of course, a clean statement by the Legislature is not unwelcome.

LITIGATION:

On December 30, 1981 the Department of Consumer Affairs and a coalition of consumer, labor, and environmental groups filed a lawsuit to enjoin the use of plastic pipe that may release cancer-causing agents into residential drinking water.

The defendant in the lawsuit, International Association of Plumbing and Mechanical Officials (IAPMO), publishes the "Uniform Plumbing Code" (UPC) which IAPMO represents as providing "minimum requirements and standards for the protection of the public health, safety, and welfare." Although IAPMO is technically a private organization, it and its publications enjoy quasi-public legal status. IAPMO's voting membership is comprised of governmental jurisdictions and government building officials and, consequently, the complaint alleges that "IAPMO is the functional equivalent of a public agency".

The California Housing and Development Commission (HDC) is required by

law to adopt building standards substantially similar to those proposed by the UPC within 1 year of publication of the UPC or the contents of the UPC are deemed automatically approved by operation of law (Health and Safety Code section 17922). Within 1 more year California's counties and cities are required to adopt the same annual changes in the UPC by local ordinance. (Health and Safety Code section 17958.)

The complaint alleges that because of these legal requirements, the net effect of changes in, or new editions of, the UPC is that they are treated as if they were law.

At its annual conference on October 13, 1981 IAPMO voted to include in the 1982 version of the UPC as "approved" materials for the use of transporting potable water, two kinds of plastic pipe — polyvinyl chloride (PVC) and polybutylene (PB). This approval was granted in spite of the fact that the HCD on November 24, 1980 and April 20, 1981 had determined that there was substantial evidence of potential or actual significant adverse environmental effects with respect to the use of PVC and PB plastic pipe for transporting potable water. The HCD, in each instance, voted to prepare an EIR as required under CEQA. The EIR's are not yet complete.

IAPMO was asked at its annual meeting to defer approval of the plastic pipes until completion of the EIRs. IAPMO refused. The problem at this point is that, notwithstanding the HCD decision to prepare EIR's, local building officials, contractors, and others will rely on the 1982 edition of the UPC and use PVC and PB pipe in construction assuming the pipe is safe (as indicated by the UPC).

In an effort to prevent unwary consumers from being exposed to the potentially dangerous pipe (not to mention the expense involved in removing and replacing the pipe should the EIR's conclude the pipe is, in fact, dangerous) the Department sued. The suit seeks an injunction that would require IAPMO to place the following notice at each location in the UPC where reference to the plastic pipe appears:

> "NOTICE: An Environmental Impact Report is now being prepared in California to determine whether this use of chlorinated polyvinyl chloride, polyvinyl chloride, or polybutylene plastic pipe poses a danger to public health or the environment. At the time this edition of the Uniform Plumbing Code was printed the use of such pipe for this purpose is not permitted in California except in extremely limited circumstances. It is recommended that you contact the State Housing Law Section of the California Housing and Community Development Department before using such pipe."

At a late February hearing in Los Angeles the court denied the Department's request for a preliminary injunction. The court indicated that there was insufficient evidence to support the claims that the pipe is potentially dangerous. The Department believes the ruling is erroneous, that the issue of the pipe's dangerousness is within HCD's jurisdiction, which properly exercised that jurisdiction when it ordered the preparation of the EIR's. The plaintiffs have appealed but it appears the UPC will be distributed in California without the aforementioned warning.

The Legislature has also become involved in this dispute. On February 12, 1982 Assemblyman Papan introduced AB 2636. AB 2636 outlaws the use of plastic pipe until the EIR's are certified. AB 2636 adds section 17921.4 to the Health and Safety Code and states:

> Notwithstanding any other provision of law, no commission, department, agency, city, county, or public entity shall permit or promulgate building standards which permit the use of plastic drain, waste, vent, or water drinking pipe in any buildings except as specifically authorized by the provisions of the 1979 unamended edition of the Uniform Plumbing Code of the International Association of Plumbing and Mechanical Officials. This limitation on the use of plastic drain, waste, vent, or water drinking pipe shall remain in full force and effect in all jurisdictions until such time as the Department of Housing and Community Development prepares and certifies a final environmental impact report, regarding the environmental effects of using that pipe in buildings. Upon certification of the final environmental impact report by the department those commissions, departments, agencies, cities, counties, and public entities authorized by law to adopt, submit, or approve building standards, may promulgate standards for use of plastic drain, waste, vent, or water drinking pipe which are consistent with state law.

AB 2636 has been referred to the Assembly Committee on Consumer Protection and Toxic Materials.

REPORT — Indoor Pollution: "Clean Your Room! A Compendium on Indoor Pollutants"

On February 15, 1982 the Department released a 700 page report that is the first comprehensive study about a wide range of indoor pollutants — where they occur, how they interact with one another, their effects on human health (if known; in many cases, scientists can only speculate about possible dangers) and what can be done about them. The following is a list of the pollutants covered in the report:

Asbestos	Particulates
Lead	Nonionizing Radiation
Formaldehyde	Odors
Radon	Air Ions
Tobacco Smoke	Plastic Pipe for Potable Water
Combustion Products	Light
Organic Chemicals	Noise Pollution
Pesticides	

The report notes the "federal government is abandoning its research obligations (in the area of indoor pollutants) in a flight from responsibility" and, accordingly, outlines an agenda for developing a public policy to combat the growing menace of indoor environmental pollution. The agenda includes long-range State planning, immediate remedial actions (the interim adoption of some European standards), the need for responsible professionals (architects, engineers, contractors, structural pest control operators and health care providers) to educate themselves about the problems of indoor pollution and incorporate the solutions into their practices, and, lastly, the need for individuals to recognize the dangers that surround them and change their lifestyles accordingly.

PRE- AND POST-NATAL CARE:

The Division is presently engaged in the preparation of a report relating to pre- and post-natal care. Few details were available and the release date is unknown.

ASSEMBLY OFFICE OF RESEARCH

1100 J Street, Fifth Floor
Sacramento, CA 95814
Director: Art Bolton
(916) 445-1863

Created in 1966, the Assembly Office of Research (AOR) performs 4 major functions: (1) budget analysis; (2) research and policy formulation on major policy projects; (3) routine research for Assembly members as requested; and (4) 3rd reading bill analysis. The AOR is directed by the Special Assembly Committee on Policy Research Management. The Committee, chaired by Assemblyman Borman, is a bipartisan collection of house leaders. The Committee approves AOR's major policy projects and generally supervises AOR's ongoing activi-

ties. However, there is no rigid protocol between the Committee and AOR, and AOR exercises a substantial degree of independence. AOR's major policy projects are often self-initiated and only secondarily approved by the Committee.

The AOR continues to work on its 7 major policy projects (see CRLR Vol. 2, No. 1 (Winter, 1982) p. 20 for a description of each project.) As of March 1, 1982 only the report on the Sacramento-San Joaquin Delta was final. A discussion paper on the status offender project had also been released.

Sacramento/San Joaquin Delta Dilemma (January 1982): The major purpose of this AOR report is to find ways to rehabilitate the Delta's 1,100 miles of man-made levees and thereby preserve the Delta's 60 subsiding islands and their many beneficial uses (agriculture, fisheries, wildlife habitat, recreation, water quality, water exports, shipping, natural gas and oil fields, utility corridors, and historical and cultural resources) from flooding.

The major obstacles to the successful rehabilitation of the Delta's levees are: (1) the absence of a single responsible government entity (presently, government responsibility is fractured between 50-60 different water districts, levee districts, and county governments); and (2) the lack of money to finance the costly repairs (the U.S. Army Corps of Engineers estimates it will cost $1 billion to rebuild the entire levee system).

The report recommends the creation of a Delta Task Force to coordinate the rehabilitation effort.

On January 27, 1982 Assemblyman Waters introduced House Resolution No. 40 which would create the Emergency Delta Task Force. The 19-member task force will be given $10,000 and required to report to the Assembly by October 1, 1982 on the following issues:

1. propose a preferred levee restoration plan;
2. identify all beneficiaries of delta resources;
3. develop an equitable cost-sharing formula among the beneficiaries;
4. develop a mechanism for raising local revenues;
5. investigate the availability of state and federal funds; and
6. review the U.S. Army Corps of Engineers and Department of Water Resources reports, expected to be released in May, 1982.

Status Offenders Project: In December, 1981 AOR released a document entitled "Status Offender Project: A Discussion Paper for Assemblyman Bill Leonard's Ad Hoc Meeting on Status Offenders".

Status offenders are youths who have committed acts that would not be crimes if they were committed by an adult. Welfare and Institutions Code section 601 defines status offenders as persons under the age of 18 who continually disobey the orders of parents or guardians or are beyond the control of such persons, violate curfew laws, or are habitually truant.

Prior to 1976 status offenders were locked-up in secured detention facilities. In 1976 the Legislature prohibited the use of secure detention for status offenders. However, it has since been learned that the present "labyrinthian and compartmentalized" system does not provide troubled youth with the needed assistance and permits too many to "fall through the cracks".

The discussion paper recommends the establishment of family service centers (who would receive youth and refer their families to the appropriate agency), the creation of family courts within superior courts, and the removal of status offenders from the jurisdiction of juvenile court.

The paper states that in 1980 California's juvenile courts handled 11,160 Welfare and Institutions Code section 601 referrals.

The Status Offender project has already produced one piece of legislation. AB 2449 (Leonard) authorizes a peace officer to take a youth under custody to "a community-based youth and family service organization" as specified.

AOR's remaining projects are nearing completion and public reports will be available by late spring. Many of the projects will result in legislation. As of March 1, 1982 the AOR project had produced 30 pieces of legislation, but no bill numbers were available. It is known that some of the AOR authors will be Assemblyman Berman, Nolan, and Katz.

SENATE OFFICE OF RESEARCH

1100 J Street, Fifth Floor
Sacramento, CA 95814
Director: Nancy Burt
(916) 445-1727

On February 17, 1982 Senate President Pro Tempore David Roberti released a document that explains the need for the legislative Special Session. The document states that the Session's original purposes were to conform state welfare law to federal law (thus saving $25 million) and to draw reapportionment maps for the State Board of Equalization's 4 districts.

However, as the Session progressed, it became apparent that the state's fiscal situation was deteriorating and further legislation would be required to balance the 1981-1982 state budget. In response, the Legislature passed the following bills:

SB 1X (Alquist) and AB 2X (Lockyer) — conform state welfare law to federal welfare law, save the state $31 million and prevent the imposition of $40 million in federal penalties. (See CRLR Vol. 2, No. 1 (Winter, 1982) p. 15 for a detailed discussion of a different aspect of the same story.)

AB 6X (Robinson) — increases state revenue by $180 million by requiring earlier payment of personal income taxes withheld by large employers.

AB 7X (Robinson) — saves the state $107 million by eliminating the expenditure of funds for certain programs and transferring those funds to the state General Fund.

AB 8X (Robinson) — increases state revenue by $165 million by raising the interest rate on all past due state taxes (except inheritance and gift tax), and accelerating the payment of sales tax collections from the state's 200 largest retailers for the first 2 weeks of June.

Roberti states that the reasons for California's budget troubles are the post-Proposition 13 exhaustion of the once large state surplus and the continuing economic recession. Because of the recession, at the first of the year state revenues were $809 million below projections. At the same time, because of increases in the cost of Medi-Cal, forest fires, and the Med Fly, among others, state General Fund expenditures were $416 million higher than projected.

However, in spite of these miscalculations, Roberti states that a $114 million budget surplus at the end of January, 1982 should carry the state through to the end of the fiscal year.

It should be noted that the Special Session did not approve the reapportionment map for the State Board of Equalization. Because of the Legislature's inability to produce such a map, in late February Secretary of State March Fong Eu petitioned the California Supreme Court to draw the map.

Correction: In CRLR Vol. 2, No. 1 (Winter, 1982) at page 22, it was reported that AB 2165 (Vasconcellos; Chapter 1186 Statutes of 1981) states the Legislature's findings and intents regarding federal block grants. The correct bill number is AB 2185 (Vasconcellos; Chapter 1186 Statutes of 1981).

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). The Board consists of 9 members, each appointed by the Governor. 4 of the members are CPA's, 2 are PA's, and 3 are nonlicensed public members. Each member serves a 4 year term and receives no compensation other than expenses incurred for Board activities. The Board establishes and maintains standards of qualification and conduct within the accounting profession, primarily through its power to license PA's and CPA's. It is a misdemeanor to practice accountancy without a license in California. The Board's staff administers and processes the nationally standardized CPA exam. Approximately 16,000 applications are processed each year. Three to four thousand of these applicants successfully complete the entire exam and are licensed.

MAJOR PROJECTS:

OAL has not completed its review of the Board's AB 1111 task force report. However, OAL complimented the Board on the form and thoroughness of its submittal, which OAL regards as exemplary. OAL may have some difficulty meeting the response deadline of April 30.

The Board, having received funding in June 1981 for a free accounting program for low income Californians, is currently recruiting accountants and considering alternative ways to implement such a program. At its January meeting the Board unanimously selected Mr. Morton Levy, founder of Accountants for the Public Interest and author of several related books, as the director of this program. Mr. Levy remains subject to further approval, but the Board regards his credentials as excellent.

LITIGATION:

The Filipino controversy remains unsettled, although some progress is being made. Over a year ago the Filipinos brought a successful class action suit against the Board alleging unequal treatment in the evaluation of the Filipinos' applications for waivers of the CPA exam. Under then existing law, a foreign applicant could substitute certain educational accomplishments and work experience for the exam. The law vested a good deal of discretion in the Board in evaluating alternative qualifications. The Filipinos claimed the Board was applying the alternative standards to Filipino qualifications inconsistently with the Board's previous waiver evaluations, and that Filipinos were being denied licenses as a result.

The Board maintains the standards were applied properly in light of their purpose, to assure the competency of the applicant, and what appears to be unequal treatment is merely the inability or unwillingness of the Filipinos to substantively or procedurally comply with the waiver requirements. The Board acknowledges that the evaluation of foreign applicants is very difficult without extensive understanding of that country's educational system and common work practices. Because of this difficulty, as well as the enormous expense of gaining such an understanding, the law, subsequent to the Filipino lawsuit, has been changed and now all foreign applicants must pass the CPA exam. Nevertheless, Filipinos who fullfill the requirements and complete their application before January 9, 1983 will be evaluated under the old law or whatever new settlement the parties can agree upon.

The Board has worked hard to comply with the settlement. A special meeting was held January 8, 1982 solely to consider individual files. The Filipinos chose 23 files representing the Board's worst action in evaluating prospective CPA candidates. In re-evaluating these candidates the Board reached the same conclusions as the original Qualifications Committee. So the problem does not appear to lie with the Qualifications Committee, as some of the plaintiffs alleged. As of the Board's January meeting 266 applications have been received, 64 have been approved or deferred while allowed to practice, 33 are pending review, 6 are ineligible and 162 have been denied licenses. The requirement that the applicants have 1 year U.S. work experience appears to be the single biggest barrier to entry. This might indicate that discrimination in hiring practices is also part of the problem. Regardless, the Board, at its January meeting, unanimously chose to form a new committee to concentrate on resolving the remaining controversy. This group will attempt to study, negotiate, and examine alternatives and reach a final settlement. The Board feels such a group can be helpful because it can attempt to clarify points of disagreement, look for areas of flexibility, and evaluate available alternatives prior to the Board's regular meetings. As a result, the parties will be able to resolve the entire issue more quickly and efficiently.

The Board has already spent a great deal of its time and the plaintiffs' time trying to reach an acceptable settlement. The Board appears ready to formulate flexible remedies in individual cases, but this requires the plaintiffs to take the initiative, which has been difficult to bring about in light of their feelings of bad faith. The Board itself has questioned whether the Filipino leaders are putting forth a good faith effort to accurately inform all those affected of their status and to reach a settlement. In view of the complex nature of this controversy, a complete settlement does not appear likely in the near future. This does not mean, however, that one will not be worked out, or that substantial efforts are not being made to bring about a solution acceptable to all those involved.

RECENT MEETINGS:

In addition to the matters mentioned related to the Filipino litigation, the Board made several minor decisions at its January meeting. Most of these matters were ministerial in nature, of consequence primarily to the Board. There was, however, one rather noteworthy occurrence. The Board presented its first award in recognition of outstanding achievement and progress relating to affirmative action in accountancy. In a very ceremonious atmosphere the Board awarded the firm of Ernst and Whinney this honor. Several members of the firm were on hand to accept the award. The Board will be presenting this award annually.

FUTURE MEETINGS:

May 7-8 in Los Angeles (7th is Regulatory meeting); June 11-12 in Montery; July 30-31 in San Diego.

BOARD OF ARCHITECTURAL EXAMINERS

Executive Secretary: Lynn Morris
(916) 445-3393

The Board of Architectural Examiners (BAE) licenses and regulates architects and building designers. Architects 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 9 member special fund board composed of 5 public members, 3 architects and 1 building designer.

MAJOR PROJECTS:

BAE continues to work on 3 major projects: creating a new California exam, increasing the effectiveness of its enforcement division and providing a more consistent flow of information to candidates and licensees. In addition, BAE has been recruiting a new Executive Secretary following Michael Cassidy's resignation. BAE hired Lynn Morris who began work the beginning of February. The first woman Executive Secretary in the history of BAE, Ms. Morris has varied consumer oriented work experience. For 2½ years, she served as Executive Officer of the State Consumer Advisory Council, a statutorily mandated advisory committee to the Governor, Legislature and Department of Consumer Affairs. Prior to that, she was a legislative advocate for California Citizen Action Group, a state-wide consumer lobby working for improved quality and cost controls in food, energy and health through citizen participation in government. Ms. Morris appears well-qualified and enthusiastic about her new position.

A continuing project, creating a new California licensing exam, is still a controversial issue. The agreement between BAE and NCARB, to preserve a national examination system (see CRLR Vol. 1, No. 3 (Fall, 1981) p. 18) is still questionable. BAE members question whether NCARB is complying with the agreement and sufficiently considering input from BAE for integration into the new NCARB exam.

Ms. Morris is supervising improvement of BAE enforcement procedures (see CRLR Vol. 1, No. 3 (Fall, 1981) p. 19). As of March 1, 1982 BAE hired a new enforcement officer. BAE has not had such an officer for the past several months. The new officer will complete an assessment of current enforcement; structure and organize an appropriate enforcement program; review consumer complaints for process and referral; set up a new procedure for processing, maintaining and tracking agency investigations; mediate or reform consumer telephone complaints; and provide status reports of investigations.

A high-priority project is providing consistent communications to candidates and licensees to increase the awareness and confidence of those affected by BAE's decisions.

RECENT MEETINGS:

The building designer study was the main issue at a special meeting January 14, 1982 in Oakland. AB 1647(L. Stirling) which would eliminate the category of "Building Designer" and grandfather all currently registered building designers as "architects" was withdrawn. Bob Allen, representing the California Council of the American Institutes of Architects (CCAIA) stated that CCAIA intends to re-introduce AB 1647.

Funds were appropriated to allow BAE to conduct a building designer study to be presented to the Assembly Business and Professions Committee. The study would define the nature and scope of unlicensed design practice in California and provide a general view as to how that activity relates to or overlaps with licensed design activity. BAE drafted the building designer study in December after reaching a compromise position with the CCAIA and AIBD. The Board supports legislation abolishing the building designer license category. Hence, BAE believes there must be some mechanism to allow currently registered building designers an opportunity to be "grandfathered" as architects. On December 28, 1981 the Board decided not to spend the money to conduct the study; to support legislation to grandfather registered building designers as architects; and to abolish the protection of the building designer title. All Board members except Beverly Wills supported the draft building designer study. Ms. Wills' believes BAE should register all persons working in the field of architecture, students studying to be architects, and reciprocity candidates awaiting their examination. According to her, this plan would protect the public and make the Board's enforcement policy more realistic.

The Board met in San Francisco on January 25, 1982. The Board unanimously elected Gerald Weisbach President and Hal Levin Secretary. Mr. Weisbach hopes BAE will become a policy-making body and wants to eliminate the Board's need to help staff on technical matters.

The Examination Committee reported on the status of the agreement with NCARB. As the first step, Mr. Weisbach volunteered to write NCARB asking for a progress report. In June, the Board will assess the expected revisions in the NCARB exam to see if they fit California's needs. Both the CCAIA and AIA support the Board's efforts to improve the NCARB test. BAE has substantially completed development of its own test in case NCARB does not satisfy the conditions of the agreement and the revised test is unsatisfactory.

The CCAIA presented the successor to AB 1647 at the March 8, 1982 meeting in Irvine. BAE voted unanimously to co-sponsor rather than merely sponsor the proposed bill, which restates AB 1647, with CCAIA. Beverly Wills, the Board's building designer member, believes the bill does not cover all aspects of the building designer problem and that the problems will not go away by merely getting BAE's approval. She also said she was not opposed to becoming an architect but that is not why she came along.

The Board drafted resolutions for consideration by the members of WESTCARB (the Western Regional NCARB meeting). The resolutions related to convention procedures, including nominating officers, voting power during the convention based on the number of state representatives and requirements for a quorum. If the members of WESTCARB support the resolutions, BAE will help introduce them at the NCARB meeting. Mr. Levin stated the resolutions were sufficiently important to cause debate at the NCARB convention.

Mr. Levin reported on NCARB's continuing progress in complying with the agreement and the examination committee in general. Mr. Weisbach, Mr. Levin and members of industry associations met with NCARB in Salt Lake City. NCARB related that the earliest the new exam will be given is June, 1983. Mr. Levin intimated this was a breach of the agreement and BAE must decide whether to keep working with NCARB. NCARB did agree to send BAE monthly progress reports.

BAE's original objective was to make the licensing test as replicative as possible of the practice of architecture. This goal makes a multiple choice exam less desirable. At the Salt Lake City meeting, NCARB presented data showing that prohibitive factors make other than multiple choice questions not feasible. BAE instructed staff to compare costs of multiple choice and other methods of examination.

Don Chang, staff attorney, asked BAE members and other interested persons to review Article III pursuant to AB 1111 and submit comments. The Board will consider comments on April 16, 1982 at the Registry Hotel in Irvine. BAE must still review Articles 3-8.

LEGISLATION:

SB 165 (Ellis): As amended by the Assembly Ways and Means Committee, the governor would appoint 7 public members, 6 architects and 1 building designer to the BAE. The public member majority would be eliminated. BAE favors a public member majority and hence opposes this amendment.

AB 1647 (L. Stirling): This bill, which would eliminate the category of "Building Designer" and grandfather all currently registered building designers as "architects," was withdrawn. However, CCAIA and BAE are seeking a new sponsor and will re-introduce this bill.

FUTURE MEETINGS:

April 23, 1982 in Oakland; early June for a 2 day long-range planning meeting.

ATHLETIC COMMISSION

Executive Officer: Don Fraser
(916) 445-7897

The Athletic Commission regulates amateur and professional boxing, contact karate and professional wrestling. The Commission consists of 5 members serving 4 year terms each. All members are "public" as opposed to industry representatives. The Commission is Constitutionally authorized and has sweeping powers to license and discipline the sports in its jurisdiction. The Commission licenses promoters, booking agents, matchmakers, referees, judges, managers, announcers, ticket-takers, ushers, timekeepers, seconds, boxers and wrestlers. Most emphasis is placed on boxing, where regulation extends beyond licensing and includes equipment and weight requirements, physical examination requirements and the separate approval of each contest to preclude mismatches. Commission inspectors attend all professional boxing contests.

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 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 such a plan to be unworkable. The current Commission has conducted actuarial studies and 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 system went into effect in January of 1982.

The deregulation proposal is part of a comprehensive review of rules begun by the Commission 1 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 as 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 their employer, the licensed promoter, 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 should be ended. The strongest argument in favor of continued regulation has been somewhat cynical: wrestling 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 proposed deregulates wrestling to some extent but does not end its regulation.

The current rule change package is divided into the 3 parts. The "primary" rule change packet includes those updating and deregulation proposals which can be made without new enabling legislation. This package was considered and passed at the May 22 meeting of the Commission in Los Angeles. Among the changes made are: removal of promoter license requirements to identify prospective dates of events, and to specify the arena to be used (and thus be limited to that arena); removing commission certification of physicians who give physical examinations to licensees (Commission certification requirements for ringside physicians remain); removing specific limits on purse amounts payable to various contestants; removing prohibitions on starting main events after 10 PM; removing the need to keep comprehensive records of those receiving complimentary tickets; removing limits on the number of seats available to the press; and ending the licensing of ticket-printers and doormen.

The secondary rule change package includes those provisions requiring statutory change *(see below)*. The secondary package would end licensing of announcers, ushers, et al. and hold the licensed promoter who employes these persons responsible for their behavior. Likewise, wrestling is substantially deregulated. Advance notice of wrestling participants, rest period specifications, dress requirements for referees, limitations on the frequency of wrestling, and other requirements are ended.

There is also a tertiary package. Immediately prior to the AB 1111 implementation, the Commission had already written to all licensees and had sent copies of the rules to all concerned, asking for comments and suggestions. These comments are included in the tertiary package. Most of the suggested changes are not to eliminate rules, but rather in the direction of change (a boxer should or should not be saved by the bell in the final round, etc.). In addition to this existing package, the Commission proposed to OAL public hearings on June 17 and 18 in Sacramento and Los Angeles, repectively, to solicit additional public suggestions and comment. These hearings were conducted by staff with no additional public response.

In order to implement the secondary package above, and to make other changes, the Commission proposed AB 2322 (Kapiloff). This bill has passed the Legislature, and has been signed by the Governor. The bill authorizes deregulation, raises license fees somewhat, and lowers some of the gate taxes from 5% to 2%, particularly in areas where heavy competition from lower gate tax states is leading promoters to schedule the major boxing contests in nearby states. According to the Commissioners, since the implementation of the pension disability plan will cost between 2 and 3% of the gate, the reduction is needed to prevent large-scale avoidance of California for the bigger fights. The bill also clarifies numerous conflicting laws and rules concerning minimum glove weights and simplifies bonding requirements for promoters (requiring 1 bond instead of 3 separate bonds). In general, the Commission law and rule change packages greatly simplify regulation. The Commission believes that fraud, health and safety standards are not compromised by the changes.

The Commission is confronted with the following additional dilemmas:

1. The Commission will be reviewing amateur boxing. Currently, amateur boxing is exempt from regulation if it is nonprofit. It is nonprofit 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, the disposition of funds would appear unconnected to these goals.

The Commission has drafted a major revision to the current law governing amateur regulation. It provides that the Commission has jurisdiction over all boxing where an admission is charged or

where anybody is paid anything (covering everything but neighborhood fist fights). However, the Commission may defer aspects of its regulation to amateur supervisory bodies which meet or exceed the health and safety standards of the Commission, subject to Commission annual verification and monitoring of those standards. This would allow responsible groups like the AAU to run their own shop without having to use Commission licensed referees, but maintain general Commission oversight, preventing health and safety laxness.

2. The Commission has decided to once again review its relationships with international and national boxing organizations, chiefly the WBA and WBC. These 2 international boxing associations rival each other and have separate lists of "champions" and "contenders." Most state Commissions tend to belong to one or the other of these 2 organizations, although both are private in nature. California has traditionally been allied with the WBC, directed by Jose Sulaiman of Mexico. After an examination of its policies in 1980, the Commission voted to maintain its independence from any international organization, but to assist any who request help on a nondiscriminatory basis. This decision followed, among other things, the squelching by the WBC delegates in 1978 and subsequent years, of plans to raise funds for a boxing pension-disability plan for boxers. Although WBC and WBA conventions are replete with emotional demonstrations of concern for boxer safety and welfare, several of the California commissioners have been unimpressed with the underlying sincerity of international delegates who seem to represent local promoters more than the exalted principles espoused.

3. The Commission is increasingly concerned with unlicensed kickboxing.

4. The Commission is increasingly concerned about medical insurance coverage.

RECENT MEETINGS

The Commission met in Los Angeles on February 5, 1982. A great deal of time was taken up discussing a problem of Rose Weiss, manager of boxer Gonzalo Montellano. Montellano was under contract to fight Arturo Frias in a World Boxing Association championship match. Frias was being promoted by Top Rank (CBS Sports). Before the final California contracts were signed, and allegedly due to improper influence, the WBA gave Top Rank permission to cancel Montellano out so Frias would meet another contender.

Rose Weiss, who succeeded her recently deceased husband Vic Weiss as a licensed manager, sought cancellation of the fight by the Commission and an emergency meeting of the Commission prior to the fight. Both requests were denied. The Commission noted that California contracts had not been signed or received, merely an out-of-state contract to sign California contracts. Further, the out-of-state contract Ms. Weiss wished to enforce included the right of the promoter (Top Rank) to control the next 3 contests of the winner — a standard tactic of promoters trying to tie up boxers in violation of California Commission rules.

The Commission discussed its general concern that the networks, through Top Rank tactics, are tying up boxers to a series of "options" which give them effective control for many years of all championship contests in a given weight class. Such control by a promoter has been subject to enormous abuse historically.

Although declaring it lacked jurisdiction to act, the Commission expressed strong feelings about the out-of-state practices of the WBA and Top Rank in violating contracts and behind the back substitution of "favored" contenders.

The Commission considered a proposal by State Senator Joseph Montoya to begin trial use of a "thumbless boxing glove." The Chairman of the Board of Everlast made a detailed presentation of the advantages of the thumbless glove regarding eye injuries from gouging. Several witnesses contended the thumbless glove would reduce gratuitous injury, including former welterweight champion Carlos Palomino. Senator Montoya testified in detail about the evidence available from the State of New York, which was now requiring the glove for major contests.

The Commissioners all spent some time trying on the Everlast gloves. 4 of the 5 thought that instead of spending several hundred thousand dollars on over 100 different models, as Everlast had done, one did not simply take the thumb and sew it to the body of the glove. The Commission voted to instruct staff to accept the thumbless glove, in any model or configuration, if it meets staff determined standards for safety, where both boxers so agree. The Commission also voted to solicit information on the experiment in New York, and to schedule rulemaking hearing on a possible new requirement, pending results of limited use.

Senator Montoya has been appointed Chairman of a Select Committee on Regulated Sports, chiefly boxing. The Commission expressed some enthusiasm, publicly and privately, over the personal attention they may be receiving from a legislator.

The Commission voted to submit the proposed legislation to revise the regulation of amateur boxing along the lines of a draft by Commissioner Fellmeth. The proposal would change regulation as described above in the Major Project discussion.

At the end of the meeting, Brad Pye was selected 1982 Chairman and Haig Kelegian Vice Chairman.

The Commission met on March 5, 1972 in the State Building in San Francisco. Commissioner Connolly was absent.

The Commission heard again from "Irish" Pat Barrett, a wrestler who was injured some 6 months prior. Barrett had been trying to get approximately $1,200 in medical expenses paid by the "Boxer and Wrestler's Welfare Fund." There are 2 such funds, 1 in Northern California and 1 in Southern California. The Northern California fund is down to about $30,000 and is not anxious to give out benefits. They denied Barrett's claim, contending he had not reported the event and filled out the proper forms. Barrett responded that he had notified the "Commission" representative immediately and that the injuries were genuine. A representative of the fund argued that the wrestlers appear in many states and California, must be particular since it used to be viewed as a Santa Claus state where everyone went to get their bad backs or knees "fixed."

The Commission noted that Barrett had paid into the fund, that he had reported it immediately, and that 2 months ago a Fund representative had asked Barrett to fill out a special application card at the Commission meeting and he had done so per instructions. However, the Commission was reminded by Deputy Attorney General Ron Russo that the funds are set up by some murky court order years ago.

Commissioner Kelegian runs an insurance enterprise and has made inquiries into the Funds. He remarked that many Fund procedures are questionable, and noted that the Northern California Fund has a $1,500 benefit limit. Kelegian does not see such a program as real medical insurance and is concerned about the hole in coverage a major medical emergency would create. Yet while the Funds make questionable decisions and are of limited use, the Commission has at least facilitated their funding by including withdrawal terms in approved contracts which fund the 2 organizations. Kelegian moved to invite bids for a real medical insurance program which could be purchased from the capital of the 2 existing funds, if the Fund Directors so approve, and the control of such insurance removed to Commission control. The motion passed. It is unclear whether

wrestling will be included.

Meanwhile the Commission members complained at length about the Fund's decision on the Barrett case. Out of deference to the Commission, the Fund's Directors, all of whom attended the meeting, voted to give Barrett his claim.

The Commission voted to allow optometrists as well as opthomologists to conduct eye examinations. The optometrists are allegedly qualified to detect the abnormalities specified on the Commission form, but are more numerous and are not as expensive.

The Commission next voted to reverse former policy and to join all international organizations involved in boxing, including both the WBA and the WBC. The Commission had been involved only in the WBC and withdrew from active involvement with it in order to treat all international organizations alike. Commissioner Fellmeth had argued previously that a governmental body should not fulfill a proprietary role in private trade associations. However, the lack of participation by California has allegedly meant discrimination against California boxers in the international politics of boxing. Hence, the Commission voted to remain non-discriminatory, but to promote its pension and boxer safety policies through all such organizations. This decision will be interpreted as a major coupe for the WBA. The Commission appears to view its new involvement as also an opportunity to represent its boxers. Its application form to the WBA was accompanied by a telegram asking the WBA to give Montellano (*see above*) the next title shot at Arturo Frias as promised in previous WBA sanctioned contracts.

The Commission reported that the Pension plan is being funded above projected levels. Over $20,000 is already in the fund, which will accrue for a decade or more before substantial withdrawals are likely. The fund has been collecting for approximately 2 months under the statutory formula of AB 2322.

The Commission is once again facing budget problems. Every year a new "analyst" from the Office of Legislative Analyst interviews a few Commission staffers briefly and then issues a Report that consistently baffles all those connected with the Commission. In 1979, the analyst concluded that there was $32,000 too much fat in the Commission budget, the ensuing cut meant months of work by the Commission staff to restore the funds which had been cut in the face of Commission correctly predicted increases in the number of events.

In 1980, an analyst suggested that the Commission be "special funded," and the Legislature voted to limit the Commission's budget to the monies it generates from fees and gate taxes. The Commission, a Constitutionally empowered body, is general funded because of the problem of conflicts of interest. Can the Commission turn down an unfair, dangerous or fraudulent fight if doing so would deprive the Commission of gate tax revenue it may desperately need for its own budget?

In 1981, an analyst suggested closing down the Los Angeles and San Francisco field offices. Most Commission work is by personal inspection of gyms, boxers and contests. Most occur in LA and San Francisco, closing down the 2 offices, to anyone familiar with Commission operations, would mean enormous travel expenses, no access to the commission by the majority of boxers and managers, and lack of on site supervision of an admittedly hazardous sport. The idea was scrapped only after it was revealed that the cost of closing the offices themselves would entail employee and other required moving expenses greater than any amounts saved from the closings.

FUTURE MEETINGS:

April, to be announced. The April meeting will formally consider deregulation and AB 1111 rule change packages.

BUREAU OF AUTOMOTIVE REPAIR

Chief: Robert Wiens
(916) 366-5050

The Bureau of Automotive Repair regulates repair facilities throughout California. Automobile Repair facilities must be licensed, pay a registration fee (to the State Treasury for credit to the Automotive Repair Fund) and display a large sign in the facility identifying them as approved repair dealerships and advising the consumer where to direct complaints if not satisfied with the quality of service. The Bureau enforces 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.

MAJOR PROJECTS:

SB33 (Presley), the "Smog Bill" (see CRLR, Vol. 2, No. 1 (Winter, 1982) p. 26) is still in the Assembly Transportation Committee.

SB 1232 (Presley), establishing voluntary shop certification (see CRLR, Vol. 2, No. 1 (Winter, 1982) p. 26) is now in the Assembly.

The Bureau is continuing its undercover "sting" operation to expose dishonest repair shops. The Bureau takes a car in perfect working order and "breaks" something easy to detect and fix, such as loosening an alternator wire. The Bureau then takes the car to a shop and authorizes the shop to fix it. The Bureau applies sanctions in appropriate cases. The Bureau recently asked the Sacramento District Attorney to file complaints against approximately 30 licensees, primarily for unnecessary repairs.

OAL has not yet taken action on the Bureau's AB 1111 review, submitted on December 31, 1981.

RECENT MEETINGS:

The Bureau devoted most of its January 14, 1982 meeting to a discussion of alternative funding. It will consider the issue further at its next meeting.

FUTURE MEETINGS:

To be announced.

BOARD OF BARBER EXAMINERS

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

In 1927, the California Legislature created the Board of Barber Examiners and the Board of Cosmetology to control the spread of disease in hair care salons for men and women, respectively. These boards are serving overlapping functions within the hair care industry with separate bureaucracies and regulations. The Board of Barber Examiners is now regulating and licensing the schools, barbers, and shops. It sets the training requirements and examines applicants, inspects barber shops for compliance with its regulations, and disciplines violators with licensing sanctions.

On this 5 member board, 2 seats are allocated to barber representatives and 3 to public representatives. 1 public seat is still vacant. Barber Raymond Stultz's term expires June 1, 1982.

RECENT MEETINGS:

The majority of applicants for a Barber License qualify for the examination by attending a licensed school for 1500 hours. An alternative to this requirement is the apprentice program, where a registered apprentice works in a licensed shop under the supervision of a licensed barber. At the March 14 meeting, Red Carter, who represents the Barbers and the Beauticians Unions, lobbied for a minimum 2000 hour apprenticeship program. Neither the Board members nor Mr. Knauss knew why the proposed regulations read 4000 hours. The Board adopted a minimum apprenticeship requirement of 2000 hours over a 24

month period.

Two attorneys from the Legal Office of the Department of Consumer Affairs, Dan Buntier and Steve Martini, described the rules and procedures the Board should follow when reviewing Administrative Law Judges' proposed disciplinary hearing decisions. The Board reviewed 10 such decisions, along with 4 requests for restoration of individual license certificates. Martini also presented the timetable for the final revision of the proposed regulatory changes under AB 1111.

The Board conducted 3 disciplinary hearings on February 22 preceeding the Board meeting. 1 of the violations involved not having a current shop license, another, delinquency in paying the $30 renewal fee and a $15 penalty. Mr. Knauss estimated the Board's cost for investigation of this violation, along with a proportionate share of the hearing, at about $300. The errant failed to appear, was held guilty in default, and his license was suspended for 19 days.

The third violation illustrates some consequences of territorialism resulting from separate bureaucracies within the same industry.

Bob Whitewing has been a licensed barber for 22 years and a licensed shop owner for 20 years. The 2 sets of regulations promulgated by 2 agencies regulating hair care, dictate that he must keep his barber shop physically separated by permanent structure from his other shop, licensed by the Board of Cosmetology. Only licensed barbers can cut hair in his licensed barber shop and only licensed cosmetologists can cut hair in his licensed cosmetology shop (Business and Profession Code section 6522). When he hires a new cosmetologist, he has them work next to him in the barber shop for the first week where he can observe their skills. For the first time in approximately 20 years he was caught when a Barber Field Representative found such an "unlicensed" person cutting hair in his barber shop. The Board of Barber Examiners does not recognize a cosmetology license. The Board found Bob Whitewing guilty. His license was suspended for 30 days (28 days stayed) and he was placed on probation for one year. Mr. Whitewing purportedly has the skills and experience to cut hair in his own shop, yet he must take a 400 hour course in a licensed cosmetology school to qualify for the cosmetology examination.

The Board meeting that followed was so brief it was conducted standing. Lack of a 3 member quorum has plagued this Board for months, leaving the Executive Secretary in control. (3 members have recently been appointed and 2 more are needed.)

Mr. Knauss reported on a meeting he had with Ross Alloway, a school owner, in which they agreed to work together on legislation. Mr. Knauss also mentioned a meeting he had with Fred Shanbour, a legislative lobbyist for the California Barber College Association, who wants to cut $100,000 from the Board's budget.

The current revised budget for the 81-82 fiscal year is $670,969. The total 80-81 expenditures were $552,680. Senator Alex Garcia, chairperson of the Business and Professions Committee, will introduce a bill to increase all of the Board's fees 50%, according to Mr. Knauss.

Also on February 22, the Examination Review Committee selected the subject matter distribution for the questions on the written and practical parts of the barber examination. One consideration was to avoid the appearance of writing a cosmetology exam. As such, the committee chose to weigh "cosmetic preparations" only 1½% of the exam. Except for a minor percentage of the exam on shaving and hairpieces, the task list examined is virtually indistinguishable from cosmetologist functions. Haircutting, styling, shampooing, waving, coloring and sanitation comprise the overwhelming majority of the barber examination, as well as the cosmetologist examination. Yet Mr. Knauss and Mr. Stults refuse to acknowledge the substantial overlap of the two boards' functions.

The Committee tried to have the exam reflect the needs of the barber and school industries. Committee chairperson George Walsh contended, "What's good for the barber college is good for the industry and what's good for the industry is good for the barber college."

LEGISLATION:

Senator Garcia will introduce a bill to increase all the Board's fees by 50%. The bill is in draft form in the Legislative Counsel's Office.

Assemblyman Elder introduced AB 2912 on March 1, which would require the issuance of a license certificate on the day of the examination. The bill would also require that half of the examinations be held in northern California and half in southern California.

Assemblyman Katz introduced AB 2305 which would require that all state agencies publish an initial small business impact statement if a proposed regulation change would have an economic impact on small business, and notify a representative member of affected small businesses. The Board voted unanimously to oppose this legislation. Mr. Stults argued that it would cause additional demand on staff time.

FUTURE MEETINGS:

The Board will consider proposing legislation to merge the Barber and Cosmetology Boards at the April 25 meeting in Los Angeles.

A hearing on all the proposed regulatory changes resulting from AB 1111 review is scheduled for the May 23 meeting in Los Angeles.

The Board is holding disciplinary hearings on May 24 and June 28 in Los Angeles.

BOARD OF BEHAVIORAL SCIENCE EXAMINERS

Executive Secretary:
Samuel Levin
(916) 445-4933

The Board of Behavioral Science Examiners licenses marriage, family and child counselors (MFCC), licensed clinical social workers (LCSW) and educational psychologists. The Board defines the scope of services which may be provided by each category of licensee, establishes education and experience requirements, designs and administers examinations, sets licensing fees, conducts disciplinary hearings and suspends and revokes licenses. The Board membership consists of 11 appointees, 6 of whom are public members.

MAJOR PROJECTS:

Consumer education continues to be a major concern of the BBSE. However, after 2½ years of work, the Board has not completed its revision of the consumer information brochure. The brochure was to have been a major topic at the BBSE's January 9 meeting, but the Board failed to achieve a quorum.

RECENT MEETINGS:

The January 9 meeting which failed to make a quorum was held in Monterey. The Board was scheduled to consider the revised consumer brochure and the Executive Secretary's AB 1111 statement of review completion. That the BBSE chose to hold such an important meeting in Monterey, which is not easily accessible, and then failed to achieve a quorum, is notable.

A previously scheduled February meeting was cancelled.

FUTURE MEETINGS:

To be announced.

CEMETERY BOARD

Executive Secretary: John Gill
(916) 920-6078

The Cemetery Board licenses cemeteries, crematories, cemetery brokers, and salespersons. Religious cemeteries, public cemeteries, and private cemeteries established before 1939 which are less than ten acres in size are all exempt from Board regulation. Because of these broad exemptions, the Board has only 185 licensed cemeteries. It also licenses approximately 1,575 crematories, brokers and salespersons. A license as a broker or salesperson is issued if the candidate passes an examination testing knowledge of the English language and elementary arithmetic, and demonstrates a fair understanding of the cemetery business.

Kathie Klass, one of the Board's public members, is the new Executive Officer of the Consumer Advisory Council.

MAJOR PROJECTS:

Prompted by the Board's regulation reviews, the Board is currently attempting to increase violations of the Cemetery Act from misdemeanor to felony status. SB 1863 (Mello) was introduced March 8, 1982 and the first hearing should be 30 days from that date. The Board expects no opposition to this bill.

The Board has completed its AB 1111 review and commenced adoption hearings on March 12 in Los Angeles. The Board made technical, nonsubstantive changes, including amending authority and reference citations, to many of its regulations. To clarify that a cemetery licensee may not provide funeral services or accept money to provide funeral services unless also licensed as a funeral director, the Board plans to delete all references to "funeral services" from the language of section 2370.

RECENT MEETINGS:

At its March 12 meeting in Los Angeles, the Board considered adoption of a regulation which would clarify existing law, detailing the various items required to be placed into every contract for cemetery goods or services, by requiring a clear disclosure, where applicable, that additional charges will be made at the time of delivery of the goods or services described in the contract. Both Bettie Kapiloff and Kathie Klass, public members, stated they support the disclosure statement. Industry member Robert Groh indicated that the additional statement might be unnecessary since licensees failing to accurately disclose the total contract price could be disciplined under the existing statute. Board licensees testified their contracts were already on 8½ x 14 inch paper, or were 2 pages long, to accommodate the disclosures already required by various government regulations. They questioned the need for further disclosure, and thought more verbiage might just confuse the consumer. Because Leslie Wells, who requested the Board consider adoption of a contract disclosure regulation, was unable to attend this meeting, the Board continued the hearing until its next meeting.

At the request of Ms. Klass, the Board discussed consumer concerns regarding pre-need trusts. She wants the Board to ensure that at the time of death consumers receive the services previously contracted for and fears the family often does not complain when such services are not provided. The Assembly Business and Professions Committee held hearings in November to address problems associated with preneed funeral arrangements. Their findings and recommendations are expected soon. The Board agreed with James Lahey, Executive Vice President of the California Mortuary Alliance, that their report would be an appropriate starting point for further Board discussion. Therefore, the Board plans to consider this issue further at that time.

The Board recently licensed Dr. Weber of the Telophase Society as a crematory operator. He is also a licensed funeral director. Although he now reports his cremation trusts to the Board of Funeral Directors and Embalmers, Dr. Weber wants to start reporting them to the Cemetery Board. The Board of Funeral Directors and Embalmers' jurisdiction encompasses services performed from a death call to final disposition. Actual cremation is under the jurisdiction of the Cemetery Board. However, Telophase charges a single sum for the services it provides and does not allocate price based upon Board jurisdiction. Ms. Klass expressed concern that Dr. Weber may be trying to take advantage of the more liberal reporting requirements of the Cemetery Board and avoid the stricter Funeral Board requirements. After discussion, the Board determined Dr. Weber must allocate his total price between the 2 functions he performs and report to both Boards accordingly.

The Board also conducted its routine business of approving cemetery broker and cremetory licenses and issuing cemetery certificates of authority. The crematory application of Miller Memorial Chapel in Visalia was of some concern to the Board since they plan to serve the entire area from Visalia to Placerville. The Board's Executive Secretary, John Gill, will write suggesting they obtain a closer facility.

The Board continues to maintain custodial responsibility over the trust fund of Imperial Valley Memorial Park, an abandoned cemetery in El Centro. Although local funeral directors would like to purchase the cemetery, its owner cannot be located. In the meantime, the Board is supervising approximately 2-3 burials each month.

As the meeting was ending, Ms. Kapiloff strongly attacked the description of the Board in the last issue of the *Reporter* as unfair and biased. As Chairperson, she prefers to conduct Board meetings with relaxed Rules of Order. She thinks it has been functional for the Board, and the members are comfortable with it. Further, she considers it her duty to move the agenda along, and, in fact, those attending Board meetings have asked her to do so to accommodate their travel arrangements. Citing the Board of Cosmetology, Ms. Kapiloff indicated this Board should not become like other agencies who hold 2-day meetings when they can easily conduct their business in considerably less time.

FUTURE MEETINGS:

The next Board meeting will probably be held sometime in June. The exact date has not yet been set.

BUREAU OF COLLECTIONS AND INVESTIGATIVE SERVICES

Chief: James Cathcart
(916) 920-6424

The Bureau of Collections and Investigative Services oversees the regulation of 5 industries: collection agencies, repossessions, private investigators, private patrol operators and alarm services. The Bureau regulates by licensing and formulating regulations. However, decisions are made by 1 person, rather than by a majority of Board members. The individual vested with this executive power is the 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 to issue licenses and propose regulations. 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 1 advisory Board under its jurisdiction. The Collection Agency Advisory Committee makes recommendations to the Chief regarding the regulation of collection agencies. The Committee is not a decision-making body and does not directly regulate. Because of the heavy regulation in the collection

industry, 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; all decisions are made administratively by the Chief. The Collection Agency Advisory Committee does have regular public hearings.

MAJOR PROJECTS:

In each of the Bureau's 5 major industries there are ongoing projects peculiar to that industry. Each industry has its own regulations and legislation which affect it. The major project common to all 5 industries, however, is compliance with AB 1111.

The Bureau is currently implementing legislation regarding respossession. AB 1453 took effect January 1, 1982 and will greatly expand the authority of the Board to regulate this industry. The new law provides for the assessment of administrative fines for violations of regulations, and clamps down on unlicensed repossession. Finally, the law sets forth clear guidelines for when and where a car may be repossessed, and procedures for return of personal property. Specific administrative remedies are provided for violations of these guidelines. The Bureau is now formulating regulations that will assist in implementing the new law.

The Bureau is presently reformulating regulations regarding firearms training programs which were previously rejected by OAL. These regulations would require private security guards to take 14 hours of firearms training. A security guard must complete the training program before being eligible for a permit to carry a gun.

The Bureau will continue to seek stricter firearms training standards in 1982. Along with increasing training hours, the Bureau will attempt to more closely monitor firearms training programs. Regulations set forth specific curriculum for these programs, and increased monitoring will ensure compliance with the regulatory standards. Recently, Bureau concern for these training programs has been heightened, because of an alarming increase in firearm related injuries. From July 1981 through January 1982, 10 discharges from private security guard guns were reported. These discharges resulted in the deaths of 3 private citizens, and injuries to 4 private citizens and security guards.

Newly submitted regulations bringing attorneys who do substantial collections under the regulatory authority of the Bureau were returned by OAL because the Board excluded tapes of the public hearings from the regulation package. The return therefore does not constitute a rejection of the regulations, and they will be reviewed by OAL after the package is submitted with the tapes. Since the return does not constitute a rejection, no notice or public hearings are required before the regulations can be resubmitted.

RECENT MEETINGS:

The Bureau held a hearing on February 19 in Fresno to take public testimony on its regulations pursuant to AB 1111.

FUTURE MEETINGS:

The Collections Advisory Committee will meet in April.

CONTRACTORS STATE LICENSE BOARD

Registrar: John Maloney
(916) 366-5153

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

The 13 member Board, which consists of 8 contractors and 3 public members, all appointed by the Governor, meets approximately every 2 months. There are no 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 it has received complaints.

The Board now has 3 Committees: an Operations Committee overseeing budget and management; an Enforcement Committee on field work and investigations; and a Consumer, Industry and Labor Relations Committee functioning as an Executive Committee. The Committees further information and do not require a quorum.

MAJOR PROJECTS:

AB 1111

The Contractors State License Board, (CSLB), is currently in phase two of its AB 1111 review of its regulations. The Board held public meetings in Los Angeles and Palm Springs, January 27-29 concerning the various licensing classifications and considerations regarding the Board's regulatory scheme. The Board plans to hold further public hearings some time in July, 1982.

Change in Status

SB 922 (Stearns) would change the CSLB by giving it Departmental status. (*see legislation infra.*) This would take the CSLB out of the control and overseeing eye of the Department of Consumer Affairs, ultimately giving the CSLB more latitude in making its decisions.

Sanctions

Board staff members and Deputy Attorney General Joe Barkett are drafting guidelines to be used as Board recommendations to Administrative Law Judges and Deputy Attorney Generals in preparing proposed decisions and negotiating stipulations. These guidelines will be used on an interim basis until finalized Board Rules can be adopted.

Flood Watch

Following the severe damages caused by heavy storms and flooding in early January, the Board, in conjunction with the State's Office of Emergency Services, manned booths in 6 bay area counties for 26 days. The Consumer Services Representative answered questions relating to selective complaints of contractors and provided copies of the booklet "Blueprint for Building Quality." An additional 1500 copies of the booklet were supplied and will be given to those awarded Federal Grants.

Major Goals

Board members have decided to vigorously pursue a more expedient complaint investigation procedure including, but not limited to, unlicensed contractors.

RECENT MEETINGS:

The CSLB met to review existing regulations in phase two of its AB 1111 review on Wednesday, January 27, 1982 in Los Angeles. The CSLB reviewed Specialty Licensee classifications, sections 730-754.16. The Board went through each classification and elicited comments from members of the audience, most of whom represented a specialty classification group.

Dudley Daye, representing North Coast Builder's Exchange submitted a written recommendation to add Section 732.2 as a separate rule pertaining to all classifications.

Other testimony questioned the effectiveness of the current licensing classification and bonding system in protecting the consumer, and proposed a more general licensing scheme and a change in the current bonding system.

With regard to changing the current bonding system, there seemed to be a fairly favorable response. Assistant Regional Deputy to the CSLB, Augustus L. Paul, agreed that the consumer has a very tough time attaching and reaching the contractor's bond. Tony DiAngelo and Vicky Fallen also felt that a change in the bonding system might benefit the CSLB and the consumer.

The remainder of the meeting went more or less smoothly, with all the various specialty classifications becoming even more specialized.

At the Board meeting of January 28 and 29 in Palm Springs, the Board supported the activities of investigators examining applicant's work experience. The staff investigates when an application contains inconsistencies. In addition a small percentage of applications are selected randomly and investigated for false information.

A representative of General Services, Program and Compliance Evaluation Division, presented the results of its study, contracted for by the Board, on the advantages and disadvantages of CSLB's acquiring Departmental Status. The Board voted to support the intent of SB 922, which would give the Board Deparmtental status.

LEGISLATION:

A bill, SB 922 (Stearns), which would give the Board departmental status has passed out of the Senate and is now in the Business and Professions committee of the Assembly. A similar bill (AB 1397 — Filante) died in committee there in January. SB 922 has a much better chance of survival and passage in the Assembly.

A bill, AB 1060 (Floyd), currently pending, would empower the registrar of the CSLB to issue citations containing orders of abatement, orders of correction, or assessments of civil penalties, to: (1) licensed persons who violate the provisions of the Business and Professions Code, and (2) unlicensed persons who act in the capacity of, or engage in the business of a contractor within this state, without being otherwise exempted from the provisions of the Business and Professions Code.

The Governor has signed AB 1079, dealing with complaint disclosure. One of the Board's analyst's, in conjunction with the Department of Consumer Affairs legal staff, is reviewing the CSLB's existing complaint disclosure system to determine necessary changes in procedure, data input, and Board rules, to implement a complaint disclosure system in compliance with the new law. The Board will discuss the recommendations at its next meeting.

FUTURE MEETINGS:

Sacramento, Red Lion Inn, April 21, 22, 23; and May 27, 28.

BOARD OF COSMETOLOGY

Executive Secretary:
Harold Jones
(916) 445-7061

In 1927, the California Legislature created the Board of Cosmetology and the Board of Barber Examiners to control the spread of disease in hair care salons for women and men, respectively. These boards are serving overlapping functions within the hair care industry with separate bureaucracies and regulations. The Board of Cosmetology is now regulating and issuing separate licenses to the salons, schools, electrolysists, manicurists, cosmetologists (who may cut hair) and cosmetitions. It sets training requirements, examines applicants, hires investigators from the Department of Consumer Affairs to investigate complaints, and disciplines violators with licensing sanctions.

The Board has 7 members, 4 public and 3 from the industry. With the departure of Gene Shacove, 1 industry seat is vacant.

MAJOR PROJECTS:

The Board completed the first cycle of its AB 1111 review at its January 24th meeting. The last 2 statements of Review Completion on exams and sanitary rules will be sent to OAL in May. After OAL wades thru the transcripts and correspondence, and responds to the statements, the second cycle will begin. At that time the Board will hold public hearings on the proposed amendments compiled in the first cycle.

The Board is increasing enforcement activity. Over the past 6 months, 22 investigations have been forwarded to the Attorney General. Some of the 22 were forwarded to local District Attorneys as well. The alleged violations include criminal activity in licensed shops and schools, repeated sanitation violations, unlicensed activity, bogus cosmetition schools, and malpractice.

The Board's Exam Review Committee is rewriting the cosmetologist licensing exam while the Barber Examiners are rewriting their exam. The 2 Boards are spending funds on overlapping exams and licenses. Future haircutters must take either 1 to get a license to cut hair in California. Such redundancy is compounded by the restriction that cosmetologists may not cut hair in barber shops and visa-versa. Any salon holding both licenses must separate the 2 areas with permanent partitions. Such territoriality of regulatory agencies is "not in the interest of the public, shopowners, or haircutters," according to Joseph Gonzales, a member of the Board of Barber Examiners. The industries and functions are so similar that Colorado and Oregon have modernized their regulation of the haircutting industry by consolidating their 2 boards.

Mr. Shacove advocates new license categories for specific job tasks cosmetologists perform, such as a license for haircutting, 1 for coloring, and 1 for permanent waving. At present, one wishing to perform 1 of these functions must obtain an umbrella license of cosmetologist or barber. 2 job tasks, manicuring and applying cosmetics, have already been individually licensed.

RECENT MEETINGS:

At the January 24 meeting, cosmetic firm representatives suggested that separate schools for cosmetitions should be splintered off from the cosmetology schools. The Board voted the idea down, leaving the 600 hours of required school attendance for a cosmetition license in the cosmetology schools.

The Board reduced license renewal fees almost in half. New license fees were not changed. The savings to the renewing licensees will total $1.1 million dollars and eliminate the surplus in the Board's fund.

Sanitary regulations were hashed over at the January 24 hearing. The neck duster, the barbers' tool to brush hair off the neck after a haircut, was in hot controversy. In addition to sanitary considerations, there was some concern whether cosmetology licensed haircutters should use a licensed barbers' tool.

On March 21 the Board considered revision of the cosmetology exam to keep abreast of the changes in the industry's services. An example is acrylic nail application which has been a hot item in salons and required in the school curriculums, but is not being tested on the license exam.

Edna Mayhand, Deputy Director of the Department of Consumer Affairs, observes "so often, boards attempt to regulate after the fact — acrylic nails have been out [in the market] for years — and suddenly there's a need for 'training' and 'consumer protection.' The Board must be clear as well as careful about new regulatory mechanisms which are so obviously connected to economic gain." On March 22, the Education and Examination Committee met with the examiners to formulate an exam revision.

The March meeting included an executive session to review two decisions from Administrative Law Judges who adjudicated license violations.

LEGISLATION:

In 1977 the Cosmetition Act instituted a 600 hour course prerequisite for the cosmetition license. That requirement

was waived for persons already performing cosmetition functions under a grandfather clause. In February, the Board forwarded to the Legislative Counsel's office a proposed draft of legislation to remove the clause. The legislation is intended to stop fraudulent use of affidavits of experience that circumvent the course requirement. An unfortunate effect of removing the clause would be imposing the course requirement on experienced but as yet non-licensed cosmetitions.

The Board's Legislative Committee is reviewing a draft of a bill authorizing immediate levying of fines for sanitation violations to hasten correction by the salons. The bill will probably be introduced next year after further discussion with the industry.

FUTURE MEETINGS:

The next board meeting will be in Sacramento on May 2.

BOARD OF DENTAL EXAMINERS

Executive Secretary:
Rodney M. Stine
(916) 445-6407

The Board of Dental Examiners issues state licenses to practice dentistry to those applicants who successfully pass the examination administered by the Board. The Board is charged with enforcing the provisions of the Dental Practice Act (Business and Professions Code section 1600 et seq.) through various disciplinary measures. The Board consists of 4 public members and 8 practicing dentists.

The Board also regulates dental auxiliaries. It is assisted in this regulatory effort by its Committee on Dental Auxiliaries. Although the Committee enjoys a sizeable degree of independence from the Board, it has no regulatory authority of its own and acts in a purely advisory capacity vis-a-vis the Board. The Committee has 9 members.

MAJOR PROJECTS:

Professor of Dentistry Dr. Sam Wycoff proposed expanding the community dentistry portion of the dental certification exam. "Community dentistry" includes preventative dentistry, diagnostic treatment, the behavioral sciences and social science as it relates to the practice of dentistry. Community dentistry currently comprises only 10% of the exam. Dr. Wycoff feels the percentage of questions dealing with community dentistry should be increased 15% to more closely match the percentage of courses on the subject in most dental school curriculums. The Board is establishing a task force to study the feasibility of the proposal. Dr. Wycoff feels the change could be implemented by the end of this year.

RECENT MEETING:

The Board convened in Los Angeles on February 26 and 27. The 2 day session included a public meeting, a closed session, and a regulatory review hearing.

Pursuant to AB 1111, the Board opened the meeting with a review of its existing regulations. To fulfill the policies of AB 1111, which include clarity, consistency and necessity, the Board may strike out archaic regulations no longer reflecting the Board's policies and simplify the langauge of the retained regulations. At this hearing, 7 different articles were reviewed and clarified. The Board discussed Article 1, general provisions, including the location of the Board's office. This article will either be repealed as unnecessary or clarified and rewritten to reflect the Board's new address.

Article 2 deals with the procedure to be followed when a dentist authorizes an assistant to perform a laboratory function. A written order delineating the task(s) to be performed by the dental assistant must include the date of the order, the license number of the dentist and the dentist's signature. The signature requirement provoked some discussion. Some practitioners feel that requiring the license number of the dentist is adequate assurance that his authority has been duly delegated to an assistant. They feel the rule should be simplified, particularly when the dentist is delegating authority to perform tasks within his office. However, Board member Dr. Shirley Bailey noted the importance of providing the dental assistant with some guaranteed recourse in the event that his or her methods or completed tasks are questioned. Dr. Bailey feels the only way to maintain these safeguards is to preserve the signature requirement.

The Board discussed proposals to clarify Article 5, rehabilitation guidelines for denied applicants, and Article 14, continuing education requirements. Article 14 currently provides that the Board "may" require a practitioner to fulfill a specified amount of continuing education prior to license renewal every 2 years. As the regulation currently stands, the dentist keeps his own record of the continuing education courses he takes and presents such record to the Board when his license is up for renewal. The Board has no enforcement power at this time and cannot use staff funds to assure compliance with the continuing education requirement. The Board is considering changing the regulation to read, "the Board *shall* require" the specified number of credits.

The Board recently adopted Article 8.5, which spells out guidelines for dental offices administering general anesthesia. Before this article was adopted, not only was this area unregulated, the Board did not even know how many dentists in California were administering general anesthesia. As of January 1, 1982 every dentist who incorporates this procedure into his or her practice, must register with the Board and obtain a permit. Article 8.5 further provides for "site evaluation" of the dentist's office facilities. Those who perform general anesthesia are in 2 distinct groups — oral surgeons and dental anesthesiologists. Oral surgeons must complete a three-year hospital residency to obtain experience in both surgery and general anesthesia. A dental anesthesiologist's training consists of a 1-year residency. Dental anesthesiology is a sparsely populated profession and involves traveling to various practitioners' offices with all of the necessary equipment to perform the anesthesiology. Although the anesthesiologist's array of equipment must be kept complete and up-to-date, the Board now requires that the office where the procedure is to be performed, must also have all the necessary equipment on hand. The provision further provides for inspections of each site by 2 oral surgeons at intervals to be determined. If a third evaluator is added, that position could be filled by another dental anesthesiologist.

The Board voted to oppose Bill 1126, which would add a dental hygenist to the 12-member board. Another bill, sponsored by Assemblywoman Gwen Moore, would require all kindergarten children to have a dental examination before entering school.

FUTURE MEETINGS:

To be announced.

BUREAU OF ELECTRONIC AND APPLIANCE REPAIR

Chief: Jack Hayes
(916) 445-4751

The Bureau of Electronic and Appliance Repair registers service dealers who repair major home appliance and electronic equipment. Grounds for denial or revocation of registration include 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 repair. The Electronic and

Appliance Repair Dealers Act also requires service dealers to provide an accurate written estimate for parts and labor when requested, provide a claim receipt when accepting equipment for repair, return replaced parts and furnish an itemized invoice describing all labor performed and parts installed.

To ensure compliance, the Bureau continually inspects service dealer locations. It also receives, investigates and resolves consumer complaints.

The Bureau's Advisory Board is comprised of 2 representatives of the appliance industry, 2 representatives of the electronic industry, and 5 public representatives appointed for 4-year terms. The Bureau is currently attempting to fill 2 public vacancies.

MAJOR PROJECTS:

During November, 1981 141 written consumer complaints were received; 116 verbal complaints received and resolved by phone; 108 written consumer complaints closed; and 434 consumer complaints pending. The Bureau issued 100 notices of non-compliance, conducted 98 inspections of electronic shops, 48 inspections of appliance shops, 4 inspections of combination shops, and had 27 legal actions pending. Monetary relief obtained for consumers totaled $6,029.15. Total registrations as of November 30, 1981 were 8,389 (4,844 electronic, 2,985 appliance and 560 combination). Total agency communications were 5,076.

During December 1981, 133 written consumer complaints were received; 114 verbal consumer complaints received and resolved by phone; 143 written consumer complaints closed; and 424 consumer complaints pending. The Bureau issued 137 notices of non-compliance, conducted 93 inspections of electronic shops, 44 inspections of appliance shops and 1 inspection of a combination shop; there were 27 legal actions pending. Monetary relief obtained for consumers totaled $7,068.50. Total registrations as of December 31, 1981 were 8,452 (4,872 electronic, 3,020 appliance and 560 combination). Total agency communications were 4,634.

The Bureau completed the review of its regulations required by AB 1111 in December, and in January filed its Statement of Completion with the Office of Administration Law.

RECENT MEETINGS:

The Bureau is continuing its attempt to resolve the problems service dealers experience in obtaining replacement parts from certain manufacturers. Letters were sent to 7 manufacturers detailing dealer complaints and inquiring as to what action they had taken in response. On December 18, the Board reported that, of Sanyo, Sony, Sears, Whirlpool, Admiral, O'Keefe & Merritt and RCA, only Admiral and Sanyo have responded with information concerning parts availability and back-order procedures.

As its quarterly meeting on December 18, 1981 Jose Balbin, Sanyo's National Service Manager, informed the Board of the improvements made in its parts availability and distribution systems. Because the Bureau was successful in resolving this problem with Sanyo, it plans to invite other manufacturers with parts availability problems to appear before the Board. Although the Bureau's jurisdiction does not extend to manufacturers, by bringing problems to the attention of the public and the industry, the Board hopes the manufacturer will attempt to resolve the parts problem informally with the Bureau rather than risk adverse publicity.

Although Atari has been in contact with the Bureau, it has not yet registered its Sunnyvale video game repair facility. Because the Bureau does not have clear jurisdiction over manufacturers or video games, it is reluctant to take legal action at this time, even though it is still receiving complaints involving Atari. The Bureau plans to introduce legislation in the next session clarifying its jurisdiction in this area and anticipates registration by Atari once the legislation is introduced.

The Board considered at length the need for legislation defining the extent of the Bureau's jurisdiction. Much of the current technology, and consequently the items service dealers repair, was not envisioned when the Electronic and Appliance Repair Dealers Act was originally written. The Board favors clarification of Business and Professions Code section 9801 by revising the definition of "service dealer" and specifically including automobile radios and stereos, direct satellite antennas, home computers, video games and information distribution units within the Bureau's jurisdiction.

FUTURE MEETINGS:

The next meeting of the Advisory Board is scheduled for June, 1982.

BUREAU OF EMPLOYMENT AGENCIES

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

Created by the Employment Agency Act, the California Advisory Board to the Bureau of Employment Agencies is a 7-member board consisting of 3 representatives from the employment agency industry and 4 public members. All members are appointed by the Governor for a term of 4 years, and a quorum of 4 is required to commence an official Board meeting.

The Employment Agency Act charges the Board with the duty to inquire into the needs of the employment agency industry. It is required by statute to focus its concern on promoting the welfare of the public and of the employment agency industry. With this responsibility, the Board operates as an advisory board to the Chief of the Employment Agency Bureau.

The Chief of the Employment Agency Bureau 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.

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

Presently, only 6 of the 7 positions on the Advisory Board are filled. The vacant seat is for a public member. Ms. Siplin hopes this seat will be filled in the near future. Since the Board is purely advisory, the Bureau's ability to take action is not impaired. In any event, the Chief makes many of the decisions unilaterally, usually asking for advice only on important matters.

MAJOR PROJECTS:

The Board held its final AB 1111 hearing on Thursday, February 11, 1982 at the Los Angeles Hilton. At that meeting, the Board distributed issue papers prepared by the Bureau covering Article 5 (dealing with the contract to be provided by the agency to the applicant before the applicant is sent on an interview), Article 6 (dealing with computerized employment agencies which are permitted to charge a registration fee to applicants), and Article 7 (a proof-of-citizenship requirement for domestic employment agencies) of Subchapter 1 of its regulations. The Board also reviewed several regulations in Subchapter 2, which pertain specifically to nurses' registries. The Bureau favors repeal of several unnecessary regulations; the Board accepted written comments through March 1, 1982.

The quarterly Advisory Board meeting

was held on Friday, February 12, 1982, at the Los Angeles Hilton. The controlling agenda item was the Board's request for suggestions on ways to generate better relations between the employment agency industry and the Bureau. Fortunately, the meeting was well-attended, and the Board received many suggestions which it will document and communicate to the Bureau Chief.

Carol Rhodes, representing the American Employment Association, reported the need for increased communication between the Bureau and the industry. Specifically, Ms. Rhodes requested that (1) Bureau informational bulletins be sent regularly to licensees; (2) the Bureau submit informational articles to the monthly trade association journals; and (3) the Bureau regularly release complaint statistics which identify the nature and location of the complaint received, and action taken by the Bureau. Rhodes stated that the industry would be able to respond more effectively to complaints if it were better informed as to the nature of alleged violations.

Sandra Lipps, owner of an educational employment agency in Santa Monica, testified that relations between the industry and the Bureau could be improved greatly by a more efficient and effective Bureau response to complaints lodged by licensees against non-licensed employment agencies. Ms. Lipps reported the existence of a non-licensed agency to the Bureau on October 28, 1981, and followed up her written complaint with telephone calls to the Bureau, but has received no action to date. Board member Alfred L. Parker responded that the budget allocation for investigative work by the Bureau was restricted, and that currently no funds have been allocated for undercover work. Parker reported that Bureau Chief Portia Siplin is in the process of requesting emergency funds for increased investigations, but unfortunately Ms. Siplin was unable to attend the Board meeting and report on her progress.

Other members of the industry in attendance (1) expressed confusion as to whether complaints should be lodged with the Board or with the Bureau; (2) complained that obtaining a written response to questions posed to the Bureau was very difficult; and (3) expressed concern that no one from the Bureau authorized to respond to these comments was present. Although Bureau Chief Siplin usually attends Board meetings, she was called away unexpectedly and had not been replaced with another Bureau representative. Since the industry's major complaint appears to be lack of communication from and response by the Bureau, it was particularly unfortunate that no one from the Bureau was able to attend the meeting. However, the Board assured those in attendance that all comments and suggestions received would be forwarded to the Bureau.

Board member Parker stated that he felt the Board had been "too loose" on (1) ensuring that a quorum of its members were present at past Board meetings, and (2) setting and adhering to a fixed schedule of meeting dates. In the past, official Board activity has been limited because the Goveror has not been prompt in filling vacancies on the Board, thus reducing the probability that a quorum would be present. Currently, however, all but one of the Board positions is filled and the Board hopes its past attendance problems are over. It was also suggested that the Board adopt a long-range schedule of fixed meeting dates, thus allowing both Board members and interested industry members to plan ahead.

The Board decided to prepare a schedule of meetings for its subcommittees, which will be presented at the next Board meeting.

FUTURE MEETINGS:

The next Advisory Board meeting will be held Friday, May 19, 1982, in San Francisco.

BOARD OF FABRIC CARE

Executive Secretary:
Beverly Bair
(916) 920-6751

The Board of Fabric Care licenses, regulates and disciplines the dry cleaning industry. The Board is supposed to consist of 7 members, 4 from the public and 3 from the industry. Presently, the Board is operating with only 5 members. The 2 public members who resigned 5 months ago have not yet been replaced.

MAJOR PROJECTS:

The Board of Fabric Care's effort to regulate dangerous chemicals used in "on-site" dry cleaning was signed into law by Governor Brown on February 2, 1982. AB 103 (Robinson, D-Santa Ana) will allow the Board to expend $200,000 from its special fund surplus to control carbon tetrachloride, trichlorethylene and perchlorethylene. The Board's efforts to contract with Department of Health Services' Toxic Chemical Department for a plan to implement AB 103 proved fruitless. The Department of Health Services' apparent inability or unwillingness to come to terms with the Board prompted the solicitation of outside bids. The Board recently voted unanimously to accept an offer from the Western Institute for Occupational Environmental Sciences at up to $30,000. Doris Easley, Chairwoman of the Examinations Subcommittee, with the help of the carpet cleaners trade association, drafted numerous proposed questions for a new licensing test for "on-site" cleaners. These questions are being reviewed by the Central Testing Unit and the new operators certificate for "on-site" cleaning may be issued in the near future. The Board has not yet detailed how it plans to spend the $170,000 balance of its allocation for AB 103, but there is every indication that these funds will be expended and a proposed draft available for the April Board meeting.

The use of dangerous chemicals in "on-site" dry cleaning poses an interesting scenario which is beginning to emerge at the Board meetings. Representatives of the Carpet Cleaners Institute recently informed the Board that the chemical process used for cleaning draperies is now the same process as used to clean furniture and carpets in the home. The Board has traditionally taken a neutral stance regarding licensing carpet cleaners, believing that their enabling statute, while specifically mentioning "textiles" was not intended to cover carpet cleaning. The Carpet Cleaners' Institute questioned the present legitimacy of this distinction in light of the fact that 90% of the on-site drapery cleaning was performed by carpet cleaners and the same chemical process being used in drapery cleaning was also now being used to clean rugs and furniture. The Carpet Cleaning Institute now appears to welcome the Board's regulation of their industry and the issue, by unanimous Board vote, will be noticed and scheduled for the April meeting.

LEGISLATION:

The Board recently circulated a draft for proposed legislation dealing with abandoned dry cleaning establishments. The proposed bill would allow the Board to enter an abandoned plant and devise a plan for returning the consumer's clothes before vandalism and theft sets in. The Board presently has no such authority and the costs of dealing with the rash of abandoned plants is becoming prohibitive. The major roadblock to such legislation is exactly how the Board's authority to enter such plants will be balanced with the rights of the land owner, who commonly rents out the space to the dry cleaner tenant. There were some suggestions that the Board examine procedures of other agencies which hold consumer valuables.

RECENT MEETINGS:

A host of disparate issues have been circulating recent meetings of the Board. 2 of the more interesting involved proposals for price posting and a complaint

disclosure policy. Neither met with a particularly warm reception. Less than 5% of the dry cleaners presently post their prices despite the fact that prices do vary considerably within the industry. A report issued more than a year ago by the former Executive Secretary indicated that the Board did not have the authority to order price posting. Most of the Board members felt that it was surely good business practice for dry cleaners to issue itemized receipts and that it was really up to the consumer to be inquisitive as to the price for certain services. The complaint disclosure policy proposal created much discussion but little action. The logistics of compiling complaints, determining at what stage complaint information should be made public and what information should be disclosed was discussed, but no consensus agreed upon. The Executive Secretary did mention that the Board was having problems getting dry cleaners to answer the Board's letters regarding complaints.

The Board has also completed its review of the Task Force's recommendations pursuant to AB 1111. The Department of Consumer Affairs' attorney has reviewed the regulations and a final draft will be submitted to OAL soon. The Board is also working in conjunction with the Department of Home Furnishings to establish a program for sending damaged clothes to be tested so as to determine fault. Presently the only lab for this procedure is run by the dry cleaners' institute. There is apparently a serious problem within the textile industry concerning the mislabeling of clothes and whether the dry cleaner should be responsible in such a situation. The Board has also authorized the Subcommittee on Consumer Information to accept the best bid on a series of 5 videotapes to be produced on recent trends and problems in drycleaning. There are also outstanding offers for bids on an 8 minute slide presentation for consumer information. Lastly, the Board has drafted and will issue a statement on unlicensed activity within the industry. The Board is asking members within the industry to report unlicensed activity.

FUTURE MEETINGS:

On April 15, 1982, the Board will hold a seminar at the Anaheim Convention Center. The Board's regular meeting should be scheduled around that date. Regulation of rug cleaners will be discussed at the upcoming meetings of the Board.

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, embalmers and approves change of business name or location. It registers apprentice embalmers, annually approves funeral establishments for apprenticeship training, annually accredits embalming schools and administers the licensing examinations. The Board inspects the physical and sanitary conditions of a funeral establishment, enforces price disclosure laws and audits preneed funeral trust accounts maintained by its licensees. An audit by the Board of a licensed funeral firm's preneed trust funds is statutorily mandated prior to transfer or cancellation of the license. Currently, there are approximately $54 million in preneed trust accounts in California. To date, the Board has recovered nearly $2.5 million in out-of-trust preneed funds. In addition, the Board investigates and resolves consumer complaints.

On November 25, 1981, Governor Brown appointed Betty Hunter Moore to the Board. Her first meeting as a Board member was February 6, 1982. She is the daughter of Jake and Doris Hunter, who established the Hunter Mortuary in Long Beach in 1931 and have owned and operated it since that time. Ms. Moore has been involved in the daily management of the mortuary for more than 7 years. She is past president of the Long Beach Funeral Directors Association, and is also active in local civic affairs.

MAJOR PROJECTS:

The Board's major project will now be the adoption proceedings of its AB 1111 review.

RECENT MEETINGS:

The Board of Funeral Directors and Embalmers continued informational hearings to review regulations contained in Title 16 of the California Administrative Code pursuant to Government Code Section 11349.7.

Staff suggested only minor changes in Article 6, Sections 1252, 1253, and 1253.5. Section 1252 establishes substantial relationship criteria while section 1253 and 1253.5 set forth rehabilitation requirements for previously ineligible licensee candidates. The minor changes consist of amending all references toward licensees with a male gender pronoun to a male/female gender pronoun. Noting that the vagueness of the regulations allows easier administrative enforcement, the Board refused to alter the regulations to enhance specificity.

The Board unanimously voted to amend section 1211 to restrict licensees from using the word "society" in the name of profit organizations. The Board feels the term misleads the public into believing the business is a non-profit organization. Those organizations which have used the term in the past will have 18 months to initiate a name change. During the interim, the business must issue a disclaimer in the same size print as the term "society", indicating the organization is a business establishment and not a membership owned or controlled society or association on all advertisements and business forms.

In February, the Neptune Society filed suit against the Board after the Board refused to grant it a license under that name (see CRLR Vol. 1, No. 2 (Winter, 1982) p. 34).

The Social Security Administration's new interpretation that section 7736 of the Business and Professions Code implies a condition of irrevocability in pre-need trusts has created much confusion in the industry and in the minds of Social Security recipients. The Board suggested that the attorney representing the Department of Aging meet with Social Security representatives. The Board offered to assist in any way possible, but noted the problem was not within its authority to solve.

The Board instructed the Executive Secretary to draft language which would force all licensees to report changes in ownership. Currently corporations are circumventing disclosure regulations through mergers and stock transfers. The new language would require all single transaction stock transfers of 5% or more of the ownership and 50% or more of stock transferred in a series of transactions be reported to the Board within 30 days.

The Executive Secretary reported on the plausibility of reducing embalmer renewal fees from $50.00 to $25.00. Because the Board would be unable to make the 1982-1983 payroll if the fees were to be reduced, the Board took no further action.

The Board considered a motion to reduce apprenticeship requirements. Under section 7643, an apprentice currently must assist in the embalming of 100 bodies and satisfy a 2 year apprenticeship service. The proposed change would reduce the 100 body requirement to 50 bodies and reduce the 2 year requirement to 6 months. Mr. Phil Newmark, Board Chairman, expressed an inability to understand any justification for having a body or time requirement for apprentice-

ships. The motion was tabled until the next meeting.

The Board approved 2 embalming schools. The Cypress School of Mortuary Science and the San Francisco School of Mortuary Science fulfilled the requirements for the Board's approval.

Mr. Danny Rohling petitioned the Board to waive the statutory apprenticeship requirements for his embalmers license. Mr. Rohling stated that he had the equivalent of the requirements. The Board sympathized with Mr. Rohling, but claimed it lacked the authority to waive the requirements. The Board suggested Mr. Rohling seek judicial relief.

The Board granted a license to the Wayfarer Memorial Society, Inc. under the condition the term "Society" be eliminated from the business's name. The field inspector had previously recommended the license be denied due to the name of the business, the unorthodox refrigeration facilities, and the location of the storage facilities. However, all 3 problems were resolved.

FUTURE MEETINGS:

The next Board meeting is scheduled for April 17 in San Diego. The Board will consider statutory changes to its apprenticeship program.

BOARD OF REGISTRATION FOR GEOLOGISTS AND GEOPHYSICISTS

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

This 8 member Board licenses geologists and certifies geophysicists and engineering geologists. Most of these designations are determined by examination and a few by Board recognition of comparable training and experience in other states.

The Board is composed of 5 public members and 2 professional members. There are no vacancies. The staff consists of 2 full-time employees, the Executive Secretary, Mr. John Wolfe, and his secretary and 2 part-time employees. The President of the Board is Dr. James Slosson.

The Board is funded by the fees it generates. The projected budget for fiscal 1981-82 is $134,557. The Board meets monthly, usually on the third Thursday of the month, in various cities around the state.

The Board is headquartered at 1120 "N" Street, Room 1124, Sacramento, CA 95814.

MAJOR PROJECTS:

The Board's review of regulations against the criteria of necessity, authority, clarity, consistency, and reference, as mandated by AB 1111, is nearly complete. This review began in March, 1981. The Board held public meetings in September and October of 1981, inviting public participation in the review process through oral or written comments. The deadline for submittal of the Statement of Review Completion to OAL was February 28, 1982. The Board requested a short extension from OAL to finish the review due to clerical delays. The substantive portion of the review has been completed.

The Board resolved an issue it has been grappling with for over 2 years. At its January 20, 1982, meeting, the Board decided to propose legislation to repeal sections 7847.5 and 7847.6 of the Business and Professions Code. These sections authorize the Board to issue a certification of registration, without written examination, to geologists and geophysicists with at least 14 years of professional experience. To qualify for such registration, the applicant must demonstrate to the Board's satisfaction that he has "acquired scientific knowledge and proficiency in geology (or geophysics) at least equivalent to that of a college graduate who has majored in the field of geology (or geophysics)." This procedure allows the certification of "eminent" professionals in those fields without resorting to a written examination of such applicants. Board members have disagreed as to procedures appropriate to test an applicant's "knowledge" and "proficiency", some members believing that experience alone should suffice and others asserting that all such applicants be required to take some kind of examination. The Board adopted the latter viewpoint and resolved to propose repeal of the code sections, shutting off the avenue which allowed experienced geologists and geophysicists to acquire certification without written examination. If this legislation passes, all applicants will be required to follow the normal examination procedure to acquire certification. The Board is now seeking a sponsor for the legislation.

The Board still appears far from resolution of another issue before it for quite some time. The Board is attempting to formulate policy concerning the certification of "reciprocity" candidates, geologists and geophysicists from other states or countries, with equivalent certificates of registration. Statutes provide that the Board may issue a certification to an entering applicant with equivalent certification of registration, without written examination, when the applicant satisfies Board rules (Business and Profession Code section 7847). The Board is attempting to formulate a procedure to guide the certification of such applicants and is considering a mandatory "oral appraisal interview" to determine the applicant's knowledge of California law concerning the practice of geology and geophysics. Alternatively, the Board is considering written examination of the "reciprocity" candidates, testing the applicant's knowledge of California law. The Board is now determining the areas of California law the "reciprocity" candidate should understand and formulating criteria to guide the use of either an oral interview or written questionnaire. Definite action on this issue does not appear to be forthcoming in the near future.

RECENT MEETINGS:

At its January 20, 1982, meeting in Sacramento, the Board amended regulations concerning graduate work experience credits which can be applied towards application requirements. The Board requires at least 7 years of professional geologic work to be eligible for the certification examination. A portion of the experience requirement can be acquired through graduate work. The adopted regulations concern the computation of these credits and provide for a month to month proration of graduate work for experience credit. The Board also discussed the experience credits those who work professionally while attending graduate school may receive and determined that a maximum of 12 months experience credit could be given.

The Board adopted a new fee schedule at the January meeting, raising application and registration fees for both geologists and geophysicists. The proposed new fee schedule must be approved by the Legislature, either through proposal and passage of a new bill or through amendment and passage of AB 940 or AB 2175, the 2 bills proposed by the Board already under consideration by the Legislature. Staff is unsure as to which procedure the Board will pursue.

The Board discussed the results of the November examination for new applicants, storm damage in Northern California, and the scheduling of future meetings.

The Board took no significant action at its February 16, 1982, meeting in Culver City. It continued discussion of experience credit for concurrent work and graduate work and recent storm damage in Northern California. It also considered the status of pending legislation and the new legislation proposed at the January meeting for the repeal of Business and Professions Code sections 7847.5 and 7847.6.

The Board held no meeting in December, 1981.

LEGISLATION:

The Board has proposed AB 940 and AB 2175, both sponsored by Assemblywoman Lafollette. AB 940 would allow the Board to prescribe application fees and increase the renewal fees for specialty geologists and geophysicists. Hearings have been held to allow public comment. AB 940 is still in the Senate Business and Professions Committee and has been taken off calendar for further revision.

AB 2175 would add a definition of "negligence" to the enabling statute. Members of the Board feel that such an amendment will protect the public against substandard geological work. AB 2175 has passed from committee to the Senate floor and staff expects action on the bill shortly. The Board expects no substantial opposition to the bill.

FUTURE MEETINGS:

The Board meets regularly on the third Thursday of each month. Future meetings have been scheduled as follows: April 19 in Anaheim, May 11 in Bakersfield, June 22 in Sacramento, and July 20 in Santa Barbara.

BUREAU OF HOME FURNISHINGS

Chief: Gordon Damant
(916) 920-6951

The Bureau of Home Furnishing 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 and control its licensees, the Bureau has access to premises, equipment, materials and articles of furniture.

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 found to be in violation of rules and regulations of the Bureau. The Bureau may also revoke or suspend a licence for violation of its rules.

An 11 member (5 industry and 6 public) California Advisory Board of Home Furnishings advises and makes recommendations to the Bureau Chief regarding changes in rules and regulations, 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 member. Currently, of the 6 public-member positions on the Board, 4 are vacant.

MAJOR PROJECTS:

The bureau completed review of its regulations pursuant to AB 1111 and submitted its position papers to the Office of Administrative Law on December 16, 1981. The position papers delineate the Bureau's critique of its regulations against the 5 statutory standards of necessity, authority, clarity, consistency and reference. OAL has taken no action on the position papers to date.

As part of the review process, the Bureau held several public hearings on existing and proposed regulations, but received little industry or public comment.

LEGISLATION:

AB 2238, introduced by Assemblyman Agnos, would require all liquid filled bedding to be clearly labeled in a manner approved by the Chief of the Bureau of Home Furnishings. Existing law requires a label marked with the name of the manufacturer. The bill passed through the Assembly on consent and is currently before the Senate Business and Professions Committee. The Bureau supports the bill and expects no opposition to passage.

RECENT MEETINGS:

The Advisory Board met on December 4, 1981, in San Francisco and on February 23, 1982, in Los Angeles and discussed the following:

Proposed Regulations: Following AB 1111 review, the Bureau proposed several amendments to existing regulations and held a public hearing at the February meeting. Most of the proposed changes were technical and elicited little comment. The proposed waterbed regulations, however, were largely substantive, imposing new labeling and safety requirements, and were formally endorsed by the Waterbed Manufacturers Association.

The Bureau received no written comment in response to its published notice. After consideration of the comments received at the hearing, the Board will submit the new regulations to OAL for approval.

Care Labeling: At the December meeting, the Board agreed to form a subcommittee to consider whether labels containing information on how to clean particular fabrics should be required on all upholstered furniture.

Industry spokespersons and Board members discussed the complexity of fabric care which is dependent on such factors as fiber content, finish, backing and the crucial variable: what's spilled. Thus, they argued, fabric care does not lend itself to brief, facile instructions.

Board members also spoke to manufacturers' cost from any additional labeling requirements, possible liability of retailers, and the consumer's interest in fabric care information and convenience. Bureau Chief Gordon Damant noted that in the last three years only 5% of the Bureau's complaints concerned fabric care.

Reporting for the subcommittee at the February meeting, Board member Linda Kenlon recognized that the myriad of individual cleaning problems could not be handled effectively by labeling. Therefore, the subcommittee recommended addressing the problem in a "general nature" by requiring a label containing a standardized code to indicate particular cleaning methods. This, the committee believed, would facilitate professional fabric cleaning.

Mr. Damant is considering the committee's recommendations.

Upholstered Furniture Sampling Project: In 1981, the Bureau allocated $40,000 for a 2 year project to buy upholstered furniture and to test the furniture for compliance with State flammability regulations. Because Bureau inspectors are empowered to enter California manufacturing plants and conduct tests, the current project focuses on furniture manufactured out-of-state.

To date the Bureau has purchased 75 pieces of furniture and found a significant number of violations. 18 of 30 chairs tested violated cigarette burn-resistance regulations; labels on 2 chairs claimed compliance, but neither was in compliance. The Bureau notified the manufacturers of the violations, issued warnings of possible administrative action and encouraged the manufacturers to voluntarily comply with State law.

Litigation: After several months of investigation, the Bureau found that 9 manufacturers of the popular "flip top" chair were filling their units with 100% non-fire-retardant polyurethane in contravention of State law. In December, the Bureau filed suit against 8 of the manufacturers and obtained a Temporary Restraining Order enjoining the sale and advertisement of chairs violating state law.

The Bureau is requesting $5,000 in damages per chair: $2,500 for false advertising (the chairs were labeled fire retardant) and $2,500 for unfair competition (other manufacturers were in compliance). One defendant manufacturer marketed 75 of these chairs in the last 6 months, thus a damage award may prove costly.

Mr. Damant estimated that the cost differential between fire-retardant filler and non-fire-retardant filler is about $2.00 to $3.00 per unit and Board member Gabe Canali indicated that the

chairs retail for between $80.00 and $180.00. Mr. Damant expressed concern that because many manufacturers make similarly styled furniture, this litigation may only be scratching the surface of a deep problem.

FUTURE MEETINGS:

The Board made plans to meet in Sacramento in the second week of May, 1982. The exact place and time will be announced at a future date.

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 oral exam. In addition, an applicant must have the equivalent of 6 years of landscape architectural work. A degree from a Board-approved school of landscape architecture counts as 4 years of experience.

The Board investigates all verified complaints against any landscape architect and prosecutes all violations of the Practice Act. The Board consists of 4 public members and 2 professional landscape architects, 1 each from Northern and Southern California.

MAJOR PROJECTS:

Current projects of the Board include: review and revision of testing procedures; completion of the Board's sunset report; and distribution of the consumer brochure.

The Board has consistently experienced difficulties in its relationship with the Council of Landscape Architectural Registration Boards (CLARB), from whom the written exam (the Uniform National Examination — UNE) is purchased. Much of the difficulty stems from California's lack of representation on CLARB. Although California buys 48% of the total exams sold by CLARB, it has only one vote in the organization. As a result, California has been unable to affect a reduction, a quantity discount or even a freeze on CLARB's exam fees. Furthermore, the Board believes that the UNE has an eastern bias which penalizes California examinees for using design components which, though incorrect for the East, are quite correct for California because of different climate conditions. The Board has considered developing its own exam, but recognizes that such development would be very costly.

The Board expects to correct the problem by grading the exams in California, taking California conditions into consideration, beginning this year. The Board will be seeking bids from independent contractors to review the exam itself and to grade the exam. The major problem with making any changes in the exam or in grading is the potential effect on reciprocity from other states. The Board will attempt to avoid that problem by presenting its problems and proposed solutions to CLARB.

The Board is also revising its oral exam procedures. The oral exam tests applicants' knowledge of law (e.g. mechanics' lien laws) and plants unique to California. Board Executive Secretary Joe Heath has devised a plan whereby the Board would nominate about 20 oral exam "Commissioners" (licensed landscape architests), train them and then hire them to conduct oral examinations of candidates. Heath said the orientation of the exam would be changed from the mere failing of students for poor performance on the exam to counseling them on which courses to take to improve their scores. Heath expects the plan to be fully operating this year. The present oral exam procedure involves 2 Board members examining 1 to 3 candidates at a time.

The Board recently submitted its sunset report to the legislature. This report outlines the purposes, organization and administration of the Board, discusses the continued need for the Board, and evaluates Board performance. Its recommendations include:

1. Appointment of an additional professional member (the Board is currently composed of 4 public members and 2 professional members).

2. Amendment of section 5641 of the Business and Professions Code, the Landscape Architecture Practice Act, to eliminate several broad exemptions. Right now, there is no formal legal distinction between landscape "architects" and landscape "designers," except that the latter do not need a license. Section 5641 permits anyone to design a landscape without a license if public health or safety are not affected.

3. Granting of restitutionary powers to the Board in judgments handed down against individual landscape architects. The Board wishes to be able to make the plaintiff whole in case of default or delinquency by the offending landscape architect.

The Board has been looking into more effective methods of publicizing and distributing its consumer brochure, which explains the qualifications of a good landscape architect and encourages consumers to report their complaints to the Board. The Board distributed the brochure to licensees to be made available in their offices, and to local schools, news media, consumer unions and the Sierra Club. The Board also contracted with the California Consumer Affairs Association (a branch of county government) to distribute the brochure in 14 counties through its normal channels, local consumer groups. But Board members are still concerned that the brochures are not being widely distributed. Board member Carla Frisk is currently researching the possiblity of using Public Service radio and television announcements to promote the brochure and to make consumers aware of the existence of the Board. Ms. Frisk has received some feedback on the brochures from the public, suggesting that there should be more information on horticulture, on hiring landscape architects, on what specifically should be included in a contract, and what constitutes fraud. New Board President Mike McCoy would like to see an increased emphasis on the brochure campaign in the coming year.

RECENT MEETINGS:

The Board held its February 21, 1982, meeting in the Santa Barbara County Planning Commission hearing room. Board member Earnest Spears was absent.

Mr. Heath first presented a procedures manual checklist he had developed for new Board member orientation. Nancy Hardesty suggested that Mr. Heath also develop a Board calendar indicating dates of meetings, elections, and budget hearings.

Mr. McCoy and Mr. Heath then proposed review of the 1981 UNE (Uniform National Exam). The selected independent testing firm will analyze the exam by item for proper wording, subject content, and difficulty, and by subject for appropriateness in terms of protecting public health, safety and welfare. The Board will send a copy of the proposal to CLARB, to serve as notice that the exam is being reviewed.

Ms. Hardesty and Mr. Heath presented a proposal for scoring California exams. The Board will be seeking bids to grade the Design and Design Implementation sections of the 1982 exam.

Noticing a trend toward low scores, and upon request by an examinee, the Board has decided to reevaluate the Design Implementation ("D") section of the 1981 exam. The Board will appoint a panel of experts consisting of the 2 professional landscape architect members of the Board, 2 exam commissioners (only 1 of whom will be from the academic community), 1 landscape contractor and

1 design review board public member. The panel will determine within 30 days of the February 21 meeting whether the exam section should be regraded. If the panel decides the section should be regraded, the regrading will take place within another 30 days. The reevaluation process will apply only to the "D" section of the 1981 exam; the problem should not arise in the future when exams are graded in California.

The sunset report has been submitted to the legislature for review. Mr. Heath expects to hear from the legislature within a month. AB 1196 (increase in fees) and AB 1077 (retirement licenses) have not yet been taken up by the legislature.

The Board elected new officers for 1982. Mike McCoy, a public member, has been elected President; Paul Saito, a professional landscape architect, Vice President.

Mr. McCoy proposed a change in the meeting schedule to make meetings more accessible to the public. In the future, the Board will plan most of its meetings for weekday evenings and will try to meet in easily accessible locations.

FUTURE MEETINGS:

The next two meetings are scheduled for April 21 at 7 PM in Sacramento, and July 14 at 7 PM in San Francisco.

BOARD OF MEDICAL QUALITY ASSURANCE

Executive Director:
Robert Rowland
(916) 920-6393

The BMQA is a 19 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 3 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, physician's assistants, podiatry, speech pathology, physical therapy, psychology, acupuncture and hearing aids. Most regulation occurs through the Committees of this Division (*see* separate reports, *infra*).

The Division of Medical Quality is responsible for disciplining physicians found to be in violation of the Medical Practice Act. In addition, it is attempting to establish review mechanisms to identify physician problems such as drug and alcohol abuse and rehabilitate 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 the physician's license to practice.

The BMQA, together with its 3 divisions, meets approximately 5 times a year at various locations throughout the state.

MAJOR PROJECTS:

The Board is currently reviewing its position papers in accordance with AB 1111. The Board expects to hold public hearings in June.

The Board also is considering amending section 2052, the legal definition of the "practice of medicine."

RECENT MEETINGS:

At the January 22 meeting in San Diego, the Board perpetuated its non-position on amending section 2052, the legal definition of the practice of medicine. Board member Jeoffrey B. Gordon, M.D., indicated the need for a concise definition of formal practice which would specify what non-licensees can and cannot do in the practice of health care. Dr. Gordon expressed the Board's concern for consumer freedom of choice. The Board plans to put these concerns into specific language to present to the legislature in early 1983. Dr. Gordon also echoed comments made at prior meetings regarding confusion in both the lay and professional press; he noted that the press is so "screwed up" in reporting the Board's position that the Board should refrain from clarification and simply proceed as planned.

Executive Director Robert Rowland subsequently commented that, due to the volatile nature of the issue, BMQA is "not committed to a position" on exactly how the Board plans to amend section 2052. He contended, however, that the Board is interested in "striking a better balance between public protection and individual freedom. The Board looks toward changes in the scope of practice by a physician as well as restrictions on non-licensees, the ultimate goal being promotion of consumer responsibility." The Center, as well as others, are unclear about what any of this means.

The Board decided to send Mr. Rowland, Board members William G. Gerber, M.D. and Ben Winters as representatives to observe the national Federation of State Medical Boards meeting in New Orleans on May 13-15, 1982. The Board looks to rejoin Federation membership but fiscal difficulties limit its representation at the national meeting. Board members James P. Lockhart, M.D., noted representation would not be precluded if Board members pay a portion of the bill. Several other Board members joined Dr. Lockhart in volunteering to pay their own way to strengthen California BMQA representation.

Project Director Judith Bruzus submitted her interim report on the Professional Performance Pilot Project to the Division of Medical Quality. The Division had developed the project to insure continuing competence of California physicians. Goals of the project include promoting communication and cooperation between public and private sector medical quality assessment programs, promoting more appropriate review at the local level, and developing locally-derived criteria or "performance indicators" to identify substandard medical care and using these indicators for early detection. The Division chose 3 of California's 14 Medical Quality Review Districts to test the project: District I (the Northern counties of California); District IV (San Francisco County); and District VII (Santa Clara County). Results range from sparse participation to strong commitment by medical communities. Ms. Bruzus noted that it is difficult to convince the private sector—the medical community—that a project of a state agency is a worthwhile pursuit which can be built on trust and confidentiality. Though the existing project is moving forward and the Division believes it will succeed, this success may only be achieved much later than anticipated. For this reason, the Division believes that, after 1 more year of close monitoring for tangible evidence of advancement, it must decide whether to introduce legislation to continue the project as a permanent BMQA program or phase out the program and transfer responsibility to the private sector.

The Division of Licensing reported that as of January 1, 1982, physicians must fulfill the new Cardiopulmonary Resuscitation (CPR) course requirements to gain relicensure. Physicians applying for relicensure without evidence of course completion within the last 2 years will be notified of the CPR requirement 2 months in advance of license expiration. The applicants also have a 30-day grace period following license expiration to fulfill the CPR requirement.

The Division of Licensing decided to hold off on a bill to implement the California Licensing Examination (CLEX), focusing instead on influencing the Federation Licensing Examination (FLEX) through cooperation with plans to field test questions on the proposed non-traditional areas (human sexuality,

child abuse, nutrition, geriatrics, and drug abuse). The Federation of State Medical Boards and the National Board of Medical Examiners support the Division's efforts to include these areas in FLEX and have expressed willingness to field test questions as early as the June or December 1982 exams. It remains to be seen if these areas will be incorporated into the national exam.

FUTURE MEETINGS:
June 10-11, 1982 in Monterey.
September 16-17, 1982 in Santa Clara.
November 18-19, 1982 in Palm Springs.

ACUPUNCTURE ADVISORY COMMITTEE

Executive Officer:
Susan Andreani
(916) 924-2642

The Legislature created the Acupuncture Advisory Committee in 1975 to regulate and control the practice of acupuncture. The Committee is part of the Division of Allied Health, which is part of the Board of Medical Quality Assurance. The Committee recommends new or amended regulations to the Division of Allied Health. It is not empowered to adopt regulations but will gain this power on July 1, 1982 when it will become an autonomous rule-making body known as the Acupuncture Examining Committee. The Committee makes its recommendations based on information gathered at public hearings and the expertise of its professional members.

In addition to making recommendations on the regulation of acupuncture, the committee administers the acupuncture licensing exam, and sets standards for acupuncture schools. The Committee consists of 4 public members and 7 acupuncturists. 5 of the acupuncturists must have at least 10 years of acupuncture experience. The remaining 2 must have 2 years of acupuncture experience and possess a physicians and surgeons certificate.

MAJOR PROJECTS:

The Committee is currently evaluating schools which have applied for approval of their acupuncture programs. In evaluating acupuncture programs, the Committee interviews the faculty members teaching the course to analyze the qualifications and experience of acupuncture instructors. The interviews and curriculum evaluation form the basis of the final determination of the quality of the program.

The Committee decided to continue offering the certification exam in 5 different languages; English, Korean, Japanese, Mandarin Chinese and Cantonese Chinese. The Committee expects 300 to 600 applicants to take the July exam. Since the exam consists of a practical and a written section, the logistical problems of administering the exam are considerable. There are often communication problems between the examiners, the examinee, and the "patient" used for the practical section of the exam.

LEGISLATION:

A bill requiring insurance companies to pay acupuncture treatment claims died in committee. MediCal approves payment for acupuncture treatment for pain, when no other treatment is available.

Effective July 1, 1982, podiatrists and dentists wanting to use acupuncture in their practice must complete a special course in acupuncture. If the podiatrist or dentist is already using acupuncture, he or she will be grandfathered in.

LITIGATION:

The Committee proposed adding diagnosis and treatment of disease, herbs, diet, nutrition, breathing exercise, communication with medical personnel and California law to the acupuncture exam. It submitted such regulations to OAL, but OAL rejected them as unnecessary and unauthorized. The Governor sustained the rejection. The Committee considered suing OAL, but decided to re-hear the issue for 2 reasons: (1) OAL might approve the regulations the second time, and (2) the re-hearing would make a stronger case in court. The Committee heard public testimony on the issue. Most acupuncturists favor the new regulations. The only opposition came from schools, not wanting to increase their curriculum.

RECENT MEETINGS:

The Committee met on January 23, 1982 in Los Angeles. In addition to subjects already reported, the Committee discussed new regulations requiring acupuncture schools to associate with community colleges or 4 year universities to obtain state approval of their programs. The Committee feels this would reduce tuition costs and improve the acupuncture schools. Representatives from acupuncture schools are strongly opposed.

FUTURE MEETINGS:

The Committee will meet June 12 in San Francisco, August 28 in Los Angeles, October 9 and December 4 in San Francisco.

HEARING AID DISPENSERS EXAMINING COMMITTEE

Executive Officer:
Carol Richards
(916) 920-6388

The Board of Medical Quality Assurance's Hearing Aid Dispensers Examining Committee consists of 7 members, 4 public. 1 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 is a licensed audiologist. The 3 non-public members are licensed hearing aid dispensers. There is currently 1 vacancy on the Committee. The Committee prepares, approves, grades and conducts exams of applicants for a hearing aid dispenser's license. The Committee also reviews the qualifications of applicants for the exam. Actual licensing is performed by the Board of Medical Quality Assurance.

The Committee is further empowered to hear all disciplinary matters assigned to it by the Board.

RECENT MEETINGS:

A staff investigator explained the Committee's disciplinary procedure at the January meeting. Complaints made by phone or in writing are submitted to the Sacramento office, where they are issued a number and sent to an expert in the particular field. The expert then decides if the complaint warrants an investigation. If so, the case is given to the appropriate regional officer. The investigator makes further inquiries upon request of the regional officer.

If the investigator finds a serious violation has been committed, he submits a package and recommendation to the Attorney General. The Attorney General makes an independent finding and if merited files an accusation. The defendant's case is then either dismissed or a hearing scheduled before a judge. Another disciplinary measure which could be taken if the violation is found not to warrant spending the money to investigate is to recommend closing the case with merit. If further violations occur, the prior violations would be noted.

LEGISLATION:

AB 194 (Rosenthal) was signed into law January 24. The bill amends section 3350, et seq. of the Business and Professions code, and imposes stringent regulations on "itinerant dispensers" of hearing aids. AB 194 will require licensed hearing aid dispensers who use another business location on a temporary basis belonging to another licensed dispenser to notify the Board of the location and dates services

will be provided at that location. The bill gives the consumer the right to hold either the seller or the person who allows the seller to use his business location responsible for the quality of the hearing aid. In addition, the bill defines who is "deemed to be engaged in the fitting and 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.)

The Committee has endorsed AB 1528 (Rosenthal), which restricts audiologists from prescribing a hearing aid for a customer who buys the hearing aid through a mail order catalogue and brings it to a doctor for fitting. The compromise bill would require audiologists who do this to become licensed hearing aid dispensers. The bill also redefines the practice of fitting and selling hearing aids from solely "making selections, adaptations, or retail sale of hearing aids" to include a "visual examination of the ear, testing and hearing as specified, taking of earmold impressions, fitting or sale of hearing aids and any necessary postfitting counseling." The bill was stalled in the Senate Business and Professions Committee at the February 22 hearing after 2 audiologists testified in opposition to the bill. A compromise is currently being worked out.

FUTURE MEETINGS:

The next meeting is scheduled for May 22 in Sacramento.

PHYSICAL THERAPY EXAMINING COMMITTEE

Executive Officer:
Don Wheeler
(916) 920-6373

The Physical Therapy Examining Committee is a 6-member board responsible for examining, licensing and disciplining approximately 8,600 physical therapists. The Board has 3 public members and 3 physical therapist members. Presently, 1 public position is vacant.

Committee licensees fall into 1 of 4 groups: Physical therapists; physical therapist assistants; physical therapist supervisors (physical therapists with at least 2 years' experience who, upon Committee certification, can supervise up to 2 physical therapist assistants); and physical therapists certified to practice electromyography. The latter certificants engage in kinesiological electromyography or the more rigorous clinical electroneuromyography.

Lastly, the Committee approves physical therapy schools. An exam applicant must have graduated from a Committee-approved school before being permitted to take the licensing exam.

When approving schools, the Committee relies almost exclusively on the guidelines supplied by the American Physical Therapy Association and the Council on Post-Secondary Education. Because the Committee recognizes these national standards, there is at least 1 school in each of the 50 states and Puerto Rico whose graduates are permitted to apply for licensure in California.

MAJOR PROJECTS:

A proposal by the Committee to amend Title 16, California Administrative code, sections 1399.50 and 1399.52 to increase application, examination and re-examination, license, license renewal, and delinquency fees for physical therapists and physical therapist assistants to the statutory maximum, was rejected by OAL because the rule-making record failed to demonstrate necessity. According to an analysis prepared by the Department of Consumer Affairs Budget Office included in the rule-making record, if fees are maintained at their current level, the Committee faces a fund deficit in Fiscal Year 1983-84. However, OAL concluded that an increase in fees to the extent proposed by the Committee would result in a substantial surplus. Executive Officer Don Wheeler indicated that a compromise was reached between the Committee and OAL that will increase fees above their current level but below the statutory maximum.

The Committee's AB 1111 review of existing regulations is entering its final stages. Position papers were ready for final Committee action at the March 19 meeting in Los Angeles. A hearing is scheduled in conjunction with the May 14 meeting in Sacramento.

The Committee's consumer education brochure originally projected to be ready for distribution in early 1982 remains, as yet, unavailable. The Committee has collected the materials to be included in the brochure and expects to make arrangements with the printer soon.

RECENT MEETING:

The Committee's January 15 meeting in San Francisco was primarily devoted to AB 1111 review of existing regulations. The Committee recommends repeal of many of the regulations relating to approval of physical therapy schools which are unnecessary since the Committee relies on the determinations made by an accrediting agency such as the Council on Post Secondary Accreditation.

FUTURE MEETINGS:

The Committee will meet in Sacramento on May 14.

PHYSICIAN'S ASSISTANTS EXAMINING COMMITTEE

Executive Officer: Ray Dale
(916) 924-2626

The BMQA's Physician's Assistants Examining Committee regulates the various types of "physicians' 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 "encourage the more effective utilization of the skills of physicians by enabling them to delegate health care tasks..."

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

The Board is made up of 9 members, all appointed by the Governor.

MAJOR PROJECTS:

The Committee has 4 goals for 1982:

1. Initiating public relations activities to inform the general public and other members of the health professions what a PA is and what tasks PA's may perform.
2. Changing the law so that a majority quorum may carry a motion.
3. Changing the law to allow more PA's membership on the Committee.
4. Clarifying and simplifying the Committee's regulations (AB 1111) with the Office of Administrative Law.

RECENT MEETINGS:

The Physician's Assistants Examining Committee met January 20, 1982, in San Diego. The major item of business was AB 1111 regulatory review. The Committee is reviewing all past regulations, as per that statutory mandate. Presently, the Committee is finalizing its recommendations as to the repeal, amendment or retention of each regulation. The Division of Allied Health Services will consider the recommendations prior to their ultimate submission to the Office of Administrative Law. While the final draft of the Committee's recommendations is not yet in, at the January meeting the Committee unanimously concurred in some major structural changes regarding the future of physician's assistants (PA's) in California.

Perhaps the most considerable change involves section 1399.523 of Title 16, California Administrative Code, entitled "Tasks Performable by a Primary Care Physician's Assistant." This section presently contains the so-called laundry list of tasks performable. Under the present regulations, PA's may only perform a task specifically listed in this section, or an "additional task" which the PAEC must authorize on an individual and ad hoc basis (see CRLR, Vol. 1, No. 3 (Fall, 1981) p. 34). The proposed amendment will allow PA's to perform laboratory, screening, and therapeutic "procedures delegated by the supervising physician where such delegation is consistent with the physician's scope of practice and the patient's health and welfare." This shift from a regulatory to a delegatory method of supervision will allow much greater flexibility in the use of PA's, and should ultimately lead to increased medical services offered to the consumer. To prevent irresponsible delegation, these delegated tasks must be within the physician's scope of practice, preventing physicians from delegating tasks they are not qualified to supervise. As a further limitation on the delegation, the physician remains financially liable for the performance of tasks done under his or her supervision. The Board believes an approved supervising physician should be capable of determining the tasks a PA may perform under the direction of his or her supervisor. Finally, the Board agreed that a delegatory approach will allow a physician and a PA to keep up with new medical procedures and developments. The Committee members unanimously agreed that physician delegation would be an improvement over the present approach.

Another important change recommended by the Committee involves section 1399.510, which currently provides that there "shall be no separate billing by the PA". Supporters of this regulation, including the California Medical Association, argued that the regulation should be retained because it serves to encourage physicians to utilize PA's. On the other hand, critics contended that this regulation served only to hide medical costs from the consumer, thus making it unlikely that the marketplace would be able to act to keep prices down. This regulation was further criticized as having no statutory authority. The Committee unanimously recommended that this regulation be repealed. If this regulation is repealed, doctors will still be able to charge for the services of the PA as part of the total health care services provided, i.e., they would still be able to hide the cost. However, they would no longer be required by the state to do so.

The Committee has also decided to seek elimination of 3 of the 4 categories of PA specialists. Women's Health Care, Orthopedic, and Allergy PA's will no longer be licensed in the future, and the only specialty which will continue to be licensed will be emergency care PA's. If amended, past licensees of the 3 discontinued specialties will still be limited to their current laundry lists of tasks performable. Future PA's, in the delegatory model recommended by the Committee, will be able to work in those fields to the extent that they are within their physician's "scope of practice", and to the extent that such actions are "consistent with the...patient's health and welfare." (proposed section 1399.523) Because the Committee feels that the extra training currently required of Emergency Care PA's should be retained, the Committee recommends that the separate category of Emergency Care PA's remain.

PAEC unanimously approved these and other recommendations. They will be forwarded to the Division of Allied Health, then to the full Board of Medical Quality Assurance, and finally to the Office of Administrative law.

The proposed amendment to the regulation requiring 1 year of clinical training for PA's, allowing for a 3 month equivalency mechanism for those who want to challenge the 1 year requirement (see CRLR, Vol. 2, No. 1 (Winter, 1982) p. 41) was resolved in the Committee's favor after intervention from the Governor's Office.

In a related matter, the PAEC was recently forced to withdraw its proposed fee increases (see CRLR, Vol. 2, No. 1 (Winter, 1982), pp. 40-41), because of threatened rejection by OAL. Apparently, the Office of Administrative Law took the position that the notice of the proposed increases was insufficient because it did not reflect the increases finally approved at the hearing. OAL threatened rejection even though the statute which seemed to be on point, Government Code section 11346.8, states that "the state agency shall make no substantial change or modification to a proposed adoption, amendment, or repeal of a regulation, unless such change or modification is related directly to the same subject matter or issue noticed." While the Committee's change of its proposed regulation seemed to relate "directly to the same subject matter or issue noticed," the Executive Officer felt that it would be in the best interests of the PAEC to re-notice and re-hear the matter, rather than appeal the issue to the Governor.

PODIATRY EXAMINING COMMITTEE

Executive Officer:
Carol Sigmann
(916) 920-6347

The Podiatry Examining Committee of the Board of Medical Quality Assurance (BMQA) has 6 members, all appointed by the Governor. The Committee consists of 2 public members and 2 private members who are licensed podiatrists. The Committee sets educational and licensing standards for podiatrists and is empowered to inspect hospital facilities specializing in podiatric medicine. This authority also allows the Committee to inspect hospital records relating to podiatry.

MAJOR PROJECTS/RECENT MEETINGS:

The Committee is currently involved in evaluating the continuing education courses offered to podiatrists. To be relicensed, a podiatrist must complete 50 hours of approved continuing education courses over a 2-year period. Because of this requirement, the Committee has determined that courses should correspond to the educational needs of podiatrists and reflect areas of clinical development.

An institution desiring to offer a continuing education course must first survey local podiatrists to determine what areas of study are most desired and needed. The institution then submits a course assessment to the Committee, justifying it in terms 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; therefore, approval is necessary to the course's survival. The supervision of these continuing education programs is the Committee's major ongoing project.

The Committee presented position papers regarding continuing education at the Division of Allied Health meeting on January 22, 1982. Some podiatrists, who teach continuing education courses, have attacked the need survey, self assessment criteria as a handicap to formulating courses. They contend the criteria limit their ability to offer courses, and allow the Committee to prescribe what instructors can teach. The Committee, however, believes that the criteria and evaluations eliminate frivolous courses which are merely designed to justify the 50 hour requirement, but have little practical value to podiatrists or consumers.

The Committee is currently trying to implement its statutory authority to inspect hospital facilities specializing in podiatric medicine, and is examining

hospital records relating to podiatric care. These actions will give the Committee a larger role in podiatric quality control, determining if hospitals are complying with regulations.

Hospital associations have opposed inspections by the Committee, contending that the Committee does not have the regulatory power. They assert that since there are no specific regulations which dictate how the Committee is to conduct these inspections, there is no authority for the Committee probes. The Committee counters by saying that section 2498 of the Business and Professions Code allows inspection of hospital facilities which relate to podiatric medicine, and therefore statutorily sanctions the practice.

As a result of this controversy the Committee sought an opinion from the Attorney General. On February 10, 1982, the Attorney General issued Opinion 81-1006 supporting the Committee's inspection authority. The Opinion asserted that the Committee did in fact have the statutory authority to inspect hospital facilities used for podiatric medicine pursuant to section 2498 of the Business and Professions Code.

FUTURE MEETINGS:

The Committee will meet sometime in May.

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. The PEC is composed of 8 members, 3 of whom are public members. 1 public member position has been vacant for approximately 1 year.

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.

RECENT MEETINGS:

At the November meeting the Committee deferred action on regulations for domestic educational comparability until the Credentials Subcommittee has finished its proposed guidelines for foreign program comparability. At its January 9 meeting in Millbrae, the PEC adopted the Doctor of Mental Health Program of the University of California as "equivalent". However, program candidates will have their course work individually reviewed.

PEC requested October licensing examination applicants to answer a short questionnaire designed to measure adverse impact. Empirical evidence generated by the questionnaires is now being weighed.

At the January meeting the Executive Officer reported that the December oral examinations had run smoothly. He voiced concern over the difficulty in defining discrete areas of specialization and sub-specialization tested in the orals. Apparently, this difficulty reflects uncertainty in the general psychological community. Mr. Levy also discussed the possibility of an "ethnic psychology requirement," still in the development stage, which would enhance the profession's effectiveness in serving minorities.

In other action in the January session, PEC elected Joseph White, Ph.D., Chairperson and Dr. Madrid, Secretary.

AB 1111:

PEC staff is still preparing position papers on its regulations as required by AB 1111.

FUTURE MEETINGS:

To be announced.

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 whom is a physician or surgeon). There is currently 1 vacancy. 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.

RECENT MEETINGS:

The Committee adopted competency guidelines for the Hearing Aid Dispensers Examining Committee at its December meeting. The guidelines set out "Procedures for Hearing Aid Fitting or Selling by Hearing Aid Dispensers." For example, the guidelines specify what documentation should be kept on fitting, describes what should be done before a hearing aid is selected and specifies what tests and follow-up exams should be undertaken.

The Committee is continuing to draft regulations clarifying Business and Professions Code section 651 on advertising. The Committee believes the guidelines are vague.

LEGISLATION:

AB 194 (Rosenthal) was signed into law January 24. The bill amends section 3350, et seq. of the Business and Professions Code, and in essence imposes stringent regulations on "itinerant dispensers" of hearing aids. AB 194 will require licensed hearing aid dispensers who use another business location on a temporary basis belonging to another licensed dispenser to notify the Board of the location and dates services will be provided at that location. The bill gives the consumer the right to hold either the seller or the person who allows the seller to use his business location responsible for the quality of the hearing aid. In addition, the bill defines who is "deemed to be engaged in the fitting and 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.)

The Committee has endorsed AB 1528 (Rosenthal) which restricts audiologists from prescribing a hearing aid for a customer who buys the hearing aid through a mail order catalogue and brings it to a doctor for fitting. The compromise bill would require audiologists who do this to become licensed hearing aid dispensers. The bill also redefines the practice of fitting and selling hearing aids from solely "making selections, adaptations, or retail sale of hearing aids" to include a "visual examination of the ear, testing and hearing as specified, taking of earmold impressions, fitting or sale of hearing aids and any necessary postfitting counseling." The bill was stalled in the Senate Business and Professions Committee at the February 22 hearing after 2 audiologists testified in opposition to the bill. A compromise is currently being worked out.

FUTURE MEETINGS:

The next meetings are scheduled for May 7 in Sacramento and June 26 in Newport Beach.

REGULATORY AGENCY ACTION

BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

Executive Office: Hal Tindall
(916) 445-8435

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

The Board consists of 9 members appointed by the Governor. 4 are nursing home administrators and 5 are members of the general public.

MAJOR PROJECTS:

At its December 11, 1981, meeting in Los Angeles, the Board discussed a proposed fee bill which would amend section 3940 of the Business and Professions Code. The proposed bill would eliminate the minimum fees set by the legislature. New maximum fees would be established in most cases. The Board referred the proposed fee bill to its Administrative Committee for further review and recommendations.

AB 1111:

The Board reviewed the specific language of the proposed changes to Title 16, California Administrative Code, at its December 11, 1981, meeting. The Board proposed the following changes: sections 3109, repeal; Article 5, amend title; 3139, adopt; 3140, amend; 3141, amend; 3142, amend; 3144, amend; 3150, repeal old and adopt new; 3151, adopt; 3152, repeal old and adopt new; 3156, repeal; and 3175, repeal subsections [c] and [d] and adopt new [c].

RECENT MEETINGS:

At the December 11, 1981, meeting Mr. Hal Tindall announced the California Association of Health Facilities and the California Association of Homes for the Aged will assist the Board in formulating a new state examination. This reformation will occur after the Board completes its AB 1111 review.

Ms. Jean Brophy reported on the continuing education program. According to course evaluation questionnaires, licensees are responding favorably to the program, finding the courses informative and well-organized.

Mr. Douglas Glenore, a former licensee, made a presentation to the Board outlining his qualifications for the Administrator-in-Training program. After considering Mr. Glenore's qualifications, the Board decided he did not meet the education and experience requirements of section 3116 of Title 16, California Administrative Code, and therefore could not be admitted to the program.

Disciplinary Matters: At the December 11, 1981, meeting the Board took the following action regarding its licensees:

Ted Epstein: approved default decision to revoke license.

Virginia McClure: stay of revocation of license; 90-day suspension and 5-year probation.

Meir Jacobs: approved a stipulation calling for revocation of license.

At the February 26, 1982, meeting in Lake Tahoe, the Board conducted a regulatory hearing on the proposed regulation changes discussed at its previous meeting. The Board reviewed specific language changes and approved all but 1 of the proposed changes. Several nursing home administrators testified against the proposed language change in section 3175. The proposed revision of subsection (c) and repeal of subsection (d) of the regulation makes the administrator responsible for the acts or omissions of facility staff constituting violations of Board regulations and statutes. Mr. George Vickerman of the Skilled Nursing Facility in San Jose testified that the rule is unfair to administrators because they would ultimately be liable for the negligence of nurses, technicians and other employees. Mr. Don Chang, the Board's attorney, explained the underlying legal theory of the rule. The Board voted to continue public discussion of the proposed changes at the next Board meeting.

FUTURE MEETINGS:

The next meeting is scheduled for April 20, 1982, in Los Angeles.

BOARD OF OPTOMETRY

Executive Officer:
John T. Quinn
(916) 445-2095

The Board of Optometry consists of 9 members appointed by the Governor. 6 are licensed optometrists and 3 are public members. The fulltime Executive Officer, John T. Quinn, was appointed in early 1980. The remaining vacancy on the Board was recently filled by Ligaya E. Avenida. The Board holds meetings 8 times a year at various locations throughout the state.

The Board protects the consumer from harm caused by unsatisfactory eye care by the setting of minimum standards for entry into the profession and the monitoring of established practitioners. 1 exam is given each year to those wishing to become optometrists, either at Berkeley School of Optometry or the Southern California College of Optometry in Fullerton. Presently the Board monitors the established profession by investigating complaints directed to the Board. The Executive Officer screens the complaints and determines which should be investigated by the Division of Investigation of the Department of Consumer Affairs, and which can be answered by his office. Generally, the complaints answered by the Executive Officer are those "which do not involve a violation of any Statute or Board regulation."

The Board also reviews fictitious name permits submitted for approval. Generally, the Board is concerned with names that might confuse the public because of similarity to names already in use or the possibility that the name would deceptively infer a specialty.

THE CHANGING OF THE GUARD:

On January 1, 1982, Dr. Jessee C. Beasley replaced Dr. Ernest K. Takahashi as chairperson of the Board of Optometry. This seemingly uneventful transition may have important ramifications on the workings and direction of the Board. Dr. Takahashi presided over the Board with political restraint. He maintained procedural control without unduly interfering with substantive debates and decisions. While his own opinions may have differed, he gave deference to the Board's desires.

At the February 21, 1982, Board meeting, Dr. Beasley submitted his Committee assignments. The assignments effectively reduced the power of the more consumer oriented members of the Board. Specifically Dr. William E. Stacy was removed from his chairperson positions and Jack R. Scanlon was eliminated from 2 important committees. The assignments elicited various responses from Board members. Ms. Avenida disagreed with the exclusion of a Board member from a committee when the member was obviously committed to the subject matter and had already expended much time and effort. Dr. Stacy and Mr. Scanlon expressed concern that perhaps the public voice was being excluded, while Dr. Lieblein asserted that questioning the chairperson's assignments undermines the organizational structure of the Board. While a majority of the Board eventually passed the Committee assignments, tensions and questions concerning the future directions of the Board remain.

MAJOR PROJECTS:

Licensure of Foreign Graduates: At the February meeting the Board outlined the method it would use to determine the educational equivalency necessary to allow a foreign graduate to take the California exam. These criteria are as follows:

1. An evaluation of education credentials, both undergraduate and optometry school, by a service approved by the Board. Upon a determination that an applicant's education is reasonably equivalent to that of graduates of U.S. schools, the applicant will be admitted to the State Board examination.

2. In the event that there is doubt with regard to educational equivalency then the foreign applicant will be permitted to demonstrate educational equivalency in the following manner:

a. Take and pass at a level acceptable to the Board the NBEO examination.

b. Upon satisfactory completion of (a), the Board's Credentials Committee will evaluate the clinical training of the foreign applicant and determine if it is reasonably equivalent to that required of U.S. graduates. If it is, the applicant will be permitted to take the State Board examination.

c. In the event the foreign graduate is deficient in clinical training and experience, the foreign graduate will be required to undergo an appropriate number of hours of additional clinical training in a public service setting to be monitored by either the University of California School of Optometry clinic or the Southern California College of Optometry clinic. Upon successful completion and certification by the appropriate monitoring school, the foreign applicant will be permitted to take the State Board examination.

Implementation of these criteria is now before the Board. Various problems may occur as the Board enacts this program. John Arvizu (Chairman of the Regulatory Review Committee), and John Quinn (Executive Secretary), expressed some concern as to the Foreign Graduate Licensure proposal. Mr. Arvizu noted it is often difficult to obtain transcripts from foreign schools. He also made the important point that the Practical Experience Requirement of California Schools is far better than most foreign schools. Mr. Quinn stated that the Board has been feeling a lot of "political heat" in the past months to pass this Foreign Graduate proposal. Now that the proposal for licensure has passed, there are still many questions as to how it may be implemented, and whether it will work to the betterment of the Optometric Association.

RELICENSURE:

The debate concerning relicensure of optometrists is still continuing. During the February meeting the periodic relicensure Evaluation Committee again proposed a relicensure package which included continuing education and a relicensure exam. Each licensed optometrist would be required to attend 50 hours of continuing education every 2 years or take an optional exam. Board members and the audience expressed concern about the examination, its cost and contents. The issue was again referred to committee for examination of these subissues.

RECENT MEETINGS:

The Board of Optometry's Regulatory Review Committee met at the Mansion Inn in Sacramento on January 23, 1982.

The Committee approved most of the regulations discussed without much difficulty. However, there were 3 regulations which resulted in some controversy among the Committee members: The National Board of Optometry's Examination (NBO), whether Optometric Corporations must carry malpractice insurance, and the determination of what constitutes professional inefficiency.

The Committee felt that it would be ideal to find a nationalized standard for testing, to allow optometrists the opportunity to practice in other states. Currently, the National Board's exam is given credibility by the California Board Exam. For some time the Committee had attempted to obtain some information about the NBO so the Board could judge the relationship between it and California's exam to determine what weight to give the NBO. However, NBO never sent the information to the Board. The Regulatory Review Committee gave notice that if NBO did not send testing information to the Committee, a motion to strike section 1535 (giving validity to the NBO) would automatically go into effect.

The Board's regulations currently specify a minimum amount of malpractice insurance *if* an optometric corporation has insurance. However, an optometric corporation is not required to have any malpractice insurance. Neither are private practitioners required to have malpractice insurance. The Committee discussed this dilemma and decided to gather further data before reaching any decision.

The problem of defining professional inefficiency came before the Committee in the form of a proposal by Dr. Stacey. Dr. Kendell claimed the proposal was too restrictive. Advising attorney, Bob Miller, said the Attorney General's Office would prefer a more specific "laundry list" to plead and prove a case for the prosecution. The Committee decided to present to the Board a choice of 3 proposals:

1. Keep section 1510 as it is;
2. Accept Dr. Stacey's proposal;
3. Accept Dr. Beasley, Dr. Arvizu, and Dr. Kendell's proposal.

On February 21, 1982, the Board met at the Disneyland Hotel in Anaheim. The meeting was held following the COA seminar and was 1 of the most highly attended meetings in recent months. The reason for such enthusiasm was the anticipated consideration of a motion concerning the licensure of foreign graduates. The audience sat placidly by while the Board discussed committee assignments and fictitious name permits and opened the public forum.

The discussion concerning the licensure of foreign graduates began with a report by the credentials committee and the presentation of proposed criteria for allowing foreign graduates to take the California exam. Thereafter, representatives from the Governor's office and various Filipino organizations made statements in support of the proposed criteria. Despite concern over how to implement the criteria, the proposal passed unanimously.

The Board again considered periodic relicensure. The relicensure committee had moved to require either continuing education or an alternative relicensure examination. This issue was again sent to committee.

FUTURE MEETINGS:

The next meeting is scheduled for April 2, 1982 in Tiburon. The Board will discuss the foreign licensure program.

BOARD OF PHARMACY

Executive Secretary:
Claudia Klingensmith
(916) 445-5014

The Board of Pharmacy grants licenses and permits to pharmacists, pharmacies, drug manufacturers, wholesalers and sellers of hypodermic needles. It regulates all sales of dangerous drugs, controlled substances and poisons. To enforce its regulations, the Board employs full-time inspectors who investigate accusations and complaints received by the Board. This may be done openly or covertly as the situation demands.

The Board is authorized by law to conduct fact-finding and disciplinary hearings, and to suspend or revoke

licenses or permits previously issued, for a variety of causes including professional misconduct and any criminal acts substantially related to the practice of pharmacy.

The Board consists of 10 members, 3 of whom are public members.

MAJOR PROJECTS:

A September, 1981, amendment to Business and Professions Code section 4046 (the Pharmacy Practices Act, AB 1868) extensively broadened the sphere of practice of a pharmacist; it allows pharmacists to furnish compounded medicines to prescribers for in-office use, to transmit prescriptions to other pharmacists, to administer drugs and antibiotics pursuant to a prescriber's order, and in some circumstances to order or perform tests on patients and to adjust patients' drug therapies. The Board is responsible for determining what "appropriate training" is necessary under section 4046. The law has been in effect since January 1, 1982, and, so far, pharmacists have nothing to guide them; the Board has decided not to specify what "appropriate training" is. They feel that pharmacists, as professionals, may set their own guidelines within some policy limits (which are now being drafted by a Board subcommittee). The California Pharmacists Association and the California Nurses' Association have both made helpful recommendations on the matter, and the policy statement should be finalized in March, 1982.

The Department of Consumer Affairs has initiated an investigation into the value of continuing education in those professions where it is required. The Board has imposed continuing education on its licenses in the past and does now, but will join the DCA in questioning its value. Any and all informed input on the matter will, no doubt, be appreciated by the Board.

LEGISLATION:

The problem of look-alike drugs in California is coming under control at last (see CRLR Vol. 2, No. 1 (Winter, 1982) p. 45). AB 2342 and SB 1286 were drafted to ban the sale of look-alike drugs while carefully not interfering with placebo therapy. Licensed prescribers may still prescribe placeboes, and on that basis the Board supports these bills.

RECENT MEETINGS:

The Board has proposed repealing all of its regulations regarding radioactive pharmaceuticals, and its position is unchanged. The Board will hold public hearings on these regulations, probably in May. The Board assumes that the regulations are redundant to other state and federal controls and are thus unnecessary; it has not stated what these other controls are. In the interests of professional convenience the current regulations should probably be retained because it is hardly reasonable to expect pharmacists to religiously canvas the Federal Register simply to keep abreast of NRC regulations.

The Board is considering changing its policy on pharmacy inspections. It wants to survey wholesalers to determine which pharmacies are buying disproportionate amounts of dangerous drugs and controlled substances, and then to randomly select about 10% of the pharmacies per year for inspection. Further, the Board is considering levying fines on licensees who are found in violations of laws and regulations to help recoup enforcement costs.

FUTURE MEETINGS:

The Board has scheduled meetings for the following dates and locations: May 19 and 20 in Los Angeles, July 28 and 29 in San Francisco, September 29 and 30 in San Francisco, and November 17 and 18 in Los Angeles.

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. Civil, electrical, and mechanical engineering, as well as land surveying, are practice disciplines, requiring registration with the Board to perform the work of, and call oneself the name of, the practice discipline, unless exempt. There are also numerous engineering title disciplines. Unlike practice disciplines, one may perform the work of a title discipline without registration. However, to call oneself the name of a title discipline, one must register with the Board. Structural engineering is an authority discipline. An authority is a narrow field of engineering within a larger practice discipline, and requires a higher level of experience and education. One must be registered as a civil engineer as a prerequisite to obtaining structural authority. Like title registration, one must register with the Board to call oneself a structural engineer.

An engineer, except for a civil engineer, is exempt from registration if employed by an industrial corporation. Officers and employees of the federal government are also exempt. As a result, 92% of California's engineers are exempt.

The Board consists of 13 members. 7 are public members, 5 must be registered as professional engineers, and 1 must be licensed as a land surveyor. The professional members must have 12 years experience in their respective fields.

The Board has established 7 standing committees dealing with land surveying and the various branches of engineering. These committees, each composed of 3 Board members, approve or deny applications for examination, and register applicants who pass the exam. Their actions must be approved by the entire Board; approval is routinely given.

To be registered as a professional engineer, the applicant must not have committed certain crimes or acts, have 6 or more years of qualifying experience, specify in which branch he or she desires registration, and pass the second division of the examination. The second division of the engineering examination tests the application of engineering fundamentals to factual situations. In most cases, the applicant will have already passed the first division of the examination, which tests knowledge of engineering fundamentals only, unless it has been waived by Board rule. To be registered as an engineer-in-training, the applicant must not have committed certain crimes or acts, and pass the first division of the examination. 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 decisions of administrative law judges who hear appeals of applicants who are denied registration, and licensees who have had their registration suspended or revoked for violations.

MAJOR PROJECTS:

The Board has concluded its public hearings on Board Member I. Michael Schulman's report on title registration. The report recommended that all existing title disciplines be abolished and that the Board develop criteria to determine whether any of the existing title disciplines should become practice disciplines. The Board has now begun to hold hearings on each title discipline to determine whether it should be regulated. Hearings will be held to gather information pursuant to the criteria stated below. At further hearings to be held late spring to early fall, the Board will discuss draft reports containing the information gathered earlier. The final decision on whether a title discipline should be regulated will be made at hearings this fall.

The recommended criteria are: (1) Is there a need to regulate? (2) Are the persons to be regulated in responsible

charge? (3) Can the discipline be regulated? (4) Is the discipline unique or is it an integral part of an existing discipline? (5) Does the discipline qualify as an authority under the existing practice acts? (6) What is the final impact on the consumer?

LEGISLATION:

As amended on February 2, 1982, SB 965 (Presley) would repeal provisions of the Professional Engineers' Act which allow the Board to establish new title disciplines upon petition from interested persons or groups. The bill provides that the Board shall by rule establish an application procedure by which interested persons or groups may apply to the Board for practice or authority registration of an engineering discipline. The bill specifies certain criteria which must be used to determine whether a discipline qualifies for practice or authority registration. The Board shall establish other criteria by rule. If the Board finds that a discipline qualifies for practice registration, it shall make a recommendation to the legislature that legislative action be taken to subject the discipline to practice registration. If the Board finds that the discipline qualifies for authority registration, it shall so provide by rule. SB 965 is still pending.

RECENT MEETINGS:

October 21, 1981: The Board approved the amended versions of Board Rules 437 and 438. Rule 437 allows an applicant to take an individual examination rather than the usual written examination if he or she meets certain criteria. The written exam is a national uniform exam administered by the National Council of Engineering Examiners and is 8 hours in length. The individual exam consists of an oral interview and a 2 hour written exam administered by the Board. Rule 437 now allows an applicant to take an individual exam only if he or she has passed a written exam in another state comparable to the written exam given in California. Provisions allowing an applicant to take the individual exam if he or she is 45 or older and has 20 or more years of qualifying experience, or is 50 or older and has 25 or more years of qualifying experience were deleted.

As noted above, an applicant for registration as an engineer or licensure as a land surveyor must have already passed the first division of the exam (fundamentals exam) before taking the second division of the exam, unless he or she obtains a waiver. Rule 438 allows for this waiver if certain conditions are met. Under the prior rule, an applicant could obtain a waiver if the applicant is 35 or older, had graduated from an approved curriculum, and had 15 or more years of qualifying experience; if the applicant is 40 or older, had obtained a B.S. degree or equivalent in engineering for engineering applicants, or in land surveying for land surveying applicants, and had 20 or more years of qualifying experience. In the amended rule, the age requirements were dropped.

The Board approved the attendance of its members at engineer and land surveyor association meetings, a seminar, and a continuing education class. The Board adopted the proposed decision of an administrative law judge in a case denying an applicant registration as an engineer.

The Board also approved the actions taken by the standing committees. A total of 550 engineering applications were accepted and 32 were found ineligible. 3 applications were reevaluated; 2 were accepted and 1 was found ineligible. 79 engineers were granted registration and 15 were denied. 1 engineer-in-training was registered. 77 land surveyor applications were accepted and 2 were found ineligible. 1 reevaluated application was accepted. 6 land surveyors were licensed. The Executive Secretary recommended, and the Board approved, the cancellation of 6 engineering applications.

The Enforcement Committee presented the revised enforcement manual, which the Board approved.

The Legislative/Rules Committee reported on a staff legislation proposal which would allow the Board to give qualifying experience for certification as an engineer-in-training or land surveyor-in-training. The proposal would permit the Board to give up to 4 years experience for passing the first division of the engineering exam (EIT exam) and up to 2 years experience for passing the first division of the land surveying exam (LSIT exam). The Board voted to approve the legislation and to seek a sponsor. Provisions of Board Rule 424 now allow the Board to give experience credit for passing the first division of the exam. Since these provisions lack statutory authority, the Board voted to repeal them and set this action for a public hearing.

November 18, 1981: The Board approved members' attendance at 2 engineering association meetings, and at a meeting of the Conference on Fiscal Responsibility. The Board adopted the proposed decision of an administrative law judge denying an applicant registration as an engineer.

The Board approved the actions taken by the standing committees. A total of 114 engineering applications were accepted and 2 were found ineligible. 25 engineers were registered and 4 were denied registration. 13 land surveyor applications were accepted and 2 land surveyors were licensed. The Executive Secretary recommended, and the Board approved, the cancellation of 6 engineering applications.

The Enforcement Committee reported on Rule 419.1, Complaint Disclosure. The Board moved and seconded that the recommended technical changes be made and that the rule be resubmitted to the Office of Administrative Law. This motion was withdrawn. The Board then voted to defer making the changes until the next meeting and until then adopt the rule as a policy.

The legislative rules Committee reported on the upcoming review of existing title disciplines. The Board voted to approve the schedule of hearings and review criteria. The Board considers the review to have very high priority. The criteria are printed above.

The committee also reported on the implementation of SB 2. This law requires civil engineers registered after June 1, 1982, to pass the second division of the land surveyor exam before they can practice land surveying. Previous law allowed any registered civil engineer to also practice land surveying without having taken the exam. The Board directed the staff to prepare criteria which can be used to evaluate the problem of overlap between civil engineering and land surveying. The result of this evaluation would be a legislative proposal to alleviate some of the problems caused by SB 2.

FUTURE MEETINGS:

Scheduled meetings are May 19 in Sacramento, June 16 in Los Angeles, and July 21 in Sacramento. According to the review of title discipline schedule, the Board will review the draft reports on chemical engineering at the May meeting, agriculture and control systems engineering at the June meeting, and manufacturing, petroleum, and traffic engineering at the July meeting.

BOARD OF REGISTERED NURSING

Executive Secretary:
Barbara Brusstar
(916) 322-3350

The California Legislature transferred the BRN from the State Board of Health to the Department of Professional and Vocational Standards (now known as the Department of Consumer Affairs) in 1939. The Board consists of up to 9 members, including 3 registered nurses actively engaged in patient care, 3 public members, 1 licensed registered nurse, who is an administrator of a nursing service, 1 licensed physician and 1 nurse educator. All Board members are appointed by the Governor and there are

presently 8 members sitting on the board.

The BRN issues licenses, a prerequisite to practice as a registeed nurse in California. Board authority also covers license renewal and the issuance of temporary licenses, by and without examination. The Board grants, revokes, and denies accreditation to California schools of professional nursing. The BRN also disciplines or prosecutes violators of the Nursing Practice Act.

MAJOR PROJECTS/RECENT MEETINGS:

The Board is currently publishing "The Consumer Guide To Registered Nursing", a pamphlet answering consumer questions about the profession. A pamphlet for registered nurses explaining the rules and regulations by which they must abide is in the final stages of revision. These pamphlets should be ready for distribution by June, 1982.

Licensing exams: The BRN was responsible for nominating a minimum of 15 qualified registered nurses to be item writers for the State Board Test Pool Examination. From the interested nurses who applied, the Board expressly sought those nurses who actively practice in direct patient care in the areas covered by the exam, and who have experience with entry level nurses. Such action furthers the purpose of the State Board Test Pool Exam, consisting of questions which measure understandings basic to minimum safe and effective practice as a registered nurse.

Reciprocity: Canadian nurses can no longer be licensed by endorsement in California since the BRN rescinded reciprocity to that country. The Board feels compelled to review the Canadian nurse licensure exam to judge the qualifications of Canadian nurses to practice in California. The BRN's request for information on the Canadian exam was not honored. In the future Canadian nurses must pass the California licensing exam before practicing as a registered nurse in this state.

AB 1111: The regulatory review hearings for the BRN received little public input last year in the issue developing stage. The Board sent its position papers, containing some substantive changes and much clarification, to the Office of Administrative Law by the February 1, 1982 deadline. When OAL has reviewed and returned the position papers, the BRN will hold additional public hearings. The Board is looking for increased participation from nurses and consumers in the establishment of regulations.

LEGISLATION:

The Senate and Assembly passed AB 534 which amends section 1417 and repeals section 1467. The BRN then increased its fees to meet rising operating expenses.

AB 1592 (Moorhead) was approved by the Legislature but has not yet been signed by the Governor. AB 1592 allows nurse-midwives to perform certain additional functions, such as uncomplicated episiotomies and administration of local anesthesia.

AB 2584 (Moorhead) would revise the membership of the BRN, set interim permits at 6 months and delete section 2740 from the Nursing Practice Act. The Board opposes this bill.

Interim permits presently are automatically revoked if the interim permittee fails the licensure exam. The Office of Administrative Law is presently reviewing the BRN's proposed 1 year duration for interim permits. This extension would allow more time for an applicant to pass the exam, without penalizing that person should they not pass the first time.

Section 2740 of the Nursing Practice Act gives the BRN final power in its actions and decisions by denying review of the Board's actions by any court or other authority. Passage of AB 2584 would severly deplete the power now held by the Board of Registered Nursing.

FUTURE MEETINGS:

The next meeting will be April 22 and 23, 1982, at the State Building in San Francisco.

BOARD OF CERTIFIED SHORTHAND REPORTERS

Executive Secretary:
Judy Tafoya
(916) 445-5101

The Board of Certified Shorthand Reporters was established to protect the consumer in 2 ways. The Board attempts to protect those who use the services of shorthand reporters by requiring a minimum competency standard for reporters. To achieve this goal, the Board requires testing and licensing of prospective reporters. A licensed reporter may have his or her license suspended or revoked for gross incompetence or professional misconduct.

The Board also certifies shorthand "schools." The Board considers the educational quality of the schools by reviewing the passage rates of their students on the reporters' exams. The Board will grant or withhold certification on that basis. The Board may also de-certify a currently accredited school.

MAJOR PROJECTS:

The Board completed the review of its regulations mandated by AB 1111. Its proposals and statement of completion have been forward to OAL.

The report of the Ad Hoc Committee on Continuing Education has been completed, submitted to and accepted by the Board. It concludes that to maintain "a real standard of practice for the benefit of the public", continuing education is essential. Various specific recommendations are made; a copy is available from the Executive Secretary. The Committee suggested that a survey of industry opinion be taken. The report includes a proposed questionnaire.

The Examination Specifications Project Committee has also completed and submitted its final report. The Board accepted the report at its January meeting, and will consider recommendations made therein at a future meeting.

LITIGATION:

In 1981, the Board allowed an increase in transcription fees for reporters. The City and County of San Francisco filed a claim against the Board, seeking recovery for the higher costs. In a 5-0 decision, the State Board of Control denied San Francisco's claim.

RECENT MEETINGS:

The budget for this fiscal year is now projected to be about $10,000 less than Board expenses. The Board has given its staff authority to request deficiency legislation so it can pay enforcement expenses.

The 1982-83 budget has been proposed at $185,000. Anticipating increased costs of administration and operation, the Board has approved budget change proposals that will increase the 1982-83 budget to $243,000.

The Transcript Reimbursement Fund (TRF), which pays the trial transcript costs for the indigent apellants is in admirable condition. With half the fiscal year behind us, only $72,580 of the $400,000 has been disbursed. The increasing claims rate which was expected simply hasn't materialized. The TRF procedures have been tightened up a little; the Board is distributing to licensees a format for notifying the court having jurisdiction of receipt of payment from the TRF. This will help reduce the fraudulent double payment potential which was inherent in the former procedure.

FUTURE MEETINGS:

The Board's next meeting is scheduled for the evening of May 6, 1982, at the San Jose Hyatt House.

STRUCTURAL PEST CONTROL BOARD

Executive Officer:
Mary Lynn Ferreira
(916) 920-6323

The Structural Pest Control Board (SPCB) licenses structural pest control

operators and structural pest control field representatives. Field representatives secure pest control work for operators. SPCB licensees are classified for either: (1) fumigation, the control of household and wood-destroying pests by fumigants; (2) general pest, the control of general pests without fumigants; or (3) termite, the control of wood-destroying organisms with insecticides and structural repairs and corrections, but excluding the use of fumigants.

SPCB requires otherwise unlicensed individuals employed by its licensees to take a written exam on pesticide equipment, formulation, application and label directions if they apply pesticides. The SPCB licenses approximately 2,000 individuals.

The SPCB has 6 members, 4 of whom are public members. 1 public member position and 1 industry position are vacant. The SPCB's enabling statute is in Business and Professions Code section 8500 et seq. and its regulations in Title 16, California Administrative Code section 1900 et seq.

MAJOR PROJECTS:

The Structural Pest Control Board has done little concerning AB 1111 review during the past 4 months.

RECENT MEETINGS:

During the November 14 meeting in San Francisco, John D. Morgentroth of Harbor Pest Control, San Diego, petitioned the Board for a policy clarification regarding the use of electronic pest control devices for treating drywood termites. Presently, Board regulations do not address use of the newly developed "Electro-Pest Gun" produced by ETEX limited. Section 1991(8)(8) merely requires that licensees treating for drywood termites must either fumigate or apply chemicals. Currently, a licensee may use the electronic device as long as the licensee also applies one of those 2 techniques. Morgentroth requested the clarification because the effectiveness of the device is questionable and he is concerned for residential consumers relying upon the device. During the January 12 meeting, also held in San Francisco, the Board considered the effectiveness of the gun but the ETEX representative at the meeting failed to present enough data to enable the Board to make an intelligent decision. Therefore, the board will take up the question during the March 20 meeting in San Diego.

Last November 14, the Board drafted a petition requesting the Department of Food and Agriculture to prohibit the use of known or suspected carcinogens or mutigens by unlicensed persons. The draft petition has not yet been submitted to the Department, but has been referred back to the Pesticide Advisory Committee pending the release of a study the National Society of Scientists is currently compiling on the same topic.

FUTURE MEETINGS:

The Board has not scheduled meetings subsequent to its March 20, 1982 meeting in San Diego.

TAX PREPARER PROGRAM

Executive Secretary:
Don Procida

The Tax Preparer Program registers and investigates tax preparers within the state of California. Certified public accountants, public accountants, attorneys, banks and trust companies and persons licensed to practice before the Internal Revenue Service are exempt from registration requirements since they are regulated by other bodies. Those wishing to become registered tax preparers must submit an application and provide a $1,000 surety bond to the Program. There is no test for competency to become a registered tax preparer but any "commercial" preparer must be registered with the program.

MAJOR PROJECTS:

The Program handles consumer complaints regarding tax preparers. The Administrator determines the manner in which each complaint is handled. The Program handles approximately 400 complaints a year and has the authority to suspend or revoke a registration certificate.

RECENT EVENTS:

The last year the Program was funded for investigations was 1979-80. During that period, 12 registration certificates were revoked and 2 were suspensed. Since that time, there have been no revocations or suspensions due to the lack of investigative funding.

In the recent past a surplus of approximately $900,000 was created from the receipt of registration fees. Through the budgetary process, the Legislature reduced the Program's overall budget (administrative and investigative) to $1. As a result, the Program is not empowered to collect any fees from applicants for registration. Therefore, there exists a statutory framework for the program but no funding to implement that law. The Program's continued existence is in serious question (See CRLR Vol. 2, No. 1 (Winter, 1982) p. 49). Legislation removing the existing statutory scheme and refunding the existing surplus to those formerly registered died in committee last January. Thus, the situation remains as before: no existing budget to investigate complaints concerning tax preparers, no authorization to collect fees from those formerly registered or to conduct new registration, a surplus from past collection of fees not available to the Program and a statutory framework to register tax preparers in California.

The debate over the wisdom and scope of regulation of tax preparers continues. Professional associations advocate a statutory scheme of mandatory entrance examinations, continuing education requirements and evaluation of consumer complaints by the Program. At a polar position are those who would repeal the existing statute and refund the current surplus to preparers who have paid to become registered. Proponents of the former position argue that such measures are necessary to protect the public from unqualified and unscrupulous persons engaging in the business of preparing income taxes. Those who would completely abolish the program feel that any regulation of tax preparers, at this time, is unnecessary.

All current registrations on file with the Program expired on October 31, 1981. There has been no attempt to register tax preparers after that date and apparently there will be no attempt to do so until the Program's budget is restored. The continued existence of the Program is questionable at this time.

BOARD OF EXAMINERS IN VETERINARY MEDICINE

Executive Secretary:
Gary K. Hill
(916) 920-7662

The Board of Examiners in Veterinary Medicine licenses all Veterinarians, veterinary hospitals, animal health care facilities and animal health technicians (AHT's). All applicants for veterinary licenses are evaluated through a written and a practical examination. Through its regulatory power, the Board determines the degree of discretion that a veterinarian, an animal health technician and an unregistered assistant have in the performance of animal health care tasks. After a proper hearing, the Board reserves the power to revoke or suspend the license or registration of any veterinarian or AHT for any act committed in violation of the regulations.

The Board may also at any time inspect the premises on which veterinary medicine, surgery or dentistry is practiced. All such facilities must be registered with the Board and must conform to minimum standards. Registration is subject to revocation or suspension if, after a proper hearing, a facility is deemed to fall short of the Board's standards.

The Board is comprised of 6 members,

including 2 public members. The Animal Health Technician Examining Committee consists of 3 licensed veterinarians, 1 of whom must be involved in AHT education, 3 public members and 1 AHT.

MAJOR PROJECTS:

The Board approved the implementation of the *Alcohol and Drug Revision Program* at its February 11 meeting. The program seeks out on a voluntary basis those in the veterinarian profession with drug or alcohol problems to help them with rehabilitation. The program will be implemented under existing statutory authority and will combine the efforts of volunteer physicians, counselors and an evaluating committee.

The Board is taking steps to more fully meet the needs of the consumer for high standards of professionalism and competency among veterinarians. It is establishing a mediation group to review complaints against veterinarians falling short of negligent or incompetent conduct which do not merit a formal hearing. The mediation group will conduct a type of informal hearing to deal with allegations of such things as "poor bedside manner" overcharging, and performing unauthorized procedures on an animal. The mediation group, the veterinarian charged with a violation and the consumer would attend the hearing. The group, to be composed of members of the profession will have no power to take any action on a veterinarian's license, but it can suspend a violator's membership in the California Veterinary Medical Association. If a veterinarian has demonstrated incompetence in performing a particular procedure, the group may recommend that the veterinarian take additional units of training in the particular area. If the veterinarian fails to comply with the recommendation, the group may turn the case over to the Board for investigation. Executive Secretary Gary Hill notes the $5,000 in legal fees a veterinarian may incur for failure to comply with the group's findings should provide significant incentive for adherence to such findings. Through implementation of the mediation group, the Board seeks to serve the important policies of providing the consumer with an immediate remedy and of saving time and money formal hearings necessitate.

RECENT MEETINGS:

The Board's last meeting was held in Los Angeles on February 10. The Board reviewed a report from the Animal Health Technician Equivalency and Eligibility Committee. Acting upon a recommendation by that Committee, the Board approved changes in AHT training policies. To obtain certification as an AHT, one may complete a 2-year curriculum at a community college, or a 9-month program at a private institution. An additional 1,000 hours of practical experience had previously been tacked onto the 9-month program. The Board felt this added clinical stint was necessary to approximate the on-campus lab experience integrated into the 2-year program. However, a comprehensive study of the 2 programs commenced last year revealed quite the opposite. Veterinarians who had worked with students from both the 2-year and the 9-month program cited no major discrepancies in ability and preparedness between the 2. In fact, some of the vets felt the private graduates brought a distinct advantage with them to a first job, since their clinical experience is gained in an actual hospital setting, rather than a college campus lab. Opponents of the 1000-hour requirement asserted that graduates of the private programs were not only well-equipped to pass the certification exam at the end of 9 months, but pass it they did with grades comparable to graduates of the 2-year program. Since the study's results shed an increasingly questionable light on the added utility of the 1000-hour requirement, the Board eliminated the requirement as of February. As the 1,000-hour requirement was struck out of the 9-month program, 2 new provisions were added to the 2-year college program. The provisions will create two new categories of persons eligible to take the certification exam. The first of these categories concern AHT's from other states or foreign countries. An AHT who has been certified in another state or foreign country and who has had 3 years' experience may sit for the California AHT exam. The second eligibility category concerns those who have obtained some college credit, but have not completed the full 2-year program. Under the new rule, those who have completed 50 units of college credit, including certain specified science courses, and have a grade point average of at least 2.00, are also eligible to take the AHT exam. December 31, 1978, marked the last date that one having no college background and only practical experience could sit for the AHT exam. Under the new measure those who failed to take the exam before that date can be "grandfathered in" once the education and experience requirements are met. If approved, the 2 new eligibility categories are expected to boost Community College enrollment, as students seek to fill the gaps in their educational backgrounds to qualify for the exam. The Board further considered the recommendations to add the 2 categories at its meeting on March 17.

The Board is also considering giving civil immunity to veterinarians who serve as expert witnesses for the Board in negligence and incompetency hearings. This practice, known as "peer review", is common in the other professions and civil immunity is customary.

FUTURE MEETINGS:

To be announced.

BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIAN EXAMINERS

Executive Secretary:
Billie Haynes
(916) 445-0793
(213) 620-4529

The California legislature established this board in 1951 to regulate the professions of vocational nursing and psychiatric technician examiners. Through licensing, the Board attempts to ensure competent nursing care. The Board licenses all vocational nurses and psych techs and has the power to revoke or suspend a license, or place an individual on probation. The Board can prosecute any person who violates a provision of the Vocational Nursing Practice Act whether or not that person is licensed, if that person holds himself or herself out to be licensed.

There is presently 1 vacancy on this 11 member Board. The Governor appoints all Board members. The Board currently consists of 1 psychiatric technician examiner (psych tech), 1 registered nurse, 3 licensed vocational nurses, and 5 public members. The vacant position is for a psych tech.

RECENT MEETINGS:

On Friday, March 15, 1982, the Board held its last AB 1111 informational hearing. Discussion centered around the curriculum regulations for accredited schools of vocational nursing. The Board wants to require more classroom hours and less clinic or hospital hours so the licensed vocational nursing program more closely parallels that of licensed registered nursing. An LVN could thereby fulfill the RN requirements more readily, without repeating classes already taken.

LEGISLATION:

A recently resubmitted bill, AB 642 (Alatoire) would allow LVNs to administer intravenous fluids containing medication to patients under certain specified conditions. LVNs are presently authorized by law to administer medication by hypodermic syringe. They are also allowed to start intravenous fluids not

containing medication. The Board supports this bill.

AB 1987 passed the Senate February 22, 1982. Executive Secretary Billie Haynes testified that the Board strongly opposes this bill, which would require the Board to grant an LVN license to Medical Technician Assistants (MTA) without their having to pass or even sit for the required exam.

The category of Medical Technician Assistant, established by the State Personnel Board, consists almost completely of Army medical corpsmen. They work within the Department of Corrections and, although unlicensed, perform services comparable to those of a vocational nurse, a registered nurse, or a licensed physician's assistant. The Department of Health Services threatened to revoke the accreditation of the Department of Correction's medical institutions if MTAs continued to perform functions for which they were not licensed. AB 1987 would compel the Board of Vocational Nursing to grant employment restricted licenses to Medical Technician Assistants without any sort of a licensing exam as a prerequisite.

The Board strongly opposes this bill for several reasons. First, under section 2873.5 of the Business and Professions Code (the statutory authority for this Board) medical corpsmen are eligible to take the LVN licensing exam. Since most MTAs were medical corpsmen they are eligible to sit for the exam. The Board believes that all applicants for a license should be required to take and pass the exam, including Medical Technician Assistants.

Second, military applicants who take the LVN exam have a failure rate of 51%. To grant licensure without requiring the MTA to pass the exam may lower the standard of nursing care. The Board is concerned with the competent administration of nursing care in all state institutions, whether public or private. The health and safety of prisoners is at issue and the Board feels that they will be jeopardized if AB 1987 goes into effect.

Third, section 2859 of the Business and Professions Code requires that an LVN practice under the supervision of a registered nurse or a medical doctor. California state correctional facilities do not employ enough RNs and MDs to supervise the large number of Medical Technician Assistants who would become licensed as vocational nurses under this bill.

AB 1987 is presently awaiting the Governor's signature.

FUTURE MEETINGS:

The Board will meet on May 13 and 14, 1982 at the State Building in San Francisco. Reinstatement hearings will be held from 9 a.m. to 5 p.m. on the 14th. It will also meet on July 8 and 9, 1982, at the State Building in Los Angeles.

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 premises where alcohol is sold. Many of the disciplinary actions taken by the ABC are printed in the liquor industry trade publication, BEVERAGE BULLETIN.

The ABC divides the state into various districts, with field offices to regulate its many licensees. The ABC Director, Baxter Rice, is appointed by the Governor. Approximately $14 million have been allocated to the Department for fiscal year 1981-82.

MAJOR PROJECTS:

AB 1111: The ABC continues to work on compliance with the AB 1111 mandated review of its regulations. ABC completed its analysis and submitted its completion statement to OAL on December 31, 1981. The first step in compliance with AB 1111 completed, ABC now faces the more arduous task of justifying its analysis and review to OAL. Another round of public hearings may be held if a member of the public requests it following OAL's response to the ABC's initial review.

LEGISLATION:

AB 429, promoted by the beer industry, would prevent volume discounts on beer sales and allow exclusive territorial control by beer manufacturers over wholesalers. The industry advocated the bill as a countermeasure to the changes ABC proposed for Rule 105 which allows more flexibility in pricing. ABC's action is in response to recent court decisions. The California Supreme Court rejected a vertical price-fixing statute for liquor in *Corsetti* and the United States Supreme Court rejected a similar statute for wine in *MidCal*. AB 429 passed both houses and is back in the Assembly awaiting concurrence on Senate amendments. The ABC has allowed Rule 105 to remain in effect without the proposed changes and the industry will let AB 429 die on the Assembly floor.

Rule 105 may be subject to challenge after the *Corsetti* and *MidCal* decisions. The difficulty is finding a party with standing to challenge the statute. The only parties who may challenge it are manufacturers the ABC detects selling at a discount. This is unlikely to occur because it is not in the manufacturers' best interest to allow volume discounts. Moreover, the rule will remain intact unless the manufacturers' defense raises the issue of the constitutionality of the statute.

Primary Source Rule: The "primary source rule" required a retailer or distributor to receive his supply from a manufacturer or his designated agent. The distributor was prevented from shopping for the best deal and forced to purchase from the manufacturer assigned to the area where he does business. With the demise of vertical price-fixing, the ABC ended the "primary source rule."

The industry strongly favored the "primary source rule" and agreed that if a primary source law was passed (AB 499), it would not oppose an "affirmation" statute (AB 570) which would require all manufacturers' sales within the state to be at or below the lowest price at which the firm sells to anyone in any other state. The Legislature passed both AB 499 and 570, but a lawsuit (*Williams v. Rice*) successfully enjoined the enforcement of AB 499. The United States Supreme Court has yet to decide whether to hear the case.

Alcohol Beverage Tax: The Legislature demonstrated its desire to control the abuse of alcohol while driving by the passage of California's strict new drunk driving law, AB 451. This desire to combat alcohol abuse has not carried over to the financing of alcohol rehabilitation and education programs. AB 1594 (Morehead), a nickel a drink tax on alcohol served in bars and restaurants, would raise money for the general fund as well as for alcohol abuse programs. The bill died in committee and the current dis-

favor with tax increases lessens the likelihood that it will be successfully raised in the near future.

Licensing Limitations: Periodically there are movements to have counties abolish the "caps" to general liquor licenses. SB 632 (Dills) is one such bill, challenging the existing "cap" on general liquor licenses allowed per capita. The proponents of such legislation maintain that the current laws are anticompetitive, allow existing licensees a degree of monopoly power, and promote an extremely difficult barrier to entry. A new entrepreneur must purchase an existing license to start his own business.

It is difficult to pass such legislation since there is no cohesive lobby for it. The parties to benefit by it, potential entrepreneurs, are not organized and perhaps not as numerous and well funded as necessary. The parties opposed to it, existing licensees, have been able to protect their interests by arguing for moderation and temperance. These licensees maintain that the current allocation of liquor licenses sufficiently serves the public and any more would result in a decline in public morals. Whether the result of temperance, apathy, or self-interest, the Legislature has accepted these arguments and SB 632 died in committee.

RECENT MEETINGS:

The Department of Alcoholic Beverage Control does not have regular meetings, and since it is not a multimember Board it is not subject to the Open Meetings Act.

Public hearings are held for proposed rule changes or when licensure disputes arise under the Administrative Procedure Act. If the ABC denies an application or the issuance of a license is protested, a hearing is held before an administrative law judge of the Office of Administrative Procedures Department of General Services. Further, a quasi-judicial Alcoholic Beverage Control Appeals Board reviews ABC adjudicative actions. There have been no recent public meetings of consequence.

FUTURE MEETINGS:

To be announced.

STATE BANKING DEPARTMENT

Superintendent:
Richard Dominguez
(415) 557-3232

The State Banking Department administers all laws applicable to corporations engaging in the commercial banking or trust business, including the establishment of state banks and trust companies; the establishment, operation, relocation and discontinuance of various types of offices of these entities; and the establishment, operation, relocation and discontinuance of various types of offices of foreign banks. The Superintendent, the chief officer of the Department, is appointed by and holds office at the pleasure of the Governor.

The Superintendent approves applications for authority to organize and establish a corporation to engage in the commercial banking or trust business. In acting upon the application, the Superintendent must consider:

1. The character, reputation and financial standing of the organizers or incorporators and their motives in seeking to organize the proposed bank or trust company.

2. The need for banking or trust facilities in the proposed community.

3. The ability of the community to support the proposed bank or trust company, considering the competition offered by existing banks or trust companies; the previous banking history of the community; opportunities for profitable use of bank funds as indicated by the average demand for credit; the number of potential depositors; the volume of bank transactions; the stability, diversity and size of the businesses and industries of the community. For trust companies, the opportunities for profitable employment of fiduciary services are also considered.

4. The character, financial responsibility, banking or trust experience and business qualifications of the proposed officers.

5. The character, financial responsibility, business experience and standing of the proposed stockholders and directors.

The Superintendent may not approve any application unless he determines that: the public convenience and advantage will be promoted by the establishment of the proposed bank or trust company; conditions in the locality of the proposed bank or trust company afford reasonable promise of successful operation; the bank is being formed for legitimate purposes; the proposed capital structure is adequate; the proposed officers and directors have sufficient banking or trust experience, ability and standing to afford reasonable promise of successful operation; the proposed name does not so closely resemble as to cause confusion the name of any other bank or trust company transacting or which has previously transacted business in the state: the applicant has complied with all applicable laws.

If the Superintendent finds that the proposed bank or trust company has fulfilled all conditions precedent to commencing business, he then issues a certificate of authorization to transact business as a bank or trust company.

The Superintendent must also approve all changes in the location of a head office, the establishment or relocation of branch offices, and the establishment or relocation of other places of business. A foreign corporation must obtain a license from the Superintendent to engage in the banking or trust business in this state. No one may receive money for transmission to foreign countries or issue travelers checks unless licensed. The Superintendent also regulates the safe-deposit business.

The Superintendent examines the condition of all licensees. However, as the result of the growing number of banks and trust companies within the state, and the reduced number of examiners following passage of Proposition 13, the Superintendent now conducts examinations only when he considers it necessary, but at least once every two years. The Department is coordinating its examinations with the FDIC so that every other year each agency examines certain licensees. New and problem banks and trust companies are examined each year by both agencies.

The Superintendent administers the Small Business Loan Program, designed to provide long-term capital to rapidly growing small businesses whose growth exceeds their ability to generate internal earnings. Under the traditional standards used by banks, these small businesses cannot provide adequate security to qualify for regular bank loans.

The Superintendent licenses Business and Industrial Development Corporations which provide financial and management assistance to business firms in California.

Acting as Administrator of Local Agency Security, the Superintendent oversees all deposits of money belonging to a local governmental agency in any state or national bank or savings and loan association. All such deposits must be secured by the depository.

RECENT ACTIONS:

As of September 30, 1981, the 246 state-chartered banks of deposit with 1,562 branches had total assets of $58.3 billion, an increase of $7.4 billion or 14.6% over September 30, 1980. During this period there was an increase of 23 banks and 137 branches.

Fiduciary assets of the trust departments of 36 state-chartered banks, 2 title insurance companies and 13 non-deposit trust companies totaled $62.5 billion, an increase of 28.1% over September 30, 1980. The assets of 90 foreign banking corporations (having 98 offices) increased 31.6% to $35 billion.

As of September 30, 1981, the ratio of equity capital assets was 5.9, the loans to

deposits was 77.4

During the fourth quarter of 1981, the Department received 6 new bank applications, approved 4 and issued Certificates of Authority to 8 new banks which opened for business.

Three merger applications were filed with the Department, 4 merger applications were approved, 1 approved merger application was withdrawn and 3 mergers were effected.

Three acquisition applications were filed with the Department, 3 acquisition applications were approved and 3 acquisitions were effected.

Two applications for new California Business and Industrial Development Corporations were approved, a certificate of authority was issued to a California Business and Industrial Development Corporation which opened for business and a pending application for an additional office of a California Business and Industrial Development Corporation was withdrawn.

Applications to establish a retail branch office and a limited branch office of foreign banking corporations were filed. One application to establish a nondepository agency of a foreign banking corporation was approved and certificates of authority were issued to a nondepository agency and a depository agency of foreign banking corporations.

The Superintendent issued 1 application for a license to engage in the business of issuing travelers checks.

One application for a license to engage in the business of transmitting money abroad was filed.

One application for a new branch office was filed, 23 were approved, 2 were withdrawn, 2 expired and 50 were licensed, including one license issued during the third quarter not previously reported. The Department received 1 application for a new place of business, approved 2 including one application approved during the third quarter not previously reported, denied 2 and licensed 3 new places of business. Sixteen applications for extension of banking offices were filed, including 1 application filed during the third quarter not previously reported, and 19 were approved. Nine applications for a license to establish and maintain an office as a representative of a foreign banking corporation, including 1 filed during the third quarter not previously reported, were filed. Three applications were approved and 3 licenses were issued.

The Department received 5 head office relocation applications, approved 10 and issued 4 licenses. It received 7 branch office relocation applications, approved 5 and licensed 9. One foreign banking corporation relocation application was filed, 1 was approved and 4 were licensed. One representative office relocation was filed and 1 was approved. The Superintendent received 1 place of business relocation application, approved 1 application and issued 1 such license.

Two applications for discontinuance of a branch office were filed, 1 approved and 2 discontinued. The Department received 2 applications for discontinuance of a place of business, approved 2 and licensed 2.

Four applications for change of name were filed, 2 approved and 3 name changes were effected.

One application for permission to engage in the trust business was filed and a certificate of authority was issued to 1 bank authorizing trust powers.

The application of Republic Bank to sell its Orangethorpe office to Capistrano National Bank was effected.

One security for $5,000,000 was certified as a legal investment for California commercial banks.

In response to inquiries, the Superintendent of Banks clarified several aspects of the new requirements for the pledging of eligible assets (Financial Code section 1761), maintenance of new assets (Financial Code section 1762) and the treatment of International Banking Facilities (IBF's).

Agency offices are not subject to the maintenance of asset requirements. The Departmental Regulations section 10.16101(a) state that $500,000 is the minimum amount of pledge for an agency office. Presently, the Superintendent has not imposed asset maintenance requirements. Additionally, Departmental Regulations section 10.16101(b) sets forth the amount of pledge of eligible assets for a branch, which should be not less than 5% of the adjusted liabilities for a branch.

The Superintendent plans to introduce legislation or regulations to implement his proposal that IBF liabilities be allowed as an exclusion to the calculation of adjusted liabilities. In addition, IBF assets which meet the criteria of Financial Code section 1762(a)(2) could be used to satisfy the maintenance of assets requirement if imposed.

Section 10.14802 of the Banking Regulations provides that foreign banks which have less than $1 billion in worldwide assets and which are, therefore, not directly subject to federal regulations regarding maximum interest rates on deposits and related matters must nonetheless comply with the federal regulations with respect to offices in California. The federal regulations were changed effective November 1, 1981, December 1, 1981 and December 3, 1981. The Superintendent's amendments to Section 10.14802 reflect these changes in the federal regulations.

MAJOR PROJECTS:

The State Banking Department has centralized all consumer complaints in the San Francisco office and instituted a new toll free number, 800-622-0620, to be used only for calls relating to consumer complaints.

Pursuant to AB 1111, the Superintendent of Banks formed a Task Force to review the Business and Industrial Development Corporation regulations which cover, among other subjects, issuance of licenses, corporate matters, personnel, affiliates, transaction of business, records, and reports. The Task Force held its first meeting March 10, 1982.

The Task Force will first study the comments and suggestions received by the State Banking Department and will then examine the Bidco regulations in detail and recommend changes. At the conclusion of the review process the Superintendent will propose appropriate changes in the regulations, give notice of the proposed changes and provide an opportunity for comment.

LEGISLATION

On January 1, 1982, AB 1059 (Bosco) went into effect. As a result, application fees for new banks, mergers acquisitions, new offices relocations, change of name and permission to engage in the trust business are increased.

SB 979 (Keene) which codifies procedures for establishing and operating ATM branch offices became effective January 1, 1982. Those ATM's installed subsequent to January 1, 1982 (except those at licensed banking offices) must be processed as an ATM branch in accordance with the new law. The application fee is $250.

DEPARTMENT OF CORPORATIONS

Commissioner:
Geraldine D. Green
(916) 445-7205
(213) 736-2741

The Department of Corporations is a part of the cabinet level Business and Transportation Agency. A Commissioner of Corporations, appointed by the Governor, oversees the Department. There is no formal Board. Hence, there are no regular hearings and the Open Meetings Act does not apply. The Department holds irregular public hearings pursuant to the Administrative Procedure Act, but only when there is an adjudicatory matter (e.g., the revocation of a license) or where there is a rule change proposal.

The Department, as a part of the Executive, administers several major statutes. The most important is the Corporate Securities Act of 1968 which requires the "qualification" of all securities sold in California. "Securities" are defined quite broadly, and may include business opportunities in addition to the traditional stocks and bonds. Many securities may be "qualified" through compliance with the Federal Securities Acts of 1933, 1934 and 1940. If not under federal qualification, a "permit" for security sales in California must be issued by the Commissioner.

The Commissioner may issue a "stop order" regarding sales or revoke or suspend permits if in the "public interest" or if the plan of business underlying the securities is not "fair, just or equitable." The Commissioner may refuse to grant a permit (unless the securities are properly and publicly offered under the federal securities statutes). A suspension or stop order gives rise to APA notice and hearing rights. The Commissioner may require that records be kept by all securities issuers, may inspect those records and may require a prospectus or proxy statement be given each potential buyer unless the seller is proceeding under federal law.

The Commissioner also licenses Agents, Broker-Dealers and Investment Advisors. Those brokers and advisers without a place of business in the state and operating under federal law are exempt. Deception, fraud or violation of any regulation of the Commissioner is cause for license suspension of up to one year or revocation.

The Commissioner also has the authority to suspend trading in any security by summary proceeding and to require securities distributors or underwriters to file all advertising for sale of securities with the Department before publication. The Commissioner has particularly broad civil investigative discovery powers; he can compel witnesses to be deposed and require production of documents. Witnesses so compelled may be granted automatic immunity from criminal prosecution.

The Commissioner can also issue "desist and refrain" orders to halt unlicensed activity or the improper sale of securities. A willful violation of the securities law is a felony, as is securities fraud. These criminal violations are referred by the Department to local district attorneys for prosecution.

The Commissioner also enforces a group of more specific statutes involving similar kinds of powers: Franchise Investment Statute, Credit Union Statute, Industrial Loan Law, Personal Property Brokers Law, Health Care Service Plans Law, Escrow Law, Check Sellers and Cashers Law, Securities Depositor Law, California Finance Lenders Law, Security Owner Protection Law.

MAJOR PROJECTS:

Corporate Securities Law Exemption: It is unlawful under Corporations Code section 25110 for anyone to offer or sell a security in a transaction directly benefiting that person, unless a myriad of laws and administrative regulations of the Department are followed. These laws are designed to protect the public from speculative schemes, misinformation, or fraud from potentially unscrupulous or incompetent offerors or sellers of securities.

However, Corporations Code section 25102 exempts some offerors and sellers of securities from the provisions of section 25110 under special circumstances. In part, these circumstances arise when the Legislature feels the buyers, because of an unusual knowledge of a particular investment, do not need these burdensome protections. The Legislature has recently expanded such an exemption under section 25102, subdivision (f) and the Department is revising its regulations to conform to this change.

AB 1518 (Imbrecht) (Chapter 1120, Stats. 1981) which expanded section 25102(f), was passed by the Legislature as an emergency measure in October, 1981, and became law on November 1, 1981. Prior to that time, an exemption from the securities law under 25102(f) was limited to general partnerships, joint ventures or limited partnership interests or beneficial trust interests, not owned by more than 5 persons. Any other securities were exempted by Department regulations only if a sale involved not more than 25 offerees and 10 purchasers. This bill eliminated these provisions and provides instead that the offer or sale of any security to no more than 35 persons, without the use of advertising, is exempt from the qualifications requirements of the Corporate Securities Law. The reason for this change is stated in the bill as follows:

> "Small business and the residential construction industry in this state are incurring severe problems in raising operating capital. The provisions of this act will eliminate regulation of specified securities transactions which will encourage capital formation of small business and residential construction in California."

The Department promulgated rules to cover this expanded exemption shortly after passage of AB 1518. These rules included lengthy notice requirements imposed upon the issuer and even longer instructions on how to file the notice. The regulations were filed with the Office of Administrative law (OAL) and because of the emergency nature of the bill were approved as emergency regulations.

Interested parties were afforded opportunity to comment on these rules for 60 days. Among the groups commenting was the Business Law Section of the State Bar, who complained the long notice and instructions were unduly burdensome and against the spirit of the new exemption, which is to speed capital formation, not bog it down in more red tape.

The Department apparently heeded many of these comments. On February 3, 1982, the Department released its final text of the 25102(f) regulations after review of all comments. With some technical changes, the Department eliminated large portions of the proposed instructions and to a lesser extent cut down on the notice requirement.

This final text was filed with OAL on February 23, 1982, for final approval. Absent negative action by OAL, the rule will become effective 30 days after filing with the Secretary of State.

Multiple lender transactions: Progress on Department regulation of multiple lender transactions has been slow. The final text should be released in March. (see, CRLR Vol. 2, No. 1 (Winter, 1982) p. 55.)

AB 1111:

On January 6, 1982, in release 11-G, the Department announced the beginning of phase three of its AB 1111 review. Phase three includes review of subchapters dealing with corporate securities, franchises, credit unions, industrial loans, health plans, personal property brokers, escrow agents, and check sellers and cashers. The Department's Office of Policy considered public and staff suggestions during the period February 15 through March 15, 1982 and will prepare a notice of proposed changes to the regulations based on these comments.

The Department will then provide a second opportunity for the public to provide comment or suggestions on any proposed changes.

On February 1, 1982, the Commissioner noticed proposed changes to Article 4 of the Corporate Securities Law relating to standards for the exercise of the Commission's authority; and on February 5 noticed proposed changes to subchapter 2.6 of the Franchise Investment Law. Written comments on these changes can be made until April 16 and March 29, 1982, respectively.

On December 3, 1981, the Department filed final AB 1111 revisions with the Secretary of State amending certain provisions of the Check Sellers and

Cashers Law, Escrow Law, Credit Union Law, Personal Property Broker Law, and Industrial Loan Law. These changes became effective January 3, 1982.

PROPOSED LEGISLATION

The Department's Policy Office has released two staff proposals it will attempt to place before the Legislature, amending the Corporate Securities Act of 1968. These proposals are as follows:

1. Amend Corporations Code section 2511, to provide for continuous qualification of unit investment trusts. This section already provides for qualification of specified securities by coordination with the federal securities laws.

2. Clarify Corporations Code section 25100(p) which exempts securities in the form of a "promissory note secured by a lien on real property, which is not one of a series of notes secured by interests in the same real property" from qualification under the Corporate Securities Act. This change would make clear that this exemption is *un*available for the offer and sale of fractionalized undivided interests in one promissory note secured by a lien on the same real property, and provide that every person filing an application or request for a notice of an exemption from qualification must file an irrevocable consent to service of process. (Corporations Code section 25165)

ENFORCEMENT:

In 1979, the voters approved Proposition 2. This measure abolished usury laws, and added state laws allowing anyone with a real estate license to open a mortgage brokering business. Beginning in late 1980, abuses under these laws began to surface. And in July, 1981, the Secretary of Business, Transportation and Housing announced formation of a strike force to combat consumer fraud in the mortgage brokerage industry. This effort is led by the Departments of Real Estate and Corporations. Through January 28, 1982, the Department took the following actions:

10 desist and refrain orders; 19 license revocations; 10 injunctions or forced receiverships; 10 criminal referrals; 19 proceedings under bankruptcy; 90 cases are still open at this time.

Combined with cases brought by the Department of Real Estate, the joint strike force has reviewed cases involving 47,301 investors, totalling funds aggregating to $676,128,700.

The largest enforcement proceeding thus far has been against Atlas Mortgage Loan Company. Charging undercapitalization and misappropriation of funds, the Department, by court order, took control of Atlas in January of 1981. On March 25, 1981, the Department filed Chapter 11 proceedings with the Sacramento Bankruptcy Court of Judge Loren Dahl on behalf of Atlas. The petition listed almost 300 pages of creditors owed more than $40 million. After an accounting, Atlas was found to have liabilities of $63 million and assets of only $32.8 million. Three days later, Irwin Jaeger took control as bankruptcy trustee. The role of the Department since then has been to monitor the proceedings and advise the court on how to protect the investors' interests.

The Department's primary goal, to speed the proceedings along, has not been met. First Judge Dahl was requested to remove himself because of an alleged conflict of interest. He denied this allegation but stepped down anyway to avoid a lengthy appeal.

Then on February 8, 1982, the trustee, Mr. Jaeger, offered his resignation to the bankruptcy court because he was unwilling to go forward with the bankruptcy plan he had submitted.

On February 23 his resignation was accepted and Enlow Ose, a developer, was appointed new trustee.

One hundred anxious investors overflowed the courtroom to watch this proceeding. One and a half years, 2 trustees, and 2 judges later, they still have no return on their investment from Atlas Mortgage Loan Co.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Director: I. Donald Terner
(916) 445-4773

The functions of the Department of Housing and Community Development (HCD) are set out in California Health and Safety Code sections 18000-19997 and sections 50000 et seq. The director and deputy director both are appointed by the Governor.

The Department of Housing and Community Development has three divisions, each headed by a chief officer appointed by the Governor. The Division of Community Affairs administers the housing and community development programs. The Division of Codes and Standards has two branches: one governing housing standards, the other regulating and licensing manufactured housing. The Division of Research and Policy Development (R & PD) collects and disseminates information regarding state housing and develops specific policies for state legislation, regulatory activity, and housing assistance activity.

The Division of Community Affairs (Chief: .Jeanette Rupp-Brown) provides technical assistance for low and moderate-income housing projects to local governments and agencies. It provides loans, grants, and technical assistance to local governments and agencies for (a) establishing Housing Advisory Services (California Housing Advisory Services); (b) housing rehabilitation programs for low and moderate-income housing (Deferred Payment Rehabilitation Loan Fund Program); (c) workshop and technical assistance for loan packaging and program design (Housing Finance and Workshop Sessions); (d) providing housing counseling services (Low Income Management Training Program); (e) assisting nonprofit organizations and local agencies to use available state and federal funds for rehabilitating and preserving residential hotels for low and very low income persons (Residential Hotel Demonstration Program); (f) purchasing land in rural areas for development of housing for low income persons (Rural Land Purchase Fund); (g) loans for the preliminary costs of developing affordable housing and housing for elderly or handicapped persons (Rural Predevelopment Loan Fund and Urban Development Loan Fund); and (h) 50% matching grants for the development of new or rehabilitated housing for low income agricultural employees (Farmworker Housing Grant Fund). In addition, this division directly assists individuals and private groups. The California Indian Assistance Program assists Native Americans in obtaining state and federal loans and grants as well as technical assistance. Deferred payment loans are available for the acquisition and rehabilitation of rental housing for elderly or handicapped persons (Demonstration Housing Rehabilitation Program for the Elderly and Handicapped). The Homeownership Assistance Program provides up to 49% of the purchase price of a dwelling unit to an eligible household, particularly to those who would be displaced by a conversion to a condominium or stock co-operative. The Housing Assistance program provides rental subsidies for disabled and handicapped persons and low income families in rural areas, as well as providing Section 8 housing for disabled and low income persons. Migrant farmworkers are provided with temporary housing during the peak harvest season (Migrant Services Program). Funds are provided for the development of new rental units where at least thirty per cent of the units are available for low and moderate income housing (Rental Housing Construction Program). Loans of up to $2,000 are available to owners of units damaged or destroyed by a "state of emergency" disaster on or after July 1, 1977. Loans

are available for the purchase and installation of solar energy systems (Solar Energy Demonstration Loan Program).

The Division of Codes and Standards (Chief: Jack Kerin) develops and enforces adequate building and housing standards and regulations to protect the public from unsafe and unsanitary living conditions. The Division has 180 employees, 2 area offices, and inspectors throughout the state.

The Housing Standards Branch of this division administers and enforces the State Housing Law. It establishes minimum standards for design and construction, regulations for noise insulation, guidelines to encourage rehabilitation, and enforces the law in the event of nonenforcement by local authorities. It also enforces the Earthquake Provision Law by promulgating requirements for design and construction of buildings.

The Manufactured Housing Branch of the Division of Codes and Standards administers the Factory-Built Housing Law by regulating the design, manufacture, and inspection of factory-built housing units. Under the Mobilehomes Parks Acts, this subdivision regulates mobile homes and parks where a city or county has assumed responsibility. Tasks include permitting and registering all mobile homes, regulating construction of mobile homes, regulating construction in parks, licensing dealers, transporters, manufacturers, and distributors, and inspecting the mobile home industry. It also administers the Employee Housing Act by issuing permits for labor camps and establishing and enforcing construction, maintenance, use, and occupancy standards.

The Division of Research and Policy Development (R & PD) collects information and develops the state housing plan, and determines specific policy options. The Division has four sections. The Research and Statistics section identifies housing needs and maintains statistical information and reference material on housing. The Policy and Legislation section studies existing housing programs and development options, as well as developing and analyzing housing-related federal or state bills. This section also biannually updates the Statewide Housing Plan. The Planning Co-ordination and Review section reviews local housing plans and projects for consistency with state policies and regulations. Thus, this section reviews housing elements developed pursuant to AB 2853, reviews housing components of local coastal plans (LCP's), reviews applications for federal block grants, and through the federal A-95 reviews certain sewer, water, industrial, and housing development announcements for consistency with the state objective to obtain jobs-housing balance in new development. There is also a Special Projects section in R & PD which performs research and analysis in responce to urgent situations.

MAJOR PROJECTS:

The Department is participating in a two year HUD/FnMA Remote Rural Demonstration Program to assist counties in northern California with community development needs.

Following a federal court consent decree resulting from the construction of the Century Freeway, the Division of Community Affairs is administering the relocation or rehabilitation of 4,200 living units.

This division is also involved in the Grover-Shafter Replacement Housing Plan in Oakland, which consists of Section 8 rentals, co-operatives, new construction, and rehabilitation.

The Local Government Surplus Lands Project is surveying surplus land parcels statewide to increase the availability of public land for the development of low and moderate income housing.

LEGISLATION:

AB 1122, which would allow the department to place housing development funds into annuity funds to obtain higher interest, is currently on the Governor's desk.

AB 1612, which involves exemptions from general plans, is still pending.

Also under consideration are several mobile home bills involving the taxation of mobile homes and registration fees.

DEPARTMENT OF INSURANCE

Commissioner: Robert C. Quinn
(415) 557-1126

The Department of Insurance is vested with the right and duty to regulate the insurance industry in California. The Department is directed by a Commissioner and 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 some seven divisions doing the work of the Insurance Department.

The Department has no regular meetings, but does hold public hearings pursuant to the Administrative Procedures Act, when rule changes are proposed or licensing controversies arise.

MAJOR PROJECTS:

The Department's AB 1111 review, under the direction of Leo Hirsch, is starting to wind up to reach the July, 1982, deadline. The Department's major disappointment was the lack of response from the public and industry. Of particular note is the Department of Corporation's and the Department of Savings and Loan's non-response to the Department's inquiries concerning regulation 2181. The regulation was written jointly by the 3 Departments and concerns reasonable cause for a lender to disapprove an insurer. At this time, the Department is renovating the regulation pursuant to its own recommendations.

Specific regulations, however, have prompted input. The Worker's Compensation Review Board has responded to worker's compensation regulations and State Farm generously submitted a detailed report about the production of agency records. This report will be helpful in updating the Department's regulations by incorporating modern record keeping methods.

Mr. Hirsch will be assigning the drafting of various regulations and amendments to divisions within the Department which are most knowledgeable in the specific technical areas of each regulation. Hearings concerning the regulations are tentatively planned for June, 1982.

The Department has not heard from OAL concerning the inclusion of forms into the regulations. The Insurance Commissioner believes he has a duty to promulgate forms and indeed the Department has received testimony concerning the necessity for such forms. Apparently OAL is deciding on the inclusion of forms into regulations on a case by case basis and has not yet approached the Department's inquiry.

The Department has addressed various issues, not within the realm of the AB 1111 review. The Department has become interested in the problems of mortgage guarantee deposits. Originally placed with the State Treasurer, the Department proposed that the deposits be placed with banks for easier withdrawal.

As of February, 1982, the Department issued its first quarterly newsletter for producers, and terminated the Monthly Bulletin. The replacement publication was the result of AB 688 by Assemblyman McAlister. It will allow the Department to increase producer licensing fees to help pay for the news-

letter. The subscription rate is $12 per year.

FUTURE MEETINGS:

AB 1111 hearings are tentatively set for June, 1982. For more information, contact Leo Hirsch or Carole Fistler at the Department.

DEPARTMENT OF REAL ESTATE

Commissioner:
Ernest L. Brazil
(916) 445-3996

The chief officer of the Department of Real Estate is the Real Estate Commissioner, who is appointed by the Governor and must have 5 years experience as a real estate broker. The Commissioner appoints a 10 member Real Estate Advisory Commission. Six members must be licensed real estate brokers and 4 are public members. As its name indicates, the Commission's role is advisory only.

The Department regulates 2 areas of the real estate industry: brokers and salespersons, and subdivisions. To be licensed as a salesperson, an applicant must pass an examination. To be licensed as a real estate broker, an applicant must have worked as a real estate salesperson for 2 of the previous 5 years, take 6 specified courses and pass an examination. Continuing education is required for both brokers and salespersons. Licenses may be suspended or revoked for disciplinary reasons.

The Department also regulates subdivisions offered for sale in California, whether or not they are located in the state. A standard subdivision is improved or unimproved land divided or proposed to be divided for the purpose of sale, lease or financing. In addition, the Department has jurisdiction over undivided interests, with certain exceptions. Subdivisions include the creation of 5 or more lots; a land project, which consists of 50 or more unimproved lots; a planned development containing 5 or more lots; a community apartment project containing 5 or more apartments; a condominium project containing 5 or more condominiums; a stock cooperative having or intended to have 5 or more shareholders; a limited equity housing cooperative; and a time share project consisting of 12 or more interests having terms of 5 years or more or terms of less than 5 years with options to renew.

The Department protects the public from fraud in connection with the sale of subdivisions through the use of the "public report." The public report contains a legal description of the land; a statement on the title to the land, including any encumbrances; a statement of the terms and conditions of sale; a statement of the provisions made for public utilities; a statement of the use or uses for which the subdivision is offered; and other such information. Additional information is required for some types of subdivisions. The person who intends to offer a subdivision for sale submits this information to the Commission on a questionnaire, and when the Commissioner finds that the application is substantially complete, he will issue the public report. The Commissioner will not issue the report if the subdivider fails to comply with any provision of the law regulating subdivisions, is unable to deliver title or other interest contracted for, is unable to show that certain adequate financial arrangements have been made or if other "reasonable arrangements" have not been made, or if the sale or lease would constitute fraud on the purchasers or lessees. A prospective purchaser or lessee of a subdivision must be given a copy of the report.

MAJOR PROJECTS:

The Department has completed its initial review of regulations pursuant to the AB 1111 criteria of necessity, authority, clarity, consistency, and reference. Public comment has been solicited.

The proposed actions are: 37 regulations are to be repealed for lack of necessity and/or authority; 66 are to be amended and/or consolidated with other regulations for clarity and/or consistency; no change is proposed for 82; and 52 are exempt from review because they were not in effect as of July 1, 1980. There are no major substantive changes.

LEGISLATION:

Aside from AB 1212, mortgage loan brokers, and SB 355, time-share rescission right, (see CRLR, Vol. 2, No. 1 (Winter, 1982) p. 57), the following are amendments to the Real Estate Law or Subdivided Lands Law enacted in 1981. They are now in effect unless otherwise noted.

AB 588 deletes the requirement that a licensee whose license is expired must apply for a renewal 30 days prior to termination of the right to renew.

Under present law, any person who obtains a court judgment against a licensee for fraud, misrepresentation, deceit, or trust fund conversion may file a petition with the Department requesting payment out of the Real Estate Education, Research and Recovery Fund for an amount unpaid on the judgment, up to $10,000. The fund is administered by the Department and is financed by a percentage of license fees. The Commissioner is authorized to defend any action on behalf of the fund. AB 1096 provides that when the Commissioner defends an action, he has the right to relitigate any issues which were decided in the previous judgment. The previous judgment creates a rebuttable presumption against the licensee. But if the judgment was obtained by consent, default, stipulation, or defended by a trustee in bankruptcy, then the burden is on the applicant to prove the alleged conduct. A licensee may defend the action against the fund on his or her own behalf, but may not relitigate any issue previously decided. Prior adjudication of those issues are conclusive.

AB 1157 also affects the Education, Research, and Recovery Fund. It decreases to 20% the license fees allocated to this account. Of this amount, 75% will be used for education and research and 25% will go to the recovery fund.

SB 951 requires that a licensee complete a 3 hour continuing education course in ethics, professional conduct, and the legal aspects of real estate. It applies to licensees who will renew their licenses on or after January 1, 1983.

AB 1500 increases the statutory limits on fees. The new license and examination fees are as follows: broker examination fee, $50; broker license fee, not in excess of $110; salesperson examination fee, $25; and salesperson license fee, not in excess of $80. Subdivision fees must not exceed the following amounts: standard subdivision filing fee, $500 and $10 per lot; common interest subdivision filing fee, $1600 and $10 per lot or unit; out-of-state subdivision filing fee, $1600 and $10 per lot or unit; and public report fees, $500 for a preliminary report, $300 for an amended report, and $500 for a renewal report.

SB 781 exempts licensees from the continuing education requirement if they are 70 years of age or older, have been licensed continuously in California for 30 years, and have not had their license suspended, revoked or restricted for disciplinary reasons. A bill introduced in January, AB 2352, would reduce the minimum age to 65.

DISCIPLINARY ACTION:

The following actions were taken against licensees from June through August, 1981: 38 revocations; 24 revocations with a right to a restricted license; 2 suspensions; 6 suspensions with stays; and 2 indefinite suspensions under recovery fund provisions.

REGULATION CHANGES:

Present regulations specify that reasonable arrangements for common interest subdivisions, such as

condominiums, must be made by the developer before the Department issues a public report. Reasonable arrangements include the establishment of an owners' association. Regulation changes allow the association's governing body to enter into a contract for laundry room facilities without the approval of a majority of association members. If the association imposes a monetary penalty on a member as a disciplinary measure, with one exception, the penalty may not be treated as a lien against the member's subdivision interest, enforceable by a sale of the interest as provided for in the Civil Code.

The Department has increased subdivision fees by regulation. The new fees are less than the statutory maximum of AB 1500. The filing fee for a standard subdivision is $400 and $8 per lot. For common interest subdivisions and out of state subdivisions it is $1500 and $8 for each lot or unit, up to a maximum fee of $7500. The public report fees are $400 for a renewal report, $150 for an amended report, and $400 for a preliminary report.

DEPARTMENT OF SAVINGS AND LOAN

Commissioner: Linda Tsao Yang (415) 557-3666

The Department of Savings and Loan (DSL) is organized under a Commissioner charged with the administration and enforcement of all laws relating to or affecting state licensed savings and loan associations. As an executive department, it is not subject to the Open Meetings Act. The Commissioner does not hold regularly scheduled meetings, although public hearings are held where required by the Administrative Procedure Act.

MAJOR PROJECTS:

The department amends its regulations on an ongoing basis to bring them into substantive conformity with regulations issued by the Federal Home Loan Bank Board relating to the operation and management of federally chartered associations. The purpose of such amendments is two-fold: (1) to maintain parity of lending powers between state and federally licensed associations and (2) to prevent a competitive advantage in any phase of operation of federal associations in California over state associations. The California Administrative Code sections affected by recent amendments and a brief summary of each are listed below. All refer to Chapter 2, Title 10 of the California Administrative Code.

Section 235.47 of Subchapter 17, relating to Balloon Payment Loans: The Federal Home Loan Bank Board (FHLBB) adopted regulations, affecting only federally-chartered associations, liberalizing nonamortized and partially amortized loan procedures by increasing the loan-to-value ratio to the level of home loans generally. The effect of the DSL change will be to allow state associations the same power, enabling them to make such loans in amounts up to 90%-95% of the value of the property. Additionally, interest rate adjustments are allowed during the terms of such loans. A required disclosure on the face of balloon loan applications and contracts gives notice of the expiration of the loan, the borrower's obligation to fully repay the loan at that date (balloon payment) and the lender's non-obligation to refinance the loan.

Section 231.9(a)(2) of Subchapter 11, relating to Investments and Borrowings: The changes to this section will enable state associations to invest in mortgage and interest rate futures. The FHLBB allows federally chartered associations to hold similar investments in the futures market. The DSL amendment will generally liberalize the extent of such investments to enable state associations to compete with federal associations on a more equal basis.

Subchapter 22, relating to Remote Service Units: The FHLBB adopted various regulations to enable federal associations to operate remote service units (automatic teller machines) without geographical restriction or prior notice and approval. The Department has repealed and recreated Subchapter 22 to enable state associations to engage in similar activities without notice, approval and geographical limitation.

The Department has engaged in a review of all its regulations pursuant to AB 1111 to provide and ensure the consistency, clarity, authority and necessity of all DSL regulations. Based upon that review, the following sections of the California Administrative Code are being amended. All refer to Chapter 2, Title 10 of the Code.

Subchapter 4 relating to Applications and Hearings: New Facilities, Branches, Changes of Location, Mobile Facilities and Executive or Administrative Headquarters: The modification to this subchapter is both technical and substantive. The recently adopted revised definition of a branch facility is incorporated into Subchapter 4 (see CRLR Vol. 2, No. 1 (Winter, 1982) p. 58). In response to the industry's request to shorten the time for approval of applications for new facilities, branches, change of location, mobile facilities and headquarters, DSL reduced the time requirements for publishing notice of and submitting written objections to such applications.

Subchapters 1 and 2, relating to Accounting Procedures and Uniform Classification of Accounts, and Appraiser Classifications and Qualifications, respectively: The amendments to these subchapters are technical and integrate and clarify existing regulations. The amendments define "insignificant items" of assets, liabilities and net worth which need not be set forth in an association's reporting to the DSL. Assets and liability items are insignificant if less than 1/10 of 1% of total assets or liabilities. An insignificant net worth item is one less than 1% of total net worth.

Subchapter 9, Section 192 relating to Guarantee stock: The Department, at the suggestion of the California Society of Certified Public Accountants, has integrated an informal Accounting Instruction Letter into its regulations to place all procedures and instructions relating to guarantee stock in one place. The section defines and regulates stock dividends and split-ups made by associations to shareholders in lieu of cash or other property representing their interest in accumulated earnings.

Subchapter 4.5, relating to other reports required by the Commissioner: The changes made to this subchapter are technical, nonsubstantive and designed to delete obsolete instructions on filing reports relating to affirmative action in employment.

Subchapter 5, relating to Independent Audits: Section 160 (purpose and scope) was repealed since it did not meet the criteria of a regulation. Additionally, several other technical and nonsubstantive amendments were made to increase the clarity and consistency of the Subchapter.

Subchapter 7.5, relating to Modification Agreements: Several technical and nonsubstantive amendments were made to increase the clarity and consistency of this Subchapter. The sections affected relate to modifications made by associations and borrowers to the terms and provisions of promissory notes and deeds of trust securing such notes.

Subchapter 1, relating to Accounting Procedures and Uniform Classification of Accounts, Subchapter 1.5, relating to Statutory Net Worth Requirements and Subchapter 5, relating to Independent Audits: The Department submitted changes to these Subchapters for public comment in September, 1981. (see CRLR Vo. 2, No. 1 (Winter, 1982) p. 58.) The amendments allow associations to either (1) defer losses or gains contrary to generally accepted accounting procedures subject to a Certified Public Accountant exception or, (2), have a lesser statutory net worth than is required to the extent that the deficiency is caused by recognizing losses on the sale of loans in accordance with generally accepted

accounting procedures. The Department hopes the amendments will enable associations to improve their profitability by providing flexibility in the disposition of assets, and allowing them to reinvest the proceeds of such sales without incurring net worth deficiencies.

Apart from regulatory modifications, the Department handles other matters pursuant to its statutory responsibility. Thus, the Department considers and decides upon applications for branch licenses, mergers, location changes and articles of incorporation. Such applicants are entitled to a hearing before the Department. The Department announces pending applications and the status of those previously submitted on a weekly basis.

RECENT AND FUTURE ACTIVITIES

On January 25, 1982, the United States Supreme Court agreed to hear and settle the major controversy over the right of homeowners to transfer existing low interest mortgages to buyers when selling mortgaged property. The Federal Home Loan Bank Board has authorized federally chartered associations to require total refinancing, at higher current interest rates, since 1976. California state Law, however, severely restricts lenders in California from inserting such "due on sale" provisions in loan contracts. The suit, De la Cuesta v. Fidelity Federal Savings & Loan, is an appeal by a federally chartered lender of a state Court of Appeal ruling that federal regulations do not pre-empt state law. If the Supreme Court decides in favor of the federal association, state chartered associations, still bound to observe California state law, could be at a severe competitive disadvantage in competing for mortgage funds. Many believe the availability and amount of secondary mortgage money (from suppliers of lending capital through their purchase of loans at discount) will be drastically reduced to state associations if the interest rates on those loans are limited to levels existing at the time of the mortgage. The Supreme Court's decision is expected in June, 1982.

As a result of large numbers of associations leaving the state system to come under the rubric of federal regulation (see CRLR Vol. 2, No. 1 (Winter, 1982), p. 59), the Department has recently announced a drastic reduction in the size of its staff from 158 to 66. The revenues collected from associations by the Department for inspection are based on the size of the association. Since most associations leaving state regulations are large, the Department's revenues have been severely cut.

The Department's staff met in Los Angeles on March 8, 1982, to determine where the staff reductions will take place. The Department's newly authorized positions are as follows, with the former size of each category in parentheses: 29 examiners (62), 7 appraisers (34), 3 attorneys (6), 6 administrative (6) and 21 secretarial and support (50).

In the past, the Department and the Federal Home Loan Bank Board (FHLBB) conducted joint investigation of associations to insure financial stability and compliance with state and federal regulations. According to Assistant Commissioner James Harrison, the Department will now rely more heavily on the examinations and investigation processes of the FHLBB. In its examination of state chartered associations the Department will use information obtained from reports compiled by the FHLBB through its examinations for purposes of federal deposit insurance carried by those associations. To discourage the trend of conversion, the Department will continue to revise and establish state regulations to maintain a regulatory parity with federal regulations affecting federally chartered associations doing business within California.

Department of Industrial Relations

CAL/OSHA

Director: Don Vial
(415) 557-3356

California's Occupational Safety and Health Administration (CAL/OSHA) is an integral part of the cabinet level Department of Industrial Relations. It administers California's program ensuring the safety and health of California's wage-earners.

CAL/OSHA was created by statute in October, 1973 and its authority is outlined in Labor Code sections 140-49. It is approved by, monitored by and receives some funding from the Federal OSHA. Its components include the Occupational Safety and Health Standards Board (OSB), the Division of Occupational Safety and Health (DOSH), which includes the CAL/OSHA consultation service and the Hazard Evaluation System and Information Service (HESIS) and finally the Appeals Board.

OSB is a quasi-legislative body empowered to adopt, review, amend and repeal health and safety orders which affect California employers and employees. Under Section 6 of the Federal Occupational Safety and Health Act of 1970, California's safety and health standards must be at least as effective as the federal standards within 6 months of the adoption of a given federal standard. Current procedures require justification for the adoption of standards more strenuous than the Federal standards. In addition, the OSB may grant interim or permanent variances from occupational safety and health standards to employers who can show that an alternate process would provide equal or superior safety to their employees.

The 7 members of the Board are appointed by the Governor to 4 year terms. Labor Code section 140 mandates that the composition of the Board consist of 2 members from management, 2 from labor, 1 from the field of occupational health, 1 from occupational safety and 1 member from the general public. The Chairman of the Board, Gerald O'Hara, is one of the labor representatives.

The duty to investigate and enforce the safety and health orders rests with DOSH. DOSH issues citations, abatement orders (granting a specific time period for remedying the violation) and levies civil and criminal penalties for serious, willful and repeated violations. Not only does DOSH make routine investigations, but it is required by law to investigate employee complaints, any accident causing serious injury, and to make follow-up inspections at the end of the abatement period.

Within DOSH, the CAL/OSHA Consultation Service provides on-site health and safety recommendations to employers who request assistance. This consultation guides employers in adhering to CAL/OSHA standards without the threat of citations or fines.

Another subdivision of DOSH is HESIS which was developed to provide employers and workers with up-to-date critical information on the health effects of toxic substances and methods for using these substances.

Finally, the Appeals Board adjudicates disputes arising out of the enforcement of CAL/OSHA's standards.

MAJOR PROJECTS:

General Industry Safety Orders Sections 3401(c) and 3410(g) were adopted and will become effective March

31, 1983. They require that firefighters be provided with a personal alarm device whenever engaged in activities requiring the use of self contained breathing apparatus. Operation and performance criteria for these devices are specified. In addition, after March 31, 1983, firefighters must be provided with a fire shelter whenever engaged in wildland fire fighting activities.

Review of the regulations contained in General Industry Safety Orders, Title 8, California Administrative Code section 5155, Airborne Contaminants, has begun and will be completed by July 1, 1982. The public comment period extends from March 15, 1982 until April 15, 1982. In addition, the public is encouraged to present statements or written and oral arguments relevant to the proposed action at public meetings to be held March 31 and April 1 in San Francisco.

Construction Safety Orders section 1637(i)(1), and 1644(a)(7) regarding scaffold erection and dismantling; section 1566(f) concerning blasting signals; sections 1724(g), 1729(b)(4), 1730(b)(1), 1730(c),(e) and (f) regarding roof hazards; Low Voltage Electrical Safety Orders section 2420.17(a)(1) and (a)(2) relating to exposed wiring; General Industry Safety Orders sections 3362, 3364, 3366, and 5148 relating to sanitation; section 5194 addressing Resubmittal of Material Safety Data Sheets; Procedural and Organizational Filing section 3204(c)(3) which defines the reference to rules of practice and procedure governing DOSH access to such records to be found in Chapter 3.2 of Title 8; and Unfired Pressure Vessel Safety Orders sections 416(d) and (h) and sections 462(a) regarding Air Tank Inspection were adopted.

The following subjects were considered by ad hoc advisory committees appointed by DOSH or OSB: Ethylene Dibromide, Guarding of Wine Pomace Pumps, Noise, Petroleum Orders (Drilling and Production, Refining and Transportation) Environmental Cab's, Elevator Safety Orders, Confined Spaces and Entry of Unshored Lock Equipment by engineering geologists.

Petitions to adopt, amend or repeal OSB regulations concerning smoke detectors, multi-deck elevators, and reduced stroke oil buffers in the Elevator Safety Orders; relating to Trichloroethylene (TCE), an airborne contaminant and Industrial Trucks in the General Industry Safety Orders; power actuated tools in the Construction Safety Orders; log loaders, canopy labeling requirements and brush deflector guards in the Logging and Sawmill Safety Orders; Steering on transit buses in Title 8, California Administrative Code; and Nonpropagating liquid insulated transformers in High Voltage Electrical Safety Orders were received by OSB pursuant to the authority contained in Labor Code section 142.2.

RECENT MEETINGS:

Two proposed revisions to Safety Orders in Title 8 and Title 24 Building Standards of the California Administrative Code were discussed at the Public Hearing on December 16, 1981.

The first revision involved Chapter 3.5, Articles 1-5, section 401-428, Rules of Procedure for Interim and Permanent Variance and Appeals from Temporary Variances. These existing rules of procedure were editorially revised for clarity, consistency and to indicate the proposed statutory authority and reference after each section.

Rules regarding the location of the Standards Board's offices, requesting a hearing and referrals to the Department of Health are considered unnecessary and are proposed for repeal. Other proposed revisions include: (1) expanded requirements that variance applicants notify employees of the employee's rights to full party status; (2) revised provisions for the denial of defective variance/appeal applications; and (3) revised rules for the assignment of the hearing panel to consider variance/appeal applications.

The second topic on the agenda involved Elevator Safety Orders, section 3000(b)(10) which lists freight platform hoists as one of the devices included as an "elevator" under the Elevator Safety Orders. As such, freight platform hoists are subject to an initial inspection upon installation and to a yearly reinspection.

The proposed regulation would exclude freight platform hoists as devices included in the Elevator Safety Orders; and section 3000(c) would specifically list freight platform hoists as a device excluded from the Elevator Safety Orders. Definitions used in the Elevator Safety Orders, including "freight platform hoists" are listed in section 3009(c). Amendments to this definition will include more detail for clarity and limit the definition to hoists with not more than 5 feet of lift. Article 15 of the existing orders, which establishes specific requirements for freight platform hoists, would be repealed and areas pertaining to crushing, pinching and electrical requirements would be governed by the General Industry Safety Orders and Electrical Safety Orders.

At the January 28th meeting in Los Angeles, the Board considered public testimony on the application of general industry safety orders to portable pumps used in the wine industry to transfer pomace (i.e., skins, berries, seeds) during the crushing season from wine fermentation tanks to other locations for additional processing. Application for the existing regulations could effectively prohibit the use of these unique pumps in California. The proposed regulations would resolve this problem by including regulations that would allow this special pump to be utilized.

Eye and Face Protection, Dok-Lok's and Occupational Noise and Ear Protection were on the agenda for the February 25th meeting in San Francisco.

The first topic relating to ear and face protection arose because existing section 1516(d) of the Construction Safety Orders does not permit the use of eye protection devices consisting of integral frame and lens design (monogoggles). The proposed revision specifies under what conditions use of monogoggles will be permitted on construction projects.

Next, the Board considered existing regulations which require that vehicles not be driven in and out of highway trucks and trailers at unloading docks unless such trucks are securely blocked and brakes set. Other more technically advanced restraining systems have been developed that provide superior safety, but their use has been restricted because of the existing safety order. The proposed revision would permit use of alternate methods of restraint.

The final agenda item concerned occupational noise and ear protection. The proposed new section 5098(c) requires employers to provide and requires employees to use hearing protectors. The new standard would require measurement of noise above 85 dBA as opposed to above 90 dBA in the existing standard. The level at which engineering controls must be considered was increased to 92 dBA from 90 dBA to maintain a standard equivalent to the federal standard in the Federal Hearing Conservation Program.

A majority of the public testimony came from those who believed that construction and agriculture should be exempt from these regulations. Bob Peterson (General Contractors) testified that the proposed standards were directed toward general industry and ignore the unique problems of the construction industry. He cited problems with the advisory committee that dealt with this standard:

1. the construction industry was not represented;

2. a lack of adequate notice (which was refuted by Chairman O'Hara);

3. the fact that FED/OSHA had 2 standards—1 for general industry and 1 for construction—should have put CAL/OSHA on notice of the need for different standards.

In addition, Peterson cited those factors

that make construction unique so that it should be exempt from the standards:

1. With construction, there is no permanent place of employment and thus there is less control over the elements;
2. Monitoring is difficult in the open air of construction;
3. Engineering controls would not be feasible on a construction site;
4. Record keeping would be difficult because of the mobile nature of construction.

He concluded that the construction industry should be exempt from this standard and a separate advisory committee appointed to study standards for the construction industry.

Tom Hale (Grape & Tree Fruit League) outlined the problems with applying the proposed standard to agriculture. He testified that agriculture would be regulated in a new area with the proposed standards. Dr. Alvin Greenberg of DOSH pointed out that there have indeed been noise standards for agriculture in the past. Hale responded that these standards have not been enforced. He also pointed to FED/OSHA's exemption of agricultural workers from its standards. Hale then pointed out the unique aspects of agriculture that favor its exemption from the proposed standards:

1. seasonal employment;
2. migratory workers; and
3. diversified work.

Hale also claimed that agriculture had had no input into the standards and questioned whether the standards would indeed protect agricultural workers. Further testimony was taken and after a recess, OSB member Edward Ashton, a management representative, whose regular employment is in the general contracting field moved that agriculture and construction be exempted. This motion was seconded and passed with a unanimous vote. A new advisory committee was created to deal with the agricultural and construction industry.

FUTURE MEETINGS:

In San Diego, on March 25, the OSB will consider the proposed repeal of Section 1541 and the adoption of a new subsection and tables to clarify the use of hydraulic shoring systems or units. As a result of testimony received at the September 24, 1981, public hearing, the Board is now proposing new tables subdivided into 3 types of trench shoring systems used to support the sides of an excavated trench—wook, metal and hydraulic systems. The revised tables relating to hydraulic systems include appropriate spacing of these units in a horizontal or vertical position. This subject is not specifically addressed by Federal regulations.

Department of Food & Agriculture

DEPARTMENT OF FOOD AND AGRICULTURE

Director: Richard E. Rominger
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The Department of Food and Agriculture promotes and protects California's agriculture, and executes the provisions of the Agriculture Code which provide for the Department's organization, authorize it to expend available moneys, and prescribe various powers and duties. The Legislature initially created the Department in 1880 to study "diseases of the vine." Today, the Department's functions are numerous and complex.

The Department works to improve the quality of the environment and farm community through regulation and control of pesticides and through the exclusion, control, and eradication of pests harmful to the state's farms, forests, parks, and gardens. The Department also works to prevent fraud and deception in the marketing of agricultural products and commodities by assuring that everyone receives the true weight and measure of goods and services.

The Department collects information regarding agriculture, and issues, broadcasts, and exhibits such information, data, and material. This includes the conducting of surveys and investigations, and the maintenance of laboratories for the testing, examining, and diagnosis of livestock and poultry diseases.

The Executive Office of the Department consists of the director and the chief deputy director who are appointed by the Governor. The director, the executive officer in control of the Department, appoints 2 deputy directors, 1 of whom serves as legislative liaison and as Executive Secretary of the State Board of Food and Agriculture. In addition to the director's general prescribed duties, he may also appoint special committees to study and advise on special problems affecting the agricultural interests of the state and the work of the Department.

The Executive Office oversees the activities of seven operating divisions:

1. *Division of Animal Industry* — Provides inspections to assure that meat and dairy products are safe, wholesome, and properly labeled and helps protect cattle producers from losses from theft and straying;
2. *Division of Plant Industry* — Protects home gardens, farms, forests, parks, and other outdoor areas from the introduction and spread of harmful plant, weed, and vertebrate pests;
3. *Division of Inspection Services* — Provides consumer protection and industry grading services on a wide range of agricultural commodities;
4. *Division of Marketing Services* — Produces crop and livestock reports, forecasts of production and market news information, and other marketing services for agricultural producers, handlers, and consumers; oversees the operation of marketing orders and administers the state's milk marketing program;
5. *Division of Pest Management* — Regulates the registration, sale, and use of pesticides and works with growers, the University of California, county agricultural commissioners, state, federal, and local departments of health, the U.S. Environmental Protection Agency, and the pesticide industry;
6. *Division of Measurement Standards* — Oversees and coordinates the accuracy of weighing and measuring of goods and services; and
7. *Division of Fairs and Expositions* — Assists the State's 80 district, county and citrus fairs in upgrading services and exhibits in response to the changing conditions of the state.

In addition, the Executive Office oversees the activities of the Division of Administrative Services which includes Departmental Services, Financial Services, Personnel Management, and Training and Development.

The State Board of Food and Agriculture consists of the Executive Secretary, Assistant Executive Secretary, and 14 members who voluntarily represent different localities of the state. The Board inquires into the needs of the agricultural industry and the functions of the Department. It confers with and advises the governor and the director as to how the Department can best serve the agricultural industry. In addition, it may make investigations, conduct hearings, and prosecute actions concerning all matters and subjects under the jurisdiction of the Department.

At the local level, county agricultural commissioners are in charge of county departments of agriculture. County agricultural commissioners cooperate in the study and control of pests that may exist in their county. They provide public

information concerning work of the county department and the resources of their county, and make reports as to condition, acreage, production, and value of the agricultural products in their county.

An example of the work of the Department of Food and Agriculture is container and packing regulation. Prior to 1971, all California produce had to be packed in an approved container. The size, strength and durability of each container used in California had to meet a particular statutory requirement for each crop. In 1971, this power was delegated to the director of the Department, who issues regulations stating what containers or packs are approved for use in the state. Containers approved in this way are called "standard." The statute also established a system of "experimental" containers, which allowed growers and others with a substantial interest in a crop to petition the director to use non-"standard" containers. Finally, the statute allowed "experimental" containers to become "standard" when 10 persons, having a "substantial interest" in the growing or handling of a particular crop, petition the director.

The Fruit and Vegetable Quality Control-Standardization division may issue experimental permits. A grower submits an application to use a certain container. (There are two types of containers used in the State; Bulk, which are large bins used primarily in shipping from farm and packing house, and Regular, which are small and shipped to stores and restaurants.) The application cannot be for more than 5% of the previous season's packing needs. The director issues the permit in 5 to 7 days. It is effective for 1 year, may be renewed once in that time. The renewal may be no more than another 5% of the previous year's packing needs. Sometimes manufacturers of containers will service growers by combining like petitions and sending them to the director, but the permits for the experimental containers can be issued only to growers, packers and shippers. "Experimental Pack" must be clearly and conspicuously stamped in letters not less than 1/2 inch in height on one end of each container. Further, the permittee must maintain records of experimental pack usage for government audit.

If a grower, packer, or shipper is pleased with the experimental container, he must find 9 others in his particular industry to petition the director to adopt this pack as standard. While 6 to 60 experimental packs are approved each year, only a handful are ever approved as standard. A hearing is required prior to adoption of a pack as standard. Evidence is obtained from the reports required by the experimental permits and separate tests performed at field stations by the Department. A hearing officer must then decide to either adopt or reject the petition to make a pack standard.

The whole basis for regulation of containers is "standardization." Both consumers and sellers must know what a "crate" or "carton" of produce means for each purchase. As long as both parties can be reasonably certain they will receive what they bargained for, then state regulation seems to be a cost efficient way to assure the "standardization" sought. The experimental pack system allows for testing new concepts in the marketplace. The need to protect California's competitive position in the marketplace is served by the states making sure that the ease of handling and identification does not vary from shipment to shipment.

There seems to be no opposition to the regulatory procedure, since it allows all interested parties a voice in the process. However, a case can be made that this is not a proper subject for regulation, since a maker of defective boxes (either in handling, strength or ability to preserve freshness) would not last long in the competitive marketplace.

Health & Welfare Agency

OFFICE OF STATEWIDE HEALTH PLANNING AND DEVELOPMENT

Acting Director: Paul Smith
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The Office of Statewide Health Planning and Development (OSHPD) regulates health care facilities and services in the state. The OSHPD has approximately 180 employees.

The OSHPD is divided into several divisions: The Administrative Division, the Health Professions Division, the Division of Health Planning, Data and Research, the Certificate of Need Division and the Facilities Development Division. In addition, special offices exist for gathering health data and for administering Hill-Burton funds. The OSHPD has its own legal office and an information officer to handle public relations.

Three statutorily created commissions and boards exist within the OSHPD. They are the Health Manpower Policy Commission, the Advisory Health Council and the Building Safety Board. SB 930 which became effective on January 1, 1982 created a State Health Planning Law Revision Commission which will cease to exist on March 1, 1983. Nominations for the 11-member commission are currently being accepted.

The Health Manpower Policy Commission provides some of the information by which the OSHPD prepares the Health Manpower Plan for the state. The biennial report provides a summary of policy and planning issues related to the various categories and specialties of health personnel. The report provides information to legislators and other policy-makers in deciding the future course that the state will take in the complex and significant areas of health manpower and health sciences education.

The Advisory Health Council is composed of 21 members. The Council has the power to:

1. Divide the state into health planning areas;
2. Evaluate and designate one area agency for each health planning area annually;
3. Integrate area plans into a single statewide health facilities and services plan;
4. Adopt a statewide health facilities and services plan;
5. Hear appeals of certificate of need (CON) decisions rendered by the Office;
6. Request public agencies to submit data on health programs pertinent to effective planning and coordination; and
7. Advise the OSHPD about health planning activities, regulations and the setting of priorities in accordance with the statewide health facilities and services plan.

The Building Safety Board acts as a board of appeals with regard to seismic safety of hospitals. The 11-member board is composed of highly knowledgeable people in their respective fields with particular emphasis on seismic safety.

The Health Planning Law Revision Commission was created to make recommendations to the Legislature and the Governor concerning health planning in the case of changes in federal law and funding. The Commission is responsible for assuring rational planning for the efficient distribution and use of health resources in a manner which assures

equal access to quality health care at reasonable costs.

The OSHPD publishes the State Health Plan. The 1980 California State Health Plan, published in consultation with the Advisory Committee on the State Health Plan, provided for 6 issues that cut across the entire health system. They include:

1. Improving health status;
2. Encouraging cost effectiveness in health care delivery;
3. Supply and regulation of health personnel;
4. The future of publicly financed health services;
5. Planning for health systems with statewide impact; and
6. Coordination of existing State health policies and programs.

The OSHPD's additional responsibility includes the approval or disapproval of a Certificate of Need (CON). A CON is essentially an advance approval by the State of health care projects. CON is a capital expenditure regulation. A CON must be obtained by anyone who wants to establish a new health facility, or to expand an existing health facility, add certain services or make a major capital expenditure. CON regulation was an outgrowth of the National Health Planning and Resources Development Act of 1974 (Public Law 93-641).

In response to the financial changes of the federal government, the Legislature passed SB 930 and it became law on January 1, 1982. The OSHPD in anticipation of federal withdrawal of funds to Health System Agencies (local planning agencies) has begun implementing the changes in regulation. (see CRLR Vol. 2, No. 1 (Winter, 1982), pp. 62-63).

The OSHPD CON's budget for the year ending July 1, 1981 was $2,633,566. This figure represents approximately 15% of the budget of the OSHPD. With the changes in CON (principally increasing the threshold level to $400,000 for diagnostic or therapeutic equipment and increasing the threshold level to $600,000 for capital expenditure projects, along with other increases in threshold levels depending on the project), the fees paid by the facilities required to have a CON have increased.

CON regulations place extensive regulatory controls on entry into health services industry and on new investments in health care facilities. The concept of capital expenditure regulation is based on the belief that this form of regulation will curtail the growth of "unnecessary" capacity without any major external cost.

Because SB 930 is now law, the reviewability will be eased because of the increase in thresholds. The OSHPD's acting Director will be able to waive CON review for nonpatient-care-related projects and to relax some restrictions on remodeling and replacement projects. Further, bed expansion projects of ten beds or less will be permitted every two years if below the threshold.

The OSHPD has begun to hold meetings with planning agencies, provider groups and individual health facilities to explain the details of the legislation which has been implemented since January 1, 1982.

If Congress repeals the National Health Planning and Resources Development Act SB 930 provides that CON will be extended to Health Maintenance Organizations (HMOs). The provision of SB 930 creating the Health Planning Law Revision Commission provides that this Commission can take a detailed look at many cost containment proposals, including rate setting. The OSHPD's Chief Counsel who has been named Deputy Secretary of the State Health and Welfare Agency (replaced by Douglas Hitchcock as Acting Chief Counsel) Joe Symkowick said after a recent seminar on "Health Planning and the Law" held in Washington, D.C.: "many of the delegates discussed prospective rate setting. The Reagan administration must think something positive about the Commission since they appropriated more for those states with mandatory rate setting in the 1981 Omnibus Budget Reconciliation Act."

ACTUAL AND POTENTIAL CONFLICTS

A. COMPETITION VERSUS MANDATORY RATES: Why would mandatory rate setting be a good idea? The statistics published in the 1981 fall issue of the Health Care Financing Review Journal raise many questions.

The federal government reported that health care expenditures went up 15.2% for the sharpest increase in 15 years. This means that almost $1 of every $10 went for health care in 1980. The Health Care Financing Administration said that the total medical bill in 1980 was $247 billion. The nation's medical bill amounts to 9.4% of the gross national product. Health care expenditures have grown at an average annual rate of 12.6% during the last 15 years. They went up 13.4% in 1979.

About two-thirds of the 1980 increase was blamed on inflation. The other one-third was blamed on population growth and on greater use of medical services, such as more visits to doctors and more surgery. The $247 billion medical bill amounted to an expenditure of $1,067 per American, with federal, state and local governments spending $450, or 42% of the total. In all, two-thirds was paid by the government or insurance.

Medicare and Medicaid programs, which cost $61 billion, accounted for nearly 28% of the total health care bill. Medicare costs rose 21.4% mainly because of higher hospital bills. President Reagan has proposed reductions in these programs as part of his budget cutting plan. Unless hospital costs drop, these proposals may be difficult to implement.

In 1980, the nation spent about $99 billion on hospitals, $46.6 billion on doctors, $20.7 billion on nursing homes and about $79 billion on other services such as dentists, drugs and medical supplies.

How will the State set rates? Will the rates be set by the locality or by the State?

This leads to the raising of another issue: who does the health planning: the State or the locality?

B. OSHPD VERSUS HSAs: At the Advisory Health Council meeting on March 5, 1982 in Los Angeles, Yoshi Honkawa, in giving his federal government report, stated that the federal government is requiring all HSAs, over 200 nationwide, to be certified by March 31, 1982. To be certified, the HSA must have 51% full-time professional staff by March 31, 1982. For each 100,000 people in the HSA boundary, the HSA is required to have one professional staff member. However, one HSA director stated that the federal government is not sure which census will be used. If the HSA does not meet the 51% full-time professional staff requirement, then notification will be sent to the HSA that within 90 days the HSA will be phased out. If the HSA has more than 51% but less than 100% full-time professional staff, the designation for the HSA will be changed from full to conditional. By July 31, 1982, the HSA is required to have 75% full-time professional staff. If not, the HSA will be phased out in 90 days. If the HSA has more than 75% but less than 100% full-time professional staff by July 31, 1982, the designation for the HSA will be changed from full to conditional. By December 31, 1982, the HSA must have 100% full-time professional staff meeting whatever census requirement. If not, the HSA will be phased out.

Because of the federal budget cuts already in effect, California's 14 HSAs are strained to build up a professional staff. They are faced with the problem of fighting or winding down. By fiscal year 1983, federal funds, no matter the number of full-time professional staff, will no longer be allocated to HSAs. The question now becomes whether the State will allocate funds to the HSAs.

The OSHPD's current budget is $13.1 million. The 1980-81 budget was $16.7 million. At the Advisory Health

Council's meeting on March 5, 1982, acting director Paul Smith stated that for next year's budget the OSHPD will lose $916,000 in federal funds. It seems unlikely that the OSHPD will be able to allocate any of its scarce funds to the HSAs. Further, with SB 930, the mechanism and tools are in place for OSHPD to replace the HSA's function of local planning.

By freezing staff vacancies, new contracts and major equipment purchases, acting director Paul Smith believes that OSHPD can weather the federal cuts of up to $1 million in its annual federal grant which starts July 1, 1982. The current grant is $2.5 million.

"But if there's a shortfall of more than $1 million, then we could be in a layoff situation," said Paul Smith. He noted that OSHPD has diverse funding sources such as state general funds and fees which soften the impact of federal fund shortfalls. 46% of the diverse funds comes from fees and assessments.

C. IS CERTIFICATE OF NEED NECESSARY? From the federal statistics, it seems that the demand for health care has increased. However, with this increase in demand for health services, the health care cost have spiraled. Then, insurance costs increased to the point where the insured is unable to afford coverage, and finally becomes dependent on government to pay the bill.

The "health insurance-service-price spiral" may be understood as follows: as health care service costs increase, the demand for services among uninsured people decreases, however, the demand for insurance to cover these costs increases. Having purchased insurance, the direct cost of health care becomes lower and people become avid consumers, raising demand, and in turn raising costs and prices to continue the spiral.

The effect of the spiral is heightened when insurance coverage is provided by the government or an employer in that the cost of insurance is not borne directly by the insured, who is further removed from participation in the marketplace.

Although the purpose of health insurance is to provide cost-sharing, hospitals, to attract the best physicians, purchase the latest "state of the art" medical equipment. In turn, the hospital charges more to the third party payor, who in turn charges higher premiums to the consumer. In addition, because federal programs do not cover all hospital's costs, the hospital cross-subsidizes its losses with a patient who has insurance and supposedly can absorb the additional cost.

The National Health Planning and Resources Development Act of 1974 instituted CON for the states to follow if they wanted to receive federal funds. The 1974 Act provided that the HSA's HSP include "a detailed statement of goals...describing a healthful environment and health systems in the area which when developed, will assure that quality health services will be available and accessible in a manner which assures continuity of care, *at reasonable costs,* for all residents of the area." (42 U.S.C. § 300L - 2(b) (2) (Supp. V 1975).

The CON requirements are a reflection of governmental concern about the rapid increase in the cost of health care services, poor distribution of services geographically and duplication of expensive equipment being underutilized.

Acting Director Paul Smith, at the March 5, 1982 Advisory Health Council's meeting, stated that now with the CON requirements "facilities have done a lot of thought in their planning." It takes an average of 4.4 months for a CON to go through the complex process. Historically, the average approval rate is 93%. The approval rate in 1980 was 97%. Since CON has begun, approximately $866 million in projects have been approved. $46 million in projects have been denied. $84 million CON applications have been withdrawn.

Statistics alone are not enough to justify the CON requirements. Although CON discourages people from entering into the marketplace, the established facilities, knowing and understanding the process, can easily have their projects approved. Their "careful" planning costs additional money in "red tape" which is passed on to the consumer and adds fire to the "health insurance-service-price spiral".

The CON requirements are in addition to required approval by the Division of Facilities Development of the OSHPD and the Division of Licensing and Certification of the Department of Health Services.

According to Senator Ken Maddy's news release announcing the original version of SB 930, a CON can cost a hospital as much as $50,000. Because of the high approval rate, does it make any sense to have CON? Due to federal budget cuts, the OSHPD is dependent on the fees collected from the facilities. Why not? — the facilities should help pay for the state planning process. Is not the consumer really paying?

In *In re Aston Park,* 282 N.C. 542, 193 S.E.2d 729 (1973), the court held that CON was unconstitutional because the police power excluded persons from engaging in and severely curtailing private funds in the construction of hospitals in North Carolina. The court found no reasonable relation between the denial of the right of a person, association or corporation to construct and operate upon his or its own property, with his or its own funds, an adequately staffed and equipped hospital, and the promotion of the public health. The court held that North Carolina's CON statutes deprived the hospital of liberty without due process of law, in violation of the state's constitution.

On the other hand, besides abolishing CON where the State would lose federal grants, what are the alternatives that will meet the federal government purposes of CON capital expenditure regulation? Some alternatives could include:

1. Require registration of all health care projects giving the state information to make planning decisions; or
2. Impose informational requirements of all health care projects giving the state information to make planning decisions; or
3. Use tax incentives in regulating hospital's capital expenditures; or
4. Deregulate hospitals in the capital expenditure area to allow for competition.

The OSHPD has a mighty task of putting a lid on the spiraling health care costs. One cannot point a finger at any specific group and say that they are the reason health care costs so much. The OSHPD, because CON has been delegated to it, should look at alternatives to the current CON process. Instead of legislating exceptions to CON by raising threshold levels or exempting certain groups, the professional health care planners must allow some system whereby the spiraling health costs will not lead to socialized medicine.

LEGISLATION:

AB 643 (Berman): A technical "clean-up" measure to SB 930 of 1981 which modifies the health planning and CON law (Senate inactive file).

AB 1414 (Rosenthal): Creates an 11-member Health Occupations Council staffed by OSHPD for review of licensure and scope of practice of health professionals (Senate Business and Professions Committee).

AB 1913 (Nolan): Requires the Department of Health Services to issue a single license under specified circumstances to two or more general acute hospitals which are at separate locations (Senate inactive file).

AB 2208 (Duffy): Permits a single pilot project permitting certain hospitals to be exempt from CON if they jointly develop an approved community health plan (in Senate).

AB 2411 (Costa): Exempts from CON law 10-bed expansion projects for skilled

nursing or intermediate care facilities (Assembly Ways and Means Committee).

AB 2458 (Moorhead): Extends the prescribing and dispensing health manpower pilot projects for one year (Assembly Health Committee).

AB 2499 (Rosenthal): A health manpower pilot project for acupuncturists to use embedded sutures (Assembly Health Committee).

SB 929 (Garamendi): Requires the Department of Mental Health to conduct a special project to evaluate the number of psychiatric patients with previously unrecognized organic conditions or diseases (Before Governor).

SB 961 (Alquist) Clarifies current law relating to the responsibilities of the state and local governments in enforcing hospital building and seismic safety standards (in Assembly).

SB 1429 (Alquist): Increases by $650 million the amount of authorized outstanding revenue bonds issued by the California Health Facilities Authority (Senate Health and Welfare Committee).

RECENT MEETINGS:

Advisory Health Council. The Council met on March 5, 1981. The Council discussed the status of West Bay HSA and Alameda/Contra Costa HSA, the methodology for annual evaluation and redesignation of area agencies for fiscal year 1983, and heard an appeal filed by Ingleside Lodge DBA: Ingleside Mental Health Center. Decision of the appeal was continued to the April 23, 1982 meeting.

Cardiac Care Review Commission. The 21-member task force administers a system under which hospital heart services are reviewed and evaluated every four years or more frequently if present volume and quality standards were not being met.

The Cardiac Care Review Commission recommended:

1. License sanctions;
2. Acceleration of CON review for expansion of highly utilized cardiac care programs to deal with localized service needs;
3. Creation of a state data registry to provide timely, uniform information to permit rational planning for cardiac services; and
4. Cooperation between government and the private sector in health promotion-health disease prevention programs.

Building Safety Board. The Board met on January 12, 1982 and discussed the requirements for the design of the entrance canopy at Mary's Help Hospital. The Board considered a presentation of initial findings of a survey of hospital buildings as to the layout of the data, data categories and raising additional funds for the study. The Board members are Robert J. Barnecut (Chairman), E.B. Hilton, William F. Ropp, Stan F. Gizienski, Mel A. Cammisa, David J. Leeds, Gary S. Rasmussen, Donald Jephcott, Perry Amimoto, Al Lockhart, Paul Cerles, Charlie Coogan, Larry Meeks, Arthur Sauer, Thomas J. Andrews, Rex W. Allen, Herman O. Ruhnau, Joe Sacco and Bob Scott. The Executive Secretary is M. Neal Hardman. Next meeting is May 11, 1982.

Report of the Graduate Medical Education National Advisory Committee (GMENAC). The Office's Division of Health Professions Development analysis of GMENAC report indicates California is aware of and addressing the physician supply problems identified in the report. In making its analysis to send to the Legislature, the Office used the following perspectives:

1. The maldistribution of physicians;
2. The shortage of primary care doctors and minority physicians; and
3. The oversupply of speciality physicians which threatens to rise further unless checked.

Health Care Cost Containment Coalition. The first meeting of the business, labor, senior citizen and provider Coalition for Health Care Cost Containment was held on December 8, 1981 in Sacramento. The Group was formed to take steps to control health care costs. One cost containment proposal before the coalition would require the state to set hospital income ceilings, which could save about $800 million annually in hospital costs. This was patterned after the systems in New Jersey, Washington and Maryland.

FUTURE MEETINGS:

April 23: Advisory Health Council

May 11 (Sacramento): Building Safety Board.

Resources Agency

AIR RESOURCES BOARD

Executive Officer:
James D. Boyd
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The California Legislature created the Air Resources Board in 1967 to control air pollutant emissions and 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 of 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:

The Air Resources Board (ARB) continues to review its regulations pursuant to AB 1111 mandate. On December 31, 1981, the ARB submitted to OAL proposed amendments to section 1960.1 of Title 13. The amendments would extend, for one year, the 1982 standards for emission of oxides of nitrogen (NO_X) from passenger cars and light and medium duty vehicles of up to 5999 pounds. After considerable input from car manufacturers indicating that they would be unable to meet the current standards, the ARB gave notice that it was delaying for two years the 1983 standard, but voted to delay that standard for only one year, until 1984.

A major ARB project, which should be of considerable interest to residents of coastal areas, environmentalists and oil producers is an extensive study on the effects of offshore oil production on air quality, and the availability and necessity of certain mitigation measures. The ARB undertook the study recognizing the nation's energy demand has moved increasingly to offshore oil development and such activities can have significant effect on air quality.

In California, primarily in the Santa Barbara Channel and off the coast of Long Beach and Huntington Beach, the offshore oil production rate of 66,000 barrels per day is equivalent to between 6 and 7% of all the State's onshore production. This rate represents a twofold increase in the past year. ARB anticipates that the production rate could increase to over 200,000 barrels a day, a threefold increase from the current production rate.

Significant effects on air quality may result from all phases of the development process including the exploration, development and production recovery operations. During the exploration stage, emissions of NO_X can approach 1 ton per day from a single drillship. Currently, 5 drillships are in operation off the California coast, most located in the Santa Barbara Channel. Unmitigated emissions of NO_X can exceed 1 ton per day from an Outer Continental Shelf (OSC) platform. At present, there are 14 platforms operating in the California OSC and 9 platforms within California waters. Industry has proposed the installation of an additional 6 to 7 platforms in the OSC and a maximum of 6 additional platforms in California waters.

Meteorological analysis indicate that the potential for increased air pollution problems along the coastal areas of Southern California resulting from emissions released over offshore waters is great. Increased acidity, ozone and particulate formation may occur from the combination of the emissions from offshore oil production and existing pollution concentrations in urban areas. Air quality simulation models and wind flow patterns indicate that pollutants emitted in the Santa Barbara Channel will be transported onshore and the concentration levels should be significantly high because very little dispersion occurs over water.

Significant adverse impacts of offshore oil production on onshore air quality has spurred extensive discussions by the ARB, local district staffs and industry such as Chevron and Exxon to develop plans, control technology and mitigation measures.

LEGISLATION:

The Environmental Protection Agency (EPA) has relaxed its air quality cleanup demands for the last 3 years. Recent policies of the EPA indicate a willingness to accept vehicle smog inspection every 2 years rather than yearly. The less restrictive federal requirements may have an effect on the progress of SB 33 (Presley), requiring yearly inspections. The bill passed the Senate but has remained dormant in the Assembly for months. Smog tests may average $10 per car and $32 if repairs are required.

RECENT MEETINGS:

On February 24, 1982, the ARB conducted a public meeting to consider a control measure for emissions of photochemically reactive organic compounds from vents of steam drive oil production. Staff determined that federal standards for ozone and state standards for oxidant are exceeded in several California air basins. It has proposed a control measure to reduce the emissions of these photochemically reactive organic compounds in those areas where emissions from steam drive well vents contribute to ambient concentration of photochemical oxidants, mainly in the San Joaquin Valley and the South Coast Air Basins. The main requirements of the suggested control measure are: (1) photochemically reactive organic compounds emissions from steam drive well vents would be limited to 4.5 pounds per well per day; (2) Annual inspections and compliance tests would be required of control systems used to control photochemically reactive organic compounds emissions from steam drive well vents. Those control systems which combust vented emissions could obtain a waiver of this requirement; (3) Exemption from the emissions control requirements may be provided to some steam drive wells in certain circumstances. The suggested control measure has been approved by the Technical Review Group for the Suggested Control Measure Development Process, which is composed of representatives from the ARB, air pollution control districts and the EPA.

ARB determined that the suggested control measure is cost-effective and that implementation of the measure will result in a reduction of emissions of photochemically reactive organic compounds from steam drive well vents from the current level of 376 tons per day to 112 tons per day.

CALIFORNIA COASTAL COMMISSION

Director: Michael Fischer
(415) 543-8555

The California Coastal Commission is responsible for land use regulation of the coastal area of California, supplementing local land use controls. When a land use change or major building project involves the jurisdiction of the Commission, plans must be submitted to the Commission for review and approval. Changes substantially affecting the coastal areas of the state cannot be started without a Commission permit where Commission jurisdiction lies. The Commission has jurisdiction to control development in all those areas of the coastal strip where control has not been returned to local governments.

In the past, control of coastal development returned to local governments only upon Commission approval of a Local Coastal Program (LCP). Recent Legislation has accelerated the process and, after January 1, 1982 development permit authority will return to local governments upon Commission approval of a land use plan (LUP). (See Legislation.)

State tidelands and public trust lands along the coastal strip are also under Commission jurisdiction and will remain so as the law is presently written. Any significant development in those areas is subject to Commission review and approval.

The Commission has 12 voting members and 3 nonvoting members. 6 of the voting members are "public members," and 6 are local elected officials who represent coastal districts. All voting Commissioners are appointed by either the Governor, Senate Rules Committee or the Speaker of the Assembly; each appoints 4 commissions; 2 public members and 2 elected officials. The Chairman of the Coastal Commission is Naomi Schwartz. Michael Fischer is the Executive Director.

MAJOR PROJECTS:

The completion of, and Commission approval of, the Local Coastal Programs (LCP's) is the major project before the Commission. The California Coastal Act of 1976 requires the 67 cities and counties of the coastal strip to prepare LCPs of coastal conservation and development in their respective jurisdictions. These LCP's are reviewed by the Commission and approved if they are found to be in accordance with the Coastal Act. Once approved, the LCP becomes the program guiding development in that city or county.

Each LCP consists of a land use plan (LUP) and implementation zoning ordinances (which carry out the policies and provisions of the LUP). Most local governments submit these in two separate phases. The LCP does not become effective in the city or county until both phases are certified (approved) by the Commission, adopted by the local government and legally certified by the Commission as conforming with the terms of its original certification.

Staff reports that as of February 11, 1982, 20 of the 67 jurisdictions had received Commission approval of their LCPs. Of these, 7 have been "effectively certified" and are now issuing their own permits for coastal development. An additional 23 jurisdictions have received approval of the LUPs only and need only obtain Commission approval of the zoning implementation portion of the total LCP to complete Commission approval of their LCPs. The Commission anticipates further approvals soon and the totals should rise to 23 LCPs approved and 30 individual LUPs approved by July 1, 1982. The Commission expects that all of the remaining LUPs will be submitted by the end of 1982, with all of the zoning implementation portions due for sub-

mittal by January 1, 1984.

AB 1111:

The Commission has responded to OAL's Order to Show Cause as to Chapters 1, 2, and 3 of its existing regulations. The Commission filed its Statement of Review Completion on April 10, 1981. OAL responded in early November, 6 hours short of its deadline for response, with an Order to Show Cause why those regulations should not be repealed. OAL insisted that the regulations objected to did not meet the 5 standards by which OAL reviewed such regulations. The Commission responded by letter to OAL and modified the regulations at issue. The Commission conducted public meetings as to these modifications in January and resubmitted the regulations to OAL on February 9th and 10th. OAL reports that review of these resubmitted regulations will be completed in the near future.

The Commission filed a Statement of Review Completion for most of its remaining regulations, Chapter 5-10, with OAL on December 1, 1982. OAL now has 6 months to review those chapters and respond to the Commission. Certain portions of Chapter 8 of the Commission's regulations have yet to be submitted to OAL, because additional public hearings must be held. The Commission and OAL are attempting to formulate a schedule for the submittal of these remaining regulations.

Public hearings were scheduled for March in Los Angeles to consider proposed amendments to the Commission's regulations which explain and implement the requirements of the California Coastal Act of 1976. The Commission's Authority to adopt these amendments and new regulations is provided in Public Resources Code sections 30333 and 30501.

The amendments basically update the Outer Continental Shelf Plan regulations by deleting all references to the expired Regional Commissions. A new section proposes consent calendar procedures for projects under review of the Commission as the state coastal management agency for the federal Coastal Zone Management Act (CZMA) 16 U.S.C. section 1451 and 15 CFR Part 930.

Subject to certain threshold requirements, section 30515 allows public works or energy facility development applicants to petition the Commission for LCP amendments. All other types of developments must meet local government approval. Regulations describe application procedures and also implement section 30330 and the Commission's national interest responsibilities pursuant to the CZMA 16 USC 1451 and 15 CRF Part 923.

The Commission also proposes deletion of incorrect references in section 130121 to "major public works" as limited to geographic areas as described in Public Resources Code sections 30601(1) and (2). This is expressly inconsistent with section 30601(3). Correction of these references will assure both public works and energy project applicants that they may take advantage of the LCP amendment procedures, regardless of the location of the proposed projects.

RECENT MEETINGS:

Coastal Commission public meetings, both recent and in the past, are generally consumed with Commission consideration of development permit applications, amendments to permits previously issued by the Commission, and appeals from previous permit decisions made by the now-defunct Regional Commissions. The continuing process of approval of LUPs and LCPs is also a major order at most Coastal Commission meetings. Through these routine procedures, the Commission fulfills the land use policies set forth in the Coastal Act in those areas where the Commission still retains jurisdiction.

On Friday January 22, the Commission, while sitting in San Diego, voted to delay approval of an amendment to a permit issued in 1974 to Southern California Edison to construct San Onofre Nuclear generating units 2 and 3. The amendment would modify permit conditions affecting public access to the sandy beach, scenic bluffs, and canyons within the boundaries of the plant site. This amendment application was spurred by the provisions of the Exclusion Area Plan (EAP) approved by the Nuclear Regulatory Commission. Before any radioactive fuel can be loaded into the reactors, this EAP must be implemented.

The EAP requires the 2.2 acres of dry sand beach seaward of the plant be fenced to the mean high tide line and completely closed to all public access. Approximately 10 acres of beach and bluff would be available only for transient use via an improved walkway. This plan would be enforced by warning signs, television monitors, and guards.

The Commission staff recommended approval of the amendment with conditions requiring the utilities to contribute $3 million to expand San Onofre State Beach, approximately one mile north of the nuclear plant.

The public hearing on this amendment drew a large vocal anti-nuclear, anti-amendment crowd. Real estate agents decried the undervaluation of the property ($3 million for beach front acreage). The San Onofre Body Surfing Club attacked the blocked access and the "chilling effect" of the warning signs, guards, and cameras. The utilities (Edison and San Diego Gas & Electric) were both condemned for not including such a plan in their original permit application before the Commission's predecessor (set up under Proposition 20) in 1974. The utilities were also accused of taking state land and charging the ratepayers for the $3 million price tag. Finally, the Commission itself was condemned for forcing through such an important amendment in a very short time. The Commission finally bowed to the overwhelming anti-nuclear crowd after several hours of testimony and voted to delay approval for approximately 1 month. The delay coincided with the next Southern California meeting in Santa Barbara. (See Litigation.)

In Santa Barbara on February 16, the Commission voted to order the utilities not only to pay the $3 million recommended by staff in San Diego in January, but also to add approximately eight acres to Carlsbad State Beach from SDG&E property in the vicinity of the Carlsbad gas-and-oil-fired power plant.

This action was in response to the erection, without approval, of chain link fences and signs around the EAP site. According to the Commissioners, Edison and San Diego Gas & Electric failed to fulfill their 1974 permit obligation to allow full public access to the beach adjoining the plant. The utilities countered that the Nuclear Regulatory Commission forced them to take control of the area as a condition subsequent to the original coastal permit approval.

Several Commissioners also urged the state Public Utilities Commission to make the stockholders pay the cost of these conditions. Edison officials, however, indicated that it is highly probable that they will ask the PUC to include these costs in the rate base.

Another large anti-nuclear crowd charged the Commission with giving special treatment to the utilities over other developers. Several speakers accused the Commission of rushing its decision to help the utilities speed up the licensing of the new reactors.

The decision to require the donation of beach area near Carlsbad State Beach was made in response to a motion by Commissioner Shipp. Several Commissioners preferred a "beach for a beach" replacement of the lost acreage at San Onofre. Shipp also cited the danger of nuclear power plants in arguing for a state recreation area farther from San Onofre.

At the same meeting, on February 18, the Commission refused to allow San Luis Obispo County to impose a moratorium on off-road vehicle use in the

Pismo Beach dunes area. Staff attorneys for the Commission indicated that such action would violate the Coastal Act's public access requirements.

Many of the Commissioners agreed however, that drastic measures are needed to save the dune area from overuse. As many as 50,000 people use the five mile long area on peak summer days. In its Land Use Plan proposal, San Luis Obispo County wants to cut public use down to approximately 7,500. This proposal includes reduction of the current 5,000 campsites to only 100, while 600 campsites will be allowed at a new "staging area" in the southern dunes area. Off-road vehicles would then be prohibited from entering the dunes from the towns of Pismo Beach, Grover City, and Oceano.

The County of San Luis Obispo explained this action was necessary because the State Department of Parks and Recreation failed to implement a 1975 plan to limit such use at the dunes. The Department countered that the county refused to approve a department plan to create staging areas near a Union Oil Company refinery. Union, however, has consistently opposed the plan.

Representatives of off-road recreation enthusiasts claimed that the state purchased the dunes with off-road "green sticker" fees. Although they are opposed to the county's plan, they admit that some controlled use is necessary and are willing to participate in the planning of controls.

LEGISLATION:

The Commission has acted to comply with the provisions of AB 385, which went into effect on January 1, 1982. The Coastal Act originally provided that permit authority would be delegated to local governments only after certification by the Commission, and legal implementation of, a "LCP". AB 385 speeds up that process and transfers permit authority to local governments within 120 days after its effective date or certification of a LUP, whichever occurs last. (Public Resources Code section 30600.5.) After that time, a permit for any development within a local jurisdiction will be subject to approval by the local government and not by the Commission. The standard for issuance of such permits by local governments will be conformance with the certified LUP. AB 385 also provides that any action taken by the local governments is appealable by any person unless the Commission finds it raises no substantial issue with respect to the LUP. Local government permits will be final within 20 days after receipt of notice of permit issuance by the Commission. (Public Resources Code section 30602.)

On January 25, 1982 the Commission adopted amendments to its Administration Regulations to give effect to the provisions of AB 385. These amendments describe the procedures for appeals to the Commission where local governments have assumed permit authority pursuant to the LUP portion of their LCP, prior to certification of the LCP. These amendments also permit local officials to issue administration development permits where local governments have assumed permit authority under AB 385. These regulations are subject to approval by OAL, and staff reports that the regulations will be submitted to OAL in the near future.

AB 385 also directs the Commission to adopt minimum standards for public notice, hearing and appeals to govern local government review of permits. Local governments must, within 60 days prior to assumption of permit authority, provide drafts of all procedures for issuance of coastal permits to the executive director of the Commission. The Commission staff will review and approve those procedures found to be in compliance with the minimum standards adopted by the Commission. If the executive director determines that procedures do not comply with the standards, he shall notify the local government and suggest modifications. The local government may then adopt those modifications or submit its own revisions.

These minimum standards required by AB 385 were formulated by staff and adopted by the Commission at its January 25 meeting. These standards are modeled after the regulations that have been used in the LCP permit procedures. Further, these standards are not regulations subject to OAL approval, but merely minimum standards required by AB 385.

Even where permit authority has been transferred to local government, the Commission will retain original permit jurisdiction for certain types of developments: developments between the sea and the public road paralleling the sea or within 300 feet of the inland extent of the beach; developments upon tidelands, public trust lands, near estuaries and wetlands; developments near coastal bluffs; developments which constitute major public works projects or major energy facilities; developments within certain ports or within any state university or college within the coastal zone; and any development proposed by any state agency. For such developments, permits will still be required by the Commission.

Pursuant to AB 385, the Commission has also promulgated a schedule for submission of remaining LUP's not already submitted. This schedule is based upon the Commission's assessment of each local government's current status and progress. In all cases though, the submittals are to be made no later than January 1, 1983. Failure to meet these schedules can result in Commission preparation and adoption of LUPs which can either be adopted or rejected by local governments. (Public Resources Code section 30517.6.)

SB 626 (Mello) took effect on January 1, 1982. This bill strips the Commission of its legislative authority to issue conditions to coastal permits that protect, encourage, or provide affordable housing opportunities for families of low and moderate income.

The California Coastal Act of 1976 had authorized the Commission to protect and encourage such affordable "housing opportunities for persons of low or moderate income" in the coastal zone. The Commission carried this mandate by attaching conditions to the approval of coastal permits, usually providing for the replacement of affordable housing units converted or demolished and for inclusion of affordable units in any new coastal development.

SB 626 deletes that portion of the Coastal Act which authorizes these activities and further provides that "no local coastal program shall be required to include housing policies and programs." (Public Resources Code section 30500.1.)

In those areas where the Commission retains permit authority, permits are still required from the Commission for coastal development. However, the Commission cannot demand its policies be fulfilled as conditions to that permit.

SB 626 transfers the protection of affordable housing opportunities to the local governments by the addition of section 65590 to the Government Code. This section provides that local governments must apply specific housing requirements when authorizing developments along the coastal strip within their jurisdiction. Section 65590 provides the minimum requirements for housing within the coastal zone for persons and families of low or moderate income and is not intended to restrain local governments from implementing further requirements.

In addition to taking away the Commission's authority to require low income housing with respect to permits applied for and approved after January 1, 1982 the bill also provided that conditions requiring low income housing incorporated into a permit approved prior to January 1, 1982 may be amended to delete such conditions. In such cases only the provisions of Government Code section 65590 are applicable as applied by the local governments.

On January 11, 1982 the Commission

adopted policies for permits to be issued after January 1 and requested amendments to permits issued before January 1, pursuant to the provisions of SB 626. These were not in the form of regulations, which the Commission is not empowered to promulgate, but in the form of policy statements to be used to carry out the provisions of SB 626.

Where a permit, including housing requirements, was issued prior to January 1 and terms of the permit had been met through an executed agreement between the applicant and the Commission, the Commission is not required to entertain requests for amendment. Where no such agreement has been executed, a person whose permit was issued prior to January 1 and who has not performed "substantial work" on the development can proceed along either of two avenues: he may comply with the conditions of the permit, in which case the Commission is not required to entertain proposed amendments to the permit, or he may proceed without complying with the permit conditions and shall be governed by the policies of Government Code section 65590, as applied by local government. The Commission has taken the stance that if the permittee chooses the latter procedure, the Commission will be entitled to notify the involved local government, thus insuring compliance with that jurisdiction's housing policies. Aside from such notification, the Commission is not empowered to enforce the provisions of Government Code section 65590.

SB 626 is silent as to the situation where no permit has been issued, but the Commission has granted conditional approval. The Commission was uncertain as to whether it could still enforce its housing policies in the subsequent issuance of such conditional approved permits. This uncertainty has been clarified by the passage of AB 321 (Hannigan) approved by the governor on February 17, 1982 which, among other things, amends portions of the Public Resources Code to alleviate this problem. AB 321 provides that where the Commission has only granted approval conditioned upon fulfillment of housing policies, but has not issued a development permit, an applicant who has not complied with such conditions may either comply and not be subject to local housing requirements (section 65590), or not comply with Commission conditions and apply to local government for the application of its housing requirements, pursuant to Government Code section 65590. Where the applicant has taken no action upon the application, the Commission shall not impose low income housing conditions and the development is subject to local control.

LITIGATION:

Following the January 22 San Diego meeting, Southern California Edison filed suit against the Commission's claim of jurisdiction over the utility's action in restricting beach access in front of the San Onofre nuclear power plant. Edison completed the fencing of the 4,500 foot stretch of beach before filing the suit in the United States District Court in San Diego.

The Commission threatened to impose a $5,000 per day fine on the utilities as long as the fence stood.

Edison's actions came after the Commission voted to delay consideration of the utility's permit amendment application (see Recent Meetings). The suit claims that the United States Constitution guarantees supremacy of the Nuclear Regulatory Commission over the Coastal Commission in this matter. It asks that the Commission be enjoined from telling the utility what steps to take to secure the safety area.

The Commission asserted in its staff report on the amendment application that according to the holding in *Pacific Legal Foundation v. State Energy Commission*, state regulation of nuclear power plants is preempted only as to regulation for radiation hazards. Here, the Commission does not seek to regulate radiation hazards. The Commission intends only to review the application for consistency with the California Coastal Management Program pursuant to section 1456(c)(3) of the Coastal Zone Management Act. Specifically, the Commission is concerned with public access in front of the plant which is within its authority.

Edison argues that the Coastal Zone Management Program was adopted after the original coastal permit was approved for San Onofre. The Commission counters that the application for the low power operating license before the NRC, from which the restriction of beach access was made mandatory, was made after the CZMA and therefore is not exempt from the Commission's review for consistency.

Edison dropped the suit after the Santa Barbara Commission decision on February 16. (see Recent Meetings)

On February 24, the California 2nd District Court of Appeal sitting in Los Angeles ruled that the Commission's guidelines requiring property owners to allow public access to beachfront areas in return for a development permit were unconstitutional and enjoined the Commission from using those guidelines in considering coastal permit applications.

The three-judge panel said the way the Commission used its power under the Coastal Act was unconstitutional. It was cited as too aggressive and for ignoring private property owners' rights.

The court said the Commission "has simply declared the very existence of privately-owned residences along the shoreline is an anathema to the public interest and has cast the private property owner in the role of the 'heavy' in every scenario."

The Court drew a distinction between homeowners and large developers whose projects clearly affect the shoreline. They are the property owners who should give up something for public use. "It seems clear to us that the Legislature in speaking of access requirements for 'new development' in the Coastal Act, meant large new construction of multi-purpose or multi-unit projects," the court said.

As to the guidelines, the court wrote that they were "a vehicle for increasing and expanding public access at the expense of private property owners, giving no consideration to whether or not any particular proposed development creates a need for additional access or impairs existing access."

The Commission must consider the social and economic needs of the people when seeking to maximize public access and recreational opportunities. Further, the constitutional protection that the public must not take private property without just compensation must be "scrupulously observed."

The guidelines are too broad in declaring that "all new developments resulting in any intensification of land use generates sufficient burdens on public access conditions in conjunction with that development." The Court also found that the Commission ignores existing nearby access and declares "by fiat that no adequate nearby access exists in any place in the coastal zone."

This case was taken on appeal by the Pacific Legal Foundation after a Los Angeles Superior Court judge dismissed it as not "ripe" for review because no specific parcel of property was involved.

Executive Director of the Commission, Michael Fischer, indicated that he will ask the Commission to immediately appeal the ruling to the California Supreme Court.

This decision will not affect public access already granted by property owners. Those who have not used the coastal permit containing beach access could reapply without the access provisions.

FUTURE MEETINGS:
April 20-23—Los Angeles
May 5-7—San Francisco
May 25-28—Santa Barbara

BOARD OF FORESTRY

Executive Officer:
Dean Cromwell
(916) 445-2921

The Board of Forestry is a 9 member board appointed by the Governor to guide policy and oversee the administration of the Z'berg-Nejedly Forest Practice Act, the State Forest system, and the State's wildland fire protection system. It writes forest practice rules, provides policy guidance to the Department of Forestry, and determines, establishes and maintains a state forest policy. California Public Resources Code section 731 requires that 5 members of the Board be selected from the general public, 3 from the forest products industry and 1 from the range livestock industry.

For purposes of promulgating forest practice rules the state is divided into 3 distinct geographic districts, Southern, Northern and Coastal. In each of these districts a District Technical Advisory Committee (DTAC) consults with the Board in the establishment and revision of district rules. Among other duties each DTAC is required to consult with and evaluate the recommendations of the Department of Forestry, concerned federal, state and local agencies, educational institutions, civic and public interest organizations, private organizations and individuals. DTAC members are appointed by the Board and receive no compensation for their services.

The Board also licenses Registered Professional Foresters (RPF). An RPF, by reason of his knowledge of the natural sciences, mathematics and the principles of forestry — acquired through forestry education and experience — performs services including but not limited to preparation of timber harvesting plans (THP), consultation, investigation, evaluation, planning and supervision of forestry activities when such professional services require the application of forestry principles and techniques, or knowledge of forest practice rules.

MAJOR PROJECTS:

The Board is presently considering revised silvicultural rules which concern the practice of controlling the growth of forests. The rules deal especially with regeneration, including the type and extent of cutting allowable to maintain the land at or near its productive capacity. The new rules were introduced to standardize terminology and remove ambiguity of terms used to describe silvicultural operations in timber harvesting plans. The changes simplify the THP review process and aid the Department of Forestry (DOF) in analyzing the impact of logging and determining which rules apply to specific silvicultural systems. Costs to the private sector are estimated to be about $3.5 million annually. The rules were submitted for OAL approval and subsequently returned for clarification on alternative silvicultural practices. No final Board action has been taken.

The Board adopted new rules for the protection of watercourses and lakes at its September, 1981 meeting. These rules were the subject of much discussion and remain somewhat controversial (See CRLR, Vol. 1, No. 3 (Fall, 1981) p. 64.) The Board hopes the new rules will result in beneficial uses of water potentially affected by harvesting operations. They clearly promote the objective of water quality protection. A range of strong protective measures is specified, but substantial flexibility is given to an RPF to propose alternative measures which meet an equivalent standard of protection. Costs to private industry are estimated to be between $6.9 and $11.7 million per year. OAL recently returned the proposed rules for better definition of the terms "beneficial use" and "quantities deleterious" (See CRLR Vol. 1, No. 3 (Fall, 1981) p. 65.) Final Board action is pending.

Recently adopted regulations requiring notice to be given to adjacent landowners prior to the commencement of timber operations have been accepted by OAL and took effect in March, 1982. The costs of the required notice will be shared by timber owners and the state, with free notice of the submission of a THP provided to the public. The Board estimates costs to timber operators to range between $40,000 and $248,000 annually. Annual cost to the state will be approximately $22,000.

In December, 1981 the Board adopted new rules to better specify best management practices for logging and erosion control activities associated with timber harvesting. These newly adopted regulations will: (1) provide a general standard for conduct of timber operations; (2) set standards applicable to felling practices; (3) set standards applicable to tractor yarding; (4) set standards for cable yarding; (5) provide protection for bird nesting sites; (6) set standards for servicing of logging equipment and disposal of refuse; (7) set standards for construction of waterbreaks; (8) direct timber harvesting during the winter period; and (9) set standards for tractor road watercourse crossings.

The Board in December, 1981 also adopted regulations which would have provided for development of alternatives. However, based on input from its RPF Liaison Committee, the Board rescinded adoption of these sections in January, 1982. New language to provide alternatives has been developed consistent with the suggestions of the Liaison Committee. The Board believes that this language raises substantial issues and has therefore scheduled further public hearings.

Some form of language to provide alternatives is essential because standard rules may not always fit site-specific conditions. In such cases, lack of ability to use an alternative practice could mean the best practices to provide environmental protection might not be used or methods required under standard rules might impose unnecessary costs on the forester, timber operator or land owner. Hearings were set for March, 1982 and final Board action is expected in April, 1982.

The Board concluded hearings on proposed changes to the boundaries of state responsibility areas (SRA) at its October meeting. SRAs are the geographic areas over which the state maintains primary responsibility for providing fire protection. Local responsibility areas (LRA) are those areas primarily protected by local authorities. The final revisions have been adopted by the Board and presently await publication.

The Board is in the process of reviewing its rules under AB 1111. January, 1982 was the scheduled date of completion. Due to workload and funding problems, the Board and Department are currently 4 months behind schedule. Extra staff has been added to alleviate the problem.

RECENT MEETINGS:

At the December meeting the Board continued its discussion of the establishment of an interdisciplinary review team to aid the Director in evaluating proposed timber harvesting plans and their environmental effect. The proposed review team would consist of a representative from the Regional Water Quality Control Board, Department of Fish and Game, Department of Parks and Recreation, California Coastal Commission (for plans in the coastal zone), California Tahoe Regional Planning Agency (for plans in the Tahoe Basin) and the Department of Forestry.

The Governor first established review teams by executive order in 1975. In 1976, the court ruled in *National Resources Defense Council, Inc. v. Arcata Nat. Corp.*, 59 Cal.App.3d 959, 131 Cal.Rptr. 172 (1976), that Environmental Impact Reports (EIR) pursuant to the California Environmental Quality Act (CEQA) would be required for timber operations conducted under the Z'berg-Nejedly Forest Practice Act. To streamline the EIR process, the Legislature established a "functional equivalent process," section 21080.5 of the Public Resources Code,

allowing an agency to meet the provisions of CEQA if certain statutory tests are met. Review teams are an essential element in the Department's functional equivalent process.

At the December meeting, the Board expressed a desire to incorporate all regulations pertaining to timber harvest plan review into a single article within Board rules. Therefore, the interdisciplinary review team issue was referred back to staff to develop a method of incorporation. To date, no public hearings have been scheduled.

Hearings on proposed regulations pertaining to logging roads and landings were closed during the November meeting. Subsequent revision of the proposed rules, however, resulted in reopening the hearings. At the January meeting the Board decided to schedule additional hearings for April, 1982. The proposed rules are designed to prevent erosion and subsequent water pollution caused by improperly constructed roads. A balance must be struck between the need to protect the forest environment and the desire to minimize the cost of building and maintaining the necessary roads.

Due to a lack of business the Board did not schedule a meeting in February, 1982.

FUTURE MEETINGS:

The Board holds monthly business meetings the first Tuesday and Wednesday of each month.

SOLID WASTE MANAGEMENT BOARD

Executive Officer:
John W. Hagerty
(916) 322-3330

The Solid Waste Management Board bears primary responsibility for the development and maintenance of state policy for solid waste management. To fulfill its statutory mandate, the Board established guidelines for counties to follow in preparing their comprehensive solid waste management plans and continues to provide technical assistance to the counties in the preparation, revision, and implementation of their plans. The Board also administers the statewide litter control, recycling, and resource recovery program created by SB 650. Board membership consists of 9 appointed members: 1 county supervisor, 1 city councilperson, 3 public representatives, a civil engineer, 2 persons from the private sector representing the solid waste management industry, and an additional public representative with specialized education and experience in natural resources, conservation, and resource recovery.

MAJOR PROJECTS:

SB 650 involves funding for 4 grant categories: litter control, resource recovery, recycling, and public awareness. 30% of the grant money must be spent towards increasing the amount of materials recycled in the state. Government Code section 68047.

3 years ago the Board began the recycling program by awarding grants to 4 different types of operations ranging from public, nonprofit recycling centers to curbside collection services. This year the Board decided to place greater emphasis on large-scale curbside collection programs and allocated approximately 80% of the recycling funds for this purpose.

One of the primary reasons for the shift in emphasis is that curbside collection programs appear least objectionable to existing private recyclers. Early in the program private entrepreneurs complained to their legislative representatives that SB 650 grants had an adverse impact on their recycling operations. In response, the legislature enacted SB 261 to require that grants be awarded only to applicants who furnish evidence that the materials they propose to collect would not otherwise be recovered. Since curbside collection generally does not duplicate services offered by existing private recyclers, it fulfills the SB 261 requirements.

Curbside collection also appears to be the most effective method of generating resident participation and thus results in recovery of more material than the other types of operations. However, it also involves greater costs. Several Board members expressed concern that the programs are not self-sufficient. Other Board members point to the indirect benefits which make the effort valuable. Curbside collection programs save the locality from paying for disposal of those materials at landfills and save the landfill space itself. Additionally, recycling materials conserves our natural resources—a factor sometimes overlooked when determining cost-effectiveness.

In its December, 1981 "Final Report on Litter Control, Recycling and Resource Recovery," the Legislative Analyst noted that the lack of information and market conditions make it impossible to evaluate the net effect of curbside collection programs. Since SB 650 sunsets in 1983, evaluation of these programs becomes important. Presently the Board is conducting 5 case studies of curbside collection which should document the benefits of the program.

Efforts by the Board to increase the supply of recycled material will not be successful in the long run unless the demand for these materials also increases. Recognizing this, the Board recently began funding research programs aimed at finding and developing secondary markets. For example, the American Paper Institute received a grant to determine consumer preferences regarding recycled materials. The study may show that consumers actually prefer to buy products packaged in recycled rather than virgin materials.

Another major project for the Board involves the siting of solid waste management facilities. By 1985 the state's landfills will be filled to capacity, yet public opposition to new sitings results in local officials rejecting applicants even though the proposed facility meets all health and safety requirements. The real problem lies with finding sites close enough to urban areas so that transportation costs are not prohibitive.

Since local interests consistently vote against the siting of new facilities in their area, under the present law the Board is forced to dictate the location of new facilities.

As an alternative to this preemptive siting, the Board proposes new legislation which gives the communities a chance to solve the problems first and uses preemption only as a last resort. The bill would require counties to include in their solid waste management plans a schedule for establishing, expanding, and closing disposal facilities. If the locality fails to carry out this requirement, the Board will prepare a facility schedule which the county must implement.

The remainder of the bill is structured around conflict resolution. The governing body of the affected cities and counties appoints members to a local committee which then negotiates with the applicant. Subjects for negotiation include compensation for economic impact as a direct result of the facility, aesthetic concerns, uses of the site after closing of the facility, and economically feasible methods to recycle or reduce quantities of waste going to the facility. However, the local committee may not negotiate the need for the facility. The Board remains as a noninterested third party, or, upon request, acts as a mediator. Failure to reach an agreement after a reasonable period of negotiation would lead to binding arbitration.

RECENT MEETINGS:

At the February 4-5 meeting, the staff presented a lengthy evaluation of the local solid waste enforcement agencies ("LEAs"). Every city and county can designate an agency of its local government as a LEA, responsible for enforcing state minimum standards for solid waste handling and disposal. Government Code section 66796.

Of the 121 existing LEAs, the staff evaluated 40. Overall the LEAs demonstrated unsatisfactory enforcement. Finding that lack of Board support accounted in part for this poor performance, the report concluded that the staff must establish a closer working relationship with the LEAs. To develop this relationship would require state funds so that the Board could provide, among other things, consultation and technical assistance for the LEAs.

The staff also proposed several statutory amendments including the following:

1. Give the Board authority to revoke designation of LEAs failing to fulfill their responsibilities.
2. Require the Board to inspect all permitted facilities at least every 4 years.
3. Streamline the permitting process by requiring the applicant to obtain a single permit from the Board. Presently, operating permits are required by 3 state agencies: Regional Water Quality Control Boards, Department of Forestry, and SWMB.
4. Establish a SWMB superfund from which grants may be made to local governments for cleanup of health and safety hazards caused by closed, illegal, and abandoned dumpsites. Hundreds of closed and abandoned dumpsites exist in the state. If nothing is done, eventually the communities develop around and over such areas, often with no knowledge of the previous use.

The Board is presently supporting AB 1346 which would accomplish the first 2 recommendations.

Since inadequate financial support plagues many LEAs, the report also suggested that the Board request local government to establish service fees. Statutory authority exists for local governments to collect fees from solid waste operators to fund the cost of administering the LEA. Private industry members present at the Feb. 4-5 meeting spoke out strongly against imposing any user fees.

April 19-25 the Board is sponsoring the Great California Resource Rally. The Rally involves a week of activities planned throughout the state aimed at encouraging conservation of energy and resources by recycling used products and reducing the amount of waste created. Last year's Rally won national acclaim as the "Best Observance of the Keep America Beautiful Day."

FUTURE MEETINGS:

To be announced.

STATE WATER RESOURCES CONTROL BOARD

Executive Director:
Clint Whitney
(916) 445-3085

The Water Resources Control Board, established in 1967, regulates state water quality and water rights. The State Board and the 9 California Regional Water Quality Control Boards are the state agencies principally responsible for the control of water quality in California. The State Board consists of 5 full-time members appointed by the Governor. Each regional board consists of 9 part-time members appointed by the Governor for 4 year terms.

The following persons (with appointment category and term expiration date) comprise the current Board: Chairwoman Carla M. Bard (Water Quality, 1/15/82); Vice Chairman L. L. Mitchell (Public Member, 1/15/81); Jill B. Dunlap (Attorney, Water Supply & Water Rights, 1/15/83); and F. K. Aljibury (Sanitary Engineering & Water Quality, Irrigated Agriculture, 1/15/84). There is 1 vacancy (Registered Civil Engineer, Water Supply and Water Rights). The Governor appoints members subject to senate confirmation. Members whose terms expire may continue until reappointed or replaced.

The State Board has 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 and assistance to waste-water facility construction. It researches and provides technical assistance on agricultural pollution control, waste-water reclamation, groundwater degradation and the impact of discharges on the marine environment. The Board administers California's water rights laws by licensing appropriative rights. The Board may exercise its investigative and enforcement powers to prevent illegal diversions, wasteful use of water, and violation of license terms.

Board activity affecting water quality in California operates at regional and state levels. Each Regional Board adopts Water Quality Control Plans, referred to as Basin Plans, for its area. These plans list uses of the waters within the region and establish the standards of water quality required to support those uses. Basin Plans serve as a basis for further Regional Board action. For example, waste discharge permits will not be issued unless they conform to the requirements of the Basin Plan, applicable state plans and federal standards. At the State level, the State Water Resources Control Board approves all regional Basin Plan Amendments. In addition the State Board acts on petition of any interested party dissatisfied with a Regional Board decision.

As a consequence of this agency structure, regional board meetings often consist of public hearings on Basin Plan Amendments and waste discharge requirements for various facilities, as well as discussion of whether to issue cease and desist orders against dischargers. At monthly business meetings, the State Board hears petitions on Regional Board actions and addresses independent matters such as construction grants, disputed water rights, and agreements with other state agencies.

MAJOR PROJECTS:

Regulatory Review: Office of Administrative Law (OAL) actions in mid-January snagged Board approved regulations related to the California Environmental Quality Act (CEQA) and the Water Quality Control Fund.

On January 14, 1982 OAL rejected proposed amendments to Title 23 California Administrative Code, sections 2700-2749.3 (implementing CEQA) on the ground that certain sections expanded the Board's authority without an adequate showing of necessity. OAL specifically reserved judgment on existing CEQA regulations which were not amended.

The OAL rejection gave "examples" of sections deemed not to comply with the Administrative Procedures Act. It stated the Board had imposed an Environmental Information Form on local public agencies for the first time and had added "prevention of nuisance" as a new basis for imposing conditions on waste discharges. Further, the rejection stated that the Board had unjustifiably tightened the approval standard for projects which had significant, though mitigable, environmental impacts by requiring specific findings supported by substantial evidence. As of this writing, Board staff had not decided whether to recommend that the Board appeal OAL's CEQA rejection.

OAL's January 29 Order to Show Cause pertained to Water Quality Control Fund loans to public agencies (Chapter 4, Subchapter 12, Title 23, California Administrative Code). The regulations identify eligibility criteria, specify procedures for Regional and State level review, set construction priorities and define loan contract terms.

OAL objected that certain sections (e.g. section 3580, Purpose) merely restated Water Code provisions and were, therefore, extraneous. Other sections

were challenged as more internal management procedures rather than regulations as defined by Government Code section 11342(b). These included distribution procedures for completed applications (section 3590) and specification of documents for State Board review (section 3593).

In several sections requiring loan applicants to provide "appropriate" information or "documents as required," OAL demanded greater specification under AB 1111's clarity requirement. Elsewhere, OAL's order questioned the Board's authority to require the Regional Boards to make independent investigations and project priorizations. (Typically, Water Board regulations cite as authority Water Code section 1058 which broadly authorizes the Board to "make such reasonable rules and regulations as it may from time to time deem advisable in carrying out its powers and duties under this code.")

A Board response to the order to show cause is expected.

Apart from the difficulties with OAL's review, the Board delayed noticing for public comment its water rights subchapters, and instead submitted a revised review schedule to OAL. The water rights sections cover procedures to appropriate water, stock pond rights, procedures to determine disputed rights, recording requirements to extract or divert water in 4 specified counties, and procedures to protect instream beneficial uses such as fish and wildlife protection and recreation. CRLR Vol. 2, No. 1, (Winter, 1982) p. 71 stated that these sections had been noticed for public comment. Board staff subsequently decided to seek a modification of the review period, and the subchapter was not noticed for public comment.

LEGISLATION:

AB 2281, recently introduced by Assemblyman Berman, directly affects the powers of the Board. As of late February it had cleared the Assembly and was awaiting disposition in the Senate Agriculture and Water Committee. This bill is in response to AB 2823 of 1980, the "Lehman Bill" (adopted Ch. 877 1980), which added section 13271 to the Water Code. AB 2281 would amend this section, which deals with the "minimum reportable quantity" of a pollutant released in any water system.

One purpose of AB 2281 is to give some teeth to the criminal sanctions ostensibly passed by the Lehman Bill. Sanctions for failure to report the release of pollutants into water have been meaningless since no minimum reportable quantities were established under AB 2823. The chore of establishing these minimums for the 791 toxic substances established under Health and Safety Code section 25140 has been delegated to the Board. Although AB 2823 allows establishment of these standards on a piece meal basis, the Board estimates that the project will take at least 10 years using present staff resources. The project could be completed in approximately 1½ years with additional special staff. However, the Board estimates this cost at $2.5 million. Since no funds were appropriated for this work under AB 2823, the Board will not be able to promulgate the regulations established under the Lehman Bill for at least the 10 year period.

The Board is using 2 methods in its attempt to enforce the requirement that releases of toxic substances be reported. The first is to establish "minimum reportable quantities" as required under AB 2823 using its available staff. Since this is a slow procedure, the Board is focusing on the "dirty dozen", the 12 most toxic substances of the 791 they must study. The second method the Board has chosen is legislative amendment, resulting in the introduction of AB 2281.

In essence, AB 2281 would allow the Board to adopt an interim measurement of one pound per substance until an individual quantity could be determined for each based upon toxicity. This one pound figure is derived from the Federal standards, which are concerned primarily with toxicity in ocean waters. Thus, the Board fears that this may be an excessive amount for some of the more toxic substances, such as the "dirty dozen", in the smaller rivers and lakes of California. The staff, however, expects to have standards for these 12 chemicals by the end of the year.

Opposition to AB 2281 is mainly from industry, who claim that the one pound requirement is too stringent and will swamp the state with calls for chemical clean-ups. Furthermore, AB 2281 designates oil as a substance to be regulated on the basis of the one pound minimum. Industry claims that this requires reporting of only a few ounces of oil, which is unreasonable, and could produce the absurd result of criminal penalties imposed for failure to notify of an overflow while filling the gas tank in the family car. The Board staff admit that the one pound minimum for oil is not consistent with standard liquid measurements and expect this to be amended to one gallon. Opposition to the bill in the Senate Agriculture and Water Committee is expected to be stringent even with this change, however, since this committee inserted the section into the Lehman Bill which AB 2281 now seeks to amend. The Agriculture and Water Committee, however, may choose to pass AB 2281 intact to prevent the appearance of undermining the enforcement provisions of the now enacted Lehman Bill.

LITIGATION:

Bypassing the District Court of Appeals, the California Supreme Court agreed in February to hear *National Audubon Society et al. v. Department of Water and Power of the City of Los Angeles et al.*, decided by the Alpine Superior Court in September, 1981. The State is a defendant in that case.

The Superior Court granted the State's motion for summary judgment, ruling that plaintiff Audubon Society failed to exhaust its administrative remedy through the State Water Resources Control Board. The court rejected the argument that it had concurrent jurisdiction with the Water Board and stated that the Public Trust Doctrine, argued by Audubon, does not function independently of statutory and administrative procedures.

Audubon hopes to prevent Los Angeles from appropriating more water from Mono lake whose level continues to drop, adversely affecting wildlife.

Pending its final decision in *U.S. v. State of California* 509 F.Supp. 867 (9th Cir. 1981), the Ninth Circuit Court of Appeals issued an injunction pending appeal on February 2, 1982 preventing the U.S. Bureau of Reclamation from filling the New Melones Dam reservoir above the 844 foot level. The injunction effectively forces temporary compliance with the Water Board's Decision #1422 and Interpretive Order #80-20, the subject of Federal-State litigation over the past 7 years.

This protracted struggle began in 1975, when the United States Bureau of Reclamation sought declaratory relief allowing it to use unappropriated water in California for Federal Reclamation Projects without first applying to the Board. The District Court held that the application must be made, but that the Board must grant the application if unappropriated waters were available. On appeal, the Ninth Circuit affirmed, but stated that the requirement for application was one of *law* under the Reclamation Act of 1902, *not comity* as stated by the District Court.

By this time the Board had issued the requested permits, but with 25 conditions which greatly limited the use of the water. At the U.S. Supreme Court, the government sought a declaratory judgment allowing it to impound whatever unappropriated water was necessary for the reclamation project without complying with state law. The Supreme Court held contra, and stated that the Board could impose any condition on control, appropriation, use, or distribution of

water in a federal reclamation project which is not inconsistent with clear congressional directives concerning the project.

The Supreme Court remanded for further findings consistent with its opinion and the District Court on remand determined that a complete fact-finding procedure was necessary. After this was completed, the District Court ruled that most of the Board's conditions were consistent with congressional directives, including the level of water in the Melones Dam reservoir. The U.S. is now in the process of re-appealing the case to the Circuit Court.

RECENT MEETINGS:

Low Interest Construction Loans: Faced with tight money and mandated pollution control projects, financially beleaguered local governments turned to the State Board for help and got much of what they wanted.

By separate actions in January and February, the Board obligated $1,132,000 of its Water Quality Control Fund. Taken together, the obligations reduced the available balance from $3,078,494 in January to $2,036,493 in February, a drop of nearly 34%. Water Code section 13400 authorizes loans to public agencies to construct waste treatment facilities to prevent pollution, reclaim, or otherwise conserve water. The revolving fund continually regenerates itself as earlier loans are paid off. With recent interest rates as low as 6.1%, the fund's attraction to local governments is understandable.

On January 21, 1982, the Board voted 4-0 to approve a $432,000, 10 year loan to finance the local share of a $5 million municipal wastewater system for Nyeland Acres (Community Service Area #30, Ventura County). Then, on February 18, after balking at a $1 million loan request by the Aliso Water Management Agency (southeast Orange County), the Board voted 3-0 to provide $700,000 for 10 years with a 3 year moratorium on interest. The allocation followed a personal appeal by Laguna Beach Mayor Sally R. Bellarue and was suballocated to the City of Laguna Beach and the Emerald Bay Service District, members of the Aliso joint powers agency.

The Nyeland loan stemmed from the Los Angeles Regional Board's prohibition of septic systems due to tank failures in the area. When Ventura County (on behalf of Nyeland) offered Revenue Bonds at 11% interest, no bids were received. Moreover, 3 local banks approached on behalf of Nyeland would have required 17 to 18% interest on private loans.

The Aliso request was more controversial in that no bond issue was actually attempted and the Board's financial hardship indicators gave inconsistent results. Though direct debt per capita substantially exceeded the Board's $150 standard, the ratio of debt to assessed valuation for both Laguna Beach and Emerald Bay was well under the 25% norm. Mayor Bellarue tried to counter the notion that Laguna Beach is a rich community, pointing out that there are many poor and moderate income people. In approving the loan, the Board directed staff to rework eligibility criteria and return with recommendations by May 1, 1982.

Tahoe Land Development: Also in January, the Board unanimously denied a petition by lot owners in the Kings View subdivision near Lake Tahoe for relief from the Lahontan Regional Board's order requiring sewer hook-ups. In so doing, the Board affirmed its own Chief Counsel's interpretation of Water Code section 13951 and rejected that of the State Attorney General (Opinion #81-505, 64 Ops. Atty. Gen. 660).

The contested section generally requires sewer hook-ups in the Tahoe watershed unless the Regional Board finds that "continued operation" of septic tanks would not harm the lake. In 1971, the Regional Board exempted Kings View from the requirement even though no septic tanks existed. 9 years later (November, 1980), in response to inquiries by the Tahoe Regional Planning Agency, the State Board's Chief Counsel informed the Regional Board that the exemption was improper since no septic tanks existed to constitute a "continued operation." On request from Senator Ray Johnson, the Attorney General reviewed section 13951, and determined the Kings View exemption was proper and could apply to newly installed systems.

Faced with conflicting opinions, the Regional Board treated the Attorney General's version as "advisory only" and on October 8, 1981, rescinded its 1971 exemption. On January 21, 1982, the State Board rejected the lot owner's appeal and, further, discarded one party's contention that reliance (by seeking permits) on the 1971 order raised an estoppel prohibiting its rescission. Any further recourse for Kings View would now be to the courts.

Twenty Year Water Policy: Perhaps reflecting on what Board Member Jill Dunlap described as the "level of hysteria generated by too many lobbyists and too many lawyers without enough to do," the Board sighed audibly and voted 4-0 to publish "Policies and Goals for California Water Management: The Next 20 Years" (January 21, 1982). The Bulletin is a joint undertaking with the Department of Water Resources, begun in 1977 as a rework of the 1957 "California Water Plan." Incorporating the visions and revisions of numerous public hearings, the document tries to balance environmental and developmental interests. Board Member F. K. Aljibury emphasized that the publication does not embody all State policy on water development and in no way limits other agencies such as the Bureau of Reclamation.

Oxnard Seawater Intrusion: At its workshop session (February 3) staff briefed the Board on actions taken by Ventura County to resolve salinity problems in the Oxnard Plain Groundwater Basin (see CRLR Vol. 2, No. 1 (Winter, 1982) p. 71). Extensive pumping in a 20 square mile area caused sea water to intrude on fresh groundwater supplies. At its November 19, 1981, meeting the Board started the clock running on a 90-day period in which local government could act to protect the water supply. Absent local action, the Board could refer the issue to the Attorney General for possible litigation.

Staff informed the Board that an election to form a Ventura County Seawater Intrusion Assessment District succeeded in January and that the District was also seeking special legislative authority to manage the salinity problem. The election appears to obviate the need for State initiated legal action, though the Board clearly retains that option if local action fails to resolve the problem.

Miscellaneous Business: In other actions the Board:

1. Adopted (3-0, January 21, 1982) a final cease and desist order requiring an appropriative water right permit holder in Amador County to assure future release of stored water to a downstream permittee with senior rights. Below normal rainfall in 1980-81 led to the downstream shortage. Various enforcement contacts and preliminary orders failed to convince the permittee to release the water. Failure to comply with the cease and desist order could lead to legal action by the State Attorney General.

2. Adopted (3-0, January 21, 1982) a $155,000 revised workplan to obtain public input on Areawide Waste Treatment Plans under section 208 of the Federal Clean Water Act through fiscal year 1982-83. The workplan designates a full time public information officer to work with staff from the Environmental Protection Agency, and State and Regional Boards to conduct seminars and public hearings on specific section 208 projects.

3. Listened to a staff report on recent Department of Finance imposed budget cuts. Based on an Environmental Protec-

tion Agency report showing only marginal differences between states which do not certify water quality testing laboratories and California (which does), the Board dropped its lab certification program, effective immediately. The Departments of Health Services and Fish and Game, which actually operate the certification program, informally opposed the Board's withdrawal and may lose staff as a result.

4. The ongoing problem of pesticide regulation has prompted the State Department of Food and Agriculture (DFA) and the Board to draft a Memorandum of Understanding. At the suggestion of DFA, the two staffs worked together to produce the MOU, which addresses the problem of jurisdictional overlap in the pesticide control area. (see CRLR Vol. 1, Nos. 2 and 3, Summer and Fall, 1981.) The memorandum elaborates each body's interest in pesticide management and formalizes a working relationship. In essence, the Board agrees to identify pesticides requiring water quality standards and to participate in DFA's Pesticide Advisory Committee and Pesticide Registration and Evaluation Committee. DFA agrees to provide pesticide registration data.

Despite the DFA staff's major role in the drafting of the MOU, and the Board's adoption of it over 3 months ago, on December 17, 1981, the DFA has failed to agree to the document. The original cause for the delay was AB 1274, which would have addressed the issues in the MOU legislatively. AB 1274 eventually died during the 1981 session. DFA now claims that the cause of the delay is the issue of physical access by the Water Board staff to trade secret documents which it possesses. In adopting the MOU, the Board decided to address this issue in a subsequent agreement. The DFA is opposed to any further negotiations, since it may be held responsible for the release of any trade secrets. The result is an apparent stalemate on the MOU until this issue can be resolved.

FUTURE MEETINGS:

Regularly scheduled meetings of the Board will be held May 20, June 17, July 15, August 19, 1982, in the Resources Building Auditorium, 1416 9th Street, Sacramento. In addition to regularly scheduled business meetings, the Board holds numerous separately noticed sessions on specific issues.

Independents

BOARD OF CHIROPRACTIC EXAMINERS

Executive Secretary: Edward Hoefling
(916) 445-3244

The Board of Chiropractic Examiners was created by an initiative 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 7 members, 2 public members and 5 licensed professionals.

RECENT MEETINGS:

The Board completed the regulatory review mandated by AB 1111 and filed its report with the Office of Administrative Law March 1. A regulatory hearing to implement the proposed changes will be scheduled.

At the February 18, 1982 meeting in Los Angeles, Dr. Reed reported on the Federation of Chiropractic Licensing Boards, representing various similar boards throughout the country. Although no action has been taken yet, the Board intends to study the possibility of changes in the licensing procedures.

The Board also took action regarding chiropractors who fail to forward a patient's X-rays because of an unpaid bill. Secretary Hoefling indicated the patient's health should be the paramount consideration and the patient ought not to be held hostage to the unsettled account with the former chiropractor.

FUTURE MEETINGS:

To be announced.

CALIFORNIA ENERGY COMMISSION

Chairman: Russell Schweickert
(916) 920-6811

In 1974, the Legislature created the state Energy Resource Conservation and Development Commission, better known by its short name, the California Energy Commission. The Commission is generally charged 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; developing contingency plans to deal with possible fuel or electrical energy shortages; and in its major regulatory function, siting power plants.

There are 5 Commissioners appointed by the Governor for 5 year terms. 4 Commissioners have experience in engineering, physical science, environmental protection, and administrative law, economics and natural resource managment. 1 Commissioner is a public member.

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

The 5 divisions within the Energy Commission are: Conservation; Development, which studies alternative energy sources (geothermal, wind, solar); Assessment, 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:

Biennial Report: Public Resources Code section 25309 mandates the Commission to submit a comprehensive report to the governor on energy issues every 2 years. The last report was submitted January 22, 1981. The Commission is now gearing up for the next report due in January, 1983. The scope of this report is very broad; requiring input from each division of the Commission. Among other provisions, the report is to include, but is not limited to, all of the following:

1. An overview, looking 20 years ahead, of statewide growth and development as they relate to future energy requirements.

2. Assessment of statewide electrical demand for the forthcoming 5-and 12-year periods. This forecast serves as the basis for planning and certifying proposed power plants.

3. Anticipated level of statewide electrical energy demand for 20 years.

4. Identification of potential adverse social, economic, or environmental impacts which may occur by continuing present energy trends.

5. Analysis and evaluation of the means by which the projected annual rate of demand growth of energy may be reduced.

Hearings to begin the process of compiling this information began with committee conferences in Los Angeles and

Sacramento on February 8 and 9, respectively. Hearings on the demand forecast portion of the report were held during the first week in March. The dates of subsequent hearings can be obtained by calling the Public Advisor's office at (800) 822-6228.

Non-residential building standards: Mandated by Public Resources Code section 25402.1, the CEC is required to develop new energy performance standards for the design of non-residential and governmental buildings to make them more energy efficient. (see CRLR Vol. 2, No. 1 (Winter, 1982) p. 73).

Phase two of this development is continuing. Technical staff meetings to consider public comments were completed February 11, 1982, in Sacramento. A workshop for public and private investors was held in Sacramento on March 16; and on March 17 the technical advisory committee met. Further public hearings were held on March 18 and 19 in San Francisco. In April, publication of any revisions to the original August, 1981 standards will be released. At that time, CEC will decide whether a phase three, further study of the report, will be implemented.

Utility reliability hearings: Study on the Commission's joint investigation with the Public Utilities Commission to assess the adequacy and reliability of utility electrical systems for the period 1982 through 1985 continues. (CEC Docket No. 81-ESR-1) This study was initiated to answer questions raised by the CEC and PUC about when new power plants will begin operation, power plant reliability during initial years of operation (especially nuclear plants), high breakdown rates at some existing plants, and the adequacy of system-wide power lines.

In response to the joint CEC/PUC staff draft submitted to the reliability committee in November, 1981 (see CRLR Vol. 2, No. 1 (Winter, 1982) p. 73), various utilities and the Sierra Club submitted written comments. After hearings in January, staff submitted one additional comment to correct data and clarify statements made in the original draft. No significant changes were made. This comment completed the staff position, and the joint committee composed on the CEC side of Chairman Schweickart and Commissioner Varanini must now issue its findings, signaling the end of phase one. Phase two, if approved, will address specific issues within the phase one report.

Residential Conservation Service: The Residential Conservation Service (RCS) is a federally mandated program established by Title II of the National Energy Conservation Policy Act (NECPA), as amended by the Energy Security Act. The stated purposes of this legislation are "...to reduce the growth in demand for energy in the United States, and to conserve nonrenewable energy resources...." To implement these objectives, NECPA provides a framework whereby regulated utilities of certain size shall develop residential energy conservation service programs designed to provide eligible customers with:

1. Home energy audits and information on energy saving techniques;
2. Assistance in installing and financing designated energy conservation measures;
3. Inspection and warranties on installed measures; and
4. Access to complaint resolution procedures for problems arising from participation in the RCS program.

Congress has designated the Secretary of the Department of Energy (DOE) as the executive branch agent responsible for formulating regulations to carry out the statutory directives. Central to the successful operation of the Congressional plan is development by the individual states of programs tailored, within the bounds of NECPA and DOE provisions, to the needs of the particular state.

Governor Brown has designated the California Energy Commission as the lead agency responsible for developing a statewide plan to guide utilities in the implementation of the RCS program in their service areas. After extensive hearings, the California Plan for the Residential Conservation Service was developed by the Commission in cooperation with the California Public Utilities Commission and the Contractors State License Board. The Commission adopted the present State Plan and submitted it to DOE on June 4, 1980. DOE approved the State Plan in December 1980. On June 29, 1981, California's participating utilities indicated that they could initiate the RCS program in their respective service areas.

To date, California utilities have notified approximately 6.7 million eligible customers of the RCS program and have conducted over 53,000 residential audits. The Commission originally estimated that 450,000 audits would be performed during the initial year of the program. The estimate has now been lowered to approximately 200,000. Commission staff estimates that the RCS program can save a customer 10-30% of his energy use. It is hoped that state residential energy use may be reduced by 5-6%.

Under the State Plan, utilities are required to perform three basic functions: (1) Announcements must be sent every two years notifying all eligible customers of benefits currently available under the Plan; (2) Utilities must finance and conduct home energy audits within 45 days of a customer's request, including financial estimates of savings to be achieved through retrofit of the home; and (3) Utilities are to give assistance in arranging installation and financing of energy saving devices.

All suppliers, lenders and installers of the energy saving devices must comply with various "listing criteria" before an auditor may recommend them to a customer. The Energy Commission is charged with the preparation and monthly update of a "Master List" of qualifying firms.

Despite the favorable response to the early stages of the program, the RCS plan required amendment to make it more administratively and fiscally efficient. Consequently, on September 3, 1981, the Commission's RCS Committee issued a "Committee Order Instituting Further Hearings" to initiate public State Plan amendment proceedings. This order divided the amendment process into "Phase I" and "Phase II". Topics to be addressed during Phase I proceedings included: program announcements and marketing; arranging installation and financing; utility financing, accounting and billing; monitoring, enforcing, recordkeeping and reporting; targeting audits for maximum cost effectiveness; complaint procedures; listing and delisting for contractors, suppliers and lenders; and RCS measures. Proposed Phase II topics include: energy audits; postinstallation inspections; qualifications of auditors, inspectors and installers; coordination; and "special needs" groups.

On September 25, 1981, staff released an initial Report detailing its recommendations on Phase I topics. Following this initial report, public workshops were held in San Diego, Los Angeles, San Francisco, Sacramento and Fresno to discuss the staff recommendations. After considering the comments received, staff issued a Revised Report on October 28, 1981. The revised staff report served as the springboard document for subsequent RCS Committee hearings.

The RCS Committee conducted public hearings on November 5 and 6 in Los Angeles, November 9 in San Francisco, and November 10 in Sacramento. On January 15, 1982, the Committee released the Committee Report On Amending The California Plan for the Residential Conservation Service - Phase I. On February 24, 1982, the report was submitted to the full Energy Commission for final public hearing. After minor modifications were made to the Committee Report, the Commission adopted the proposed Phase I amendments.

Committee hearings on Phase II of the

amendment process are scheduled to begin during the final week of March, 1982. The Committee Report to the full Commission and subsequent adoption of Phase II Amendments is expected in May, 1982. The Amendments will then be submitted for DOE approval and, pending approval, are expected to take effect July 1, 1982.

The CEC filed a petition for rehearing in the latest Pacific Gas & Electric (PG&E) general rate case before the Public Utilities Commission (PUC). (The CEC usually participates as an independent party in PUC rate proceedings.) The CEC's opening brief contained several significant proposals regarding PG&E's budget allocation.

Two administrative law judges heard the case—one for the electric rate design issue and one for all the other issues. What follows are excerpts from the CEC 130 page brief dated August 28, 1981. All references to transcripts and exhibits on which the CEC relied have been omitted.

A major focus of this proceeding, particularly by PG&E, was PG&E's adverse financial condition and the rate relief appropriate to alleviate it.

PG&E's financial condition has worsened in the last 10 years. There are three major reasons for this relatively poor financial condition: rising interest rates, attrition of earnings due to inflation and the increasing burden of financing nonearning assets from large, long lead time power plants before they become operational. The major causes for the increase in PG&E's nonearning assets in recent years have been the Diablo Canyon nuclear plant and to a lesser extent the Helms Pumped Storage project.

The PUC, in previous rate proceedings, has emphasized the importance of rate relief and utility actions promoting development of conservation and alternative resources.

"...[W]e expect utilities to work aggressively for the development of alternate energy sources, including solar and geothermal energy, and we will consider these efforts in rate and supply decisions." (PUC, Dec. 84902, Sept. 16, 1975.)

"...Where the marginal cost of conserved energy is less than the marginal cost of new supply, the former should always be the investment of choice. Supply from nonconventional and renewable sources, where it costs less at the margin than supply from conventional sources, should be the preference. We expect the energy utilities we regulate to make these principles central in their planning and investment decisions....In estblishing specific goals, PG&E should be guided by the following overall goal: All currently cost-effective conservation potential shall be achieved to the level of effective market saturation by 1985." (PUC, Dec. 91107, December 19, 1979.)

Alternative (or preferred) resources are: conservation, wind, small (under 30 megawatts and at existing sites) hydroelectric, and solar electric. These resources generally have shorter lead times than base load coal, oil, and nuclear power plants.

The financial burdens from a resource plan containing long lead time projects are likely to be greater than those from a resource plan with short lead time projects. The shorter construction period of preferred resources reduces the likelihood of cost overruns and diversifies risk of project delay and failure across a large number of projects.

The lead time issue is also critical to the position of ratepayers. Preferred resources can be constructed and operating while base load power plants are still on the drawing board, thus reducing expensive oil bills faster.

The record shows that much of PG&E's present financial difficulty stems from its pursuit of long lead time conventional plants (Diablo Canyon and Helms Pumped Storage) and that further development of similar long lead-time resources is likely to continue PG&E's present financial troubles. The record also shows that, in contrast, development of short lead time conservation and alternative resources can improve PG&E's financial condition and assist state energy policy.

PG&E's presentation in this rate case ignores this evidence. Its "solution" to its present financial difficulties is to request an unprecedented $1.4 billion dollar rate increase (later reduced to $1.27 billion) and cash flow mechanisms costing ratepayers $359 million. Rather than addressing one of the root causes of its difficulties—that of pursuing long lead time generating plants—PG&E plans a large generic coal plant with construction cost and timing as yet unknown. At the same time the Company plans this massive plant, PG&E has failed to assess its effect on the financial health of the Company and ratepayers and what alternatives might be pursued in the next few years. This approach has led to a number of problems in this application.

PG&E filed an application based on an outdated resource plan, presented a chief financial witness with no knowledge of the Company's expenditures beyond 1983, and provided no explanation of how the massive rate increases requested in this proceeding fit in with state energy policy.

A much more sensible approach, for both the Company and ratepayers, is to modify PG&E's investment decisions so as to minimize the need for massive rate relief. CEC presented both an analysis of PG&E's present financial conditions and a long-range view of the Company's resource and financial needs. The CEC developed a comprehensive program for both the Company and the PUC based on the mutually dependent goals of restoring PG&E to financial health while at the same time promoting development of conservation and alternative energy resources that will assist PG&E to maintain financial health in the future.

CEC System of Incentives.

A cornerstone for achieving these interrelated goals is implementation of a system of incentives—both rewards and penalties—for PG&E's development of preferred resources. [The following are features of the CEC proposed program of incentives:]

1. For preferred resource capital projects owned in whole or in part by PG&E and operative after December 19, 1979, PG&E should receive a 3 percent return on common equity above base rates and 8 year depreciation.

2. For purchases, a reasonable goal for PG&E is to sign 250 megawatts (MW) of contracts per year with alternative energy producers.

3. If PG&E signs more than 200 MW of contracts it should receive an incentive payment of 0.002 percent of rate base per megawatt of contracts signed above 200 MW. If PG&E signs less than 160 MW of contracts, it should be penalized by 0.002 percent of rate base per MW of contracts signed below 160 MW.

4. Except for 1982 and 1983, PG&E should receive an additional incentive payment of 0.003 percent of rate base per MW for each MW over 200 MW brought on line under contract in any one year.

5. PG&E should receive an additional 0.002 percent of rate base per MW for each MW where PG&E provides material noncapital services, (maintenance contracts, feasibility study financing, or loan/bond guarantees).

6. To assure that utility conservation programs reach renters and low-income people, vigorous and imaginative action to reach them should be rewarded. The PUC should establish in this proceeding that PG&E will receive an incentive of $100,000 per thousand renters and low-income customers included in its Zero Interest Program (ZIP). [For a description of ZIP, see CRLR, Vol. 1, No. 3, Summer, 1981) p. 74.]

The benefits of the CEC incentives are that they will encourage the Company to develop beneficial resources, reward the added management effort needed to develop these resources, provide immediate cash flow, and compensate for risks in

developing the resources.

PG&E filed rebuttal testimony sponsored by its Financial Vice President, Mr. Doudiet, expressing concern that the investment community would react negatively to such a system of incentives. However, Mr. Doudiet was unable to provide any specific details of individual contacts supporting his allegations of opposition by the investment community. Mr. Doudiet could identify no investor who has responded negatively to the imposition of the rewards and penalties system proposed by the CEC in this application, nor any investor who has concluded that PG&E's risk of incurring penalties under CEC's proposed system and an insufficient return earned on their investment, is much greater than the chance of actually earning the rewards proposed by the CEC.

PG&E's concern thus stems not from any actual adverse reaction of the investment community but is instead a philosophical opposition. PG&E admitted that since 1975 the PUC has consistently urged PG&E to devote as much of its resources as possible to conservation and alternatives. Nevertheless, PG&E characterizes the CEC incentive system to develop such resources as being "rewarded for doing small things that someone would like to have them do." As Mr. Doudiet bluntly testified:

> "But if what you're trying to do is get management's attention towards those projects and entice management to do something it wouldn't otherwise do, in favor of those projects, I just—I don't believe in that system."

PG&E in essence argues for *no* regulation directing the Company towards development of preferred resources, even regulation consisting only of rewards. However, PG&E's own testimony in this proceeding demonstrates the need for providing incentives to the Company to spur its initiative. PG&E admitted that it is aware of the PUC's policy since 1975, as stated in the above-quoted PG&E rate case Decision 91007. Nevertheless, Mr. Doudiet did not know whether PG&E has performed *any* studies in the last five years comparing a given resource plan largely based on conventional resources to a plan based on alternatives and conservation. Furthermore, when asked whether PG&E has priorities for the resources it will develop given an inability to finance everything in a resource plan, Mr. Doudiet responded that PG&E has no formal system of prioritization and that its response "for at least the last 10 years" for "seeking reconciliation between the resource plan and any deficiencies in the finance plan [has been] to ask the Commission for rate relief."

If the PUC were to ignore the CEC's proposed incentive system the very likely outcome would be what PG&E has testified it has done in the past—little serious analysis of how to actually implement the PUC's directives to develop all cost-effective conservation and alternatives and, at the same time, continued requests for massive rate relief stemming from its failure to significantly develop preferred resources. It is therefore necessary for the PUC to adopt the CEC's proposed system of incentives for preferred resource development.

PG&E's Cash Flow Proposals: [PG&E requested the PUC to establish three mechanisms to provide the company with additional cash flow, only one of which is included here.]

PG&E proposes automatic inclusion of Construction Work in Progress (CWIP) in the rate base through its Non-Earning Asset Ratio (NEAR) formula. This means that ratepayers invest in projects before they receive benefits. In the extreme case, inclusion of CWIP in the rate base results in charging ratepayers for projects that will never become used and useful. (CEC staff has identified a number of projects, amounting to $53.1 million, included in PG&E's NEAR formula which will come into service over 10 years from now or will never be in service.) In other words, ratepayers assume the risk of project failure, without receiving any benefit for having assumed this risk.

Another argument against PG&E's proposal for CWIP is that utility management incentives for efficiency would be reduced. With CWIP in the rate base, the financing costs of any delays or cost overruns can be passed on to ratepayers, and the immediate, direct cash flow impact of the delays to the Company is eliminated.

Calculating CWIP in the rate base provides more funds for projects with long lead times, largely coal and nuclear projects. CEC staff showed that a coal project with CWIP in rate base would give PG&E 157 percent more preoperation revenue than the equivalent amount of equity investment in congeneration. The inclusion of CWIP in rate base would thus largely benefit conventional projects and dilute the major financial factor motivating utilities to develop preferred resources—the lead time issue. CWIP in the rate base would motivate utilities to adopt the financially riskier conventional strategy by shifting the risk onto ratepayers. Moreover, it would result in ratepayers paying twice for power—once for current oil usage and at the same time for projected power from nonoperative resources which are being built to displace the oil usage.

The proposed CWIP mechanism directly contradicts the PUC policy stated in Dec. 89711, Southern California Edison's 1978 rate case, that "[r]eturn measurements that serve to encourage and reward generation capacity expansion are no longer in the public interest."

Amortization of Construction Work in Progress: In response to shifts in energy demand, state policy, inflation, and the cost of oil over the last 10 years, PG&E has deleted a number of projects from its supply plan or indefinitely postponed them. As a result, a substantial amount of money has accumulated in nonoperative CWIP and plant held for future use (PHFU) accounts from dead or moribund projects. These projects account for $126 million in CWIP and $6.7 million in PHFU. (CEC Economist William Marcus' testimony that 12 projects have either been abandoned or may not be developed until 1995 is undisputed. The projects are: Pittsburg 8 and 9, Mendocino, Davenport, HAWVES, future nuclear, future large fossil, Potrero 7, Humboldt Bay, Coastal Siting Studies, South Moss Landing, and Nipomo.)

CEC therefore proposes that PG&E be permitted on a one-time basis to amortize in four years the costs of these abandoned projects less accrued Allowance for Funds Used During Construction (AFUDC). This rate treatment would improve the Company's cash flow.

The continued inclusion of abandoned projects in CWIP and PHFU is contrary to even PG&E's policy. As PG&E counsel stated, a project is normally placed in CWIP only when there is an ongoing development effort.

The PUC has expressed concern with both the magnitude of abandoned project costs which ratepayers have been asked to shoulder, and the increased risk to shareholders. The PUC has stated that neither ratepayers nor stockholders should be required to bear the entire cost of abandoned projects. Therefore, the PUC has permitted the amortization of prudently incurred costs of abandoned projects on a case by case basis.

Attrition: The Company, the PUC staff, and the CEC all agree that PG&E must receive interim rate relief in 1983 to protect against reduced earnings as a result of inflation and increases in rate base to serve growing numbers of customers (commonly referred to as attrition). Specific proposals of the three parties differ. The original PG&E proposal estimated 1983 attrition amounts and revenue requirements based on 1981 data but provided for hearings late in 1982 to determine the exact amount. PG&E also suggested that cost indexing could provide an alternative that would eliminate

the need for hearings.

CEC staff emphasized that the most current data available should be used to set 1983 rates rather than using estimated attrition allowances based on 1981 projections of 1982 inflation rates and supported either 1982 hearings or partial indexing of general operating expenses combined with forecasts of rate base, depreciation, property taxes, embedded cost of debt, offsets for investment tax credits, and tax depreciation deductions. In addition, CEC staff proposed that increased 1983 activity levels in conservation, load management, and preferred resource programs found reasonable by the PUC in this case should be recovered in full. This proposal would assure that PG&E stockholders would not be required to cover the increased costs of these programs, thus removing disincentives for vigorous and imaginative conservation programs.

Cogeneration: PG&E's lack of success or initiative in developing cogeneration capacity has been an issue in PG&E's last 3 rate applications. (Application Nos. 55509/10, 57284/5, and 58545/6.) In December 1979, the PUC's investigations into PG&E's cogeneration activities culminated in the PUC's determination that "...full development of cogeneration and generation from biomass and refuse-derived fuels is of the highest importance to ratepayers and society..." (Dec. 91109), that there was a minimum of 2,000-3,000 MW of cogeneration potential currently available to PG&E (Dec. 91107, Dec. 91109) and that PG&E's efforts to promote the development of cogeneration had been seriously inadequate. (Dec. 91107) Based upon its findings, the PUC reduced PG&E's authorized return on equity for its Electric Department operations by 20 basis points. It provided PG&E the opportunity to remove this penalty if it signed contracts for at least 600 MW of new cogeneration capacity. The PUC found this 600 MW requirement to be the *minimal* level of performance to reasonably expect from PG&E. (Dec. 91107)

PG&E's performance since Decisions 91107 and 91109 though improved, is still unsatisfactory. Since Decenber 1979, PG&E has signed only 188 MW of new cogeneration contracts. In the first six months of 1981 it signed only 40 MW, thus actually decreasing its rate of signing contracts in 1981 from 1980. Only 16 MW of new cogeneration projects were brought on line in 1980, and none so far in 1981.

PG&E's resource plans continue not to reflect its cogeneration potential. Its June 1981 resource plan actually shows less cogeneration through 1985 than the resource plan in effect at the time of Decisions 91107/9.

[Both PG&E and the PUC advanced reasons to excuse PG&E's lack of cogeneration development, none of which the CEC accepts.]

The only remaining factor left that possibly contributed to the disappointing level of PG&E's cogeneration effort is financing considerations of the potential cogenerators. However, PG&E's actions have only exacerbated this factor as an obstacle. One way to remove this barrier, of course, is for PG&E to participate in the financing. PG&E, rather than adopting this positive approach to encourage cogeneration, has done just the opposite. In December 1980, PG&E withdrew its offer to participate in at least 5 cogeneration projects. The effect of that decision was reflected in PG&E's December 1980 long-term resource plan, which deleted approximately 340 MW of potential cogeneration. Of the cogeneration contracts PG&E has signed (for both new and existing cogeneration) since December 1979, only 11.4 MW out of the 202 MW total has involved PG&E equity.

CEC analysis illustrated that utility investment in viable cogeneration projects can provide potential economic benefit to the utility, the cogenerator, and ratepayers. PG&E did testify that "if investment by PG&E is necessary for the development of a worthwhile cogeneration or other facility using renewable resources, PG&E will consider making such an investment." However, in actual practice, PG&E's "consideration" has not resulted in any viable commitment of capital, or development of cogeneration. Instead, the evidence demonstrates a withdrawal of about 340 MW from its resource plan that was to be at least partially funded by PG&E. PG&E's Financial Vice President, Mr. Doudiet, testified that PG&E does not see any equity investments in cogeneration desirable unless PG&E receives its requested 17 percent rate of return and three proposed cash flow items.

PG&E supports its policy of not investing in cogeneration by arguing that the barriers to private cogenerator financing (limited capital availability, regulatory risks, and relatively large capital requirements) apply at least equally to PG&E. However, PG&E acknowledged that its capital availability is not an absolute obstacle but is dependent on its rate relief and capital expenditures. Similarly, its capital requirements are a function of how the company decides to satisfy its obligation to serve the public. PG&E still plans tremendous capital expenditures—about $1.3 billion per year during the next 2-3 years and about $1.56 billion for its unidentified generic coal project. With regard to its assertion of regulatory risks, PG&E presented no specific facts, instead admitting it is generally more knowledgeable about cogeneration requirements and how to satisfy them than private entities developing cogeneration and that it was not aware of any PG&E cogeneration project that had not received regulatory approval.

The final factor to be examined is what requirements should the PUC impose on PG&E to improve the Company's cogeneration program. The PUC staff recommends only a few additional mailings and studies, and elimination of the 20 basis point penalty. PG&E has already agreed, without complaint, to implement these recommendations to the PUC staff's satisfaction. If the PUC were to adopt the PUC staff's proposals, not only would it not require PG&E to do anything it does not already plan on doing, but the PUC would retreat significantly from its prior strong commitment of requiring PG&E's aggressive development of cogeneration and tell PG&E management that business as usual is acceptable.

There is no justification for any retreat by the PUC from its strong commitment that full development of cogeneration is of the highest priority (Dec. 91109), nor from its regulatory directives over the last six years requiring PG&E's aggressive promotion of its cogeneration potential. Consistent with the PUC's position, the CEC's Biennial Report emphasizes cogeneration development among preferred resources (CEC *Electricity Tomorrow*, January 1981, p. 17). The Governor's review of the Biennial Report (Pub. Res. Code section 25309.2) similarly adopts a very high priority for cogeneration and states that "[t]his ranking provides a guide for investment decisions by utilities, state and local governments, and businesses, as well as *rate* and licensing *decisions.*" (Edmund G. Brown, Jr., Governor, *Statement on the California Energy Commission's 1981 Biennial Report*, May 1981, pp. 4-5; emphasis added.)

To maintain both the PUC and PG&E's strong commitment to cogeneration the CEC recommends, based on the finding that PG&E's performance in signing up new cogenerators has been unsatisfactory, that the 20 basis point penalty be maintained. PG&E should have the opportunity to have the penalty removed upon presentation to the Commission of signed contracts for at least 100 MW of new cogeneration capacity with equity investment or joint ownership by PG&E.

Since between December 1979 and July 8, 1981, PG&E had proposed to participate financially in at least 6 cogenera-

tion projects totalling over 320 MW, and PG&E's May 1980 resource plan had included 397 MW of full or partial ownership, 100 MW is a feasible goal. Cogenerators are interested in PG&E's equity participation and it is reasonable to expect that PG&E's investment will encourage development of other cogeneration projects. The maximum cost of this requirement, assuming $750/Kilowatts and total PG&E equity, would be $75 million or roughly 1-2 percent of PG&E's construction budget over the next 2-3 years.

PG&E should be required to offer this equity investment and joint ownership in a mailing to the chief executive officers of identified potential cogenerators. This offer should be included in the mailing recommended by the PUC staff. PG&E's financial analysis model should be modified to accept flexible capital arrangements between the utility and industry rather than solely private capital investment.

Finally, PG&E should expand its efforts to vigorously support private development of cogeneration so that the maximum cogeneration potential will be achieved as soon as possible.

PG&E's Research, Development, and Demonstration (RD&D) Program: Over two years ago Governor Brown proposed a major alternative energy and transportation development program "to keep California economically strong and maintain its leadership in energy conservation and the development and application of renewable energy sources." (Letter dated May 30, 1979 from Governor Edmund G. Brown Jr. to President Bryson and Members of the Public Utilities Commission.) A key element of the proposal was to "encourage State agencies to do everything in their power to promote energy conservation and the development of alternative energy supplies," with the PUC, using its regulatory jurisdiction over privately-owned electric and gas utilities, playing "a major role in this effort." Governor Brown particularly emphasized that he desired "more extensive review [by the PUC] of utility research and development budgets and their redirection toward the development and use of alternative energy sources."

PG&E proposes to spend a substantial amount on Research, Development, and Demonstration (RD&D) in the next 2 years - $131 million in 1982 and $165 million in 1983. Given PG&E's large RD&D expenditures and its limited financial resources, the PUC must ensure that PG&E's RD&D program is adequately structured to increase use of conservation and alternatives.

Both the PUC staff Policy and Planning Division and the Revenue Requirements Division testified to deficiencies in PG&E's RD&D program and to the need to expand PG&E's conservation and alternatives RD&D efforts. Their testimony finds that PG&E has failed to identify an understandable relationship between its proposed test year expenditures and state energy policy for development of conservation and renewables or its own resource plan. The PUC staff expressed particular reservations about PG&E's Electric Power Research Institute (EPRI) and Gas Research Institute (GRI) contributions. While PG&E proposes to contribute $12,615,000 to EPRI in 1982, EPRI has allocated less than 3 percent of its budget for conservation. In contrast, EPRI budgets 41 percent for nuclear and direct-fired coal R&D in 1982.

PG&E's proposed 1982 RD&D expenditures also include expenditures on normal engineering, environmental data gathering, business data processing, and siting and seismic studies that are not RD&D and should not be accounted for as RD&D. Other problems with PG&E's RD&D filing in this case include use of an arbitrary 25 percent annual escalation factor and failure to specify the RD&D expenditures for which recovery is actually sought. Additionally, PG&E's annual detailed RD&D filing, the basis for its proposed expenditures is, in the words of the PUC staff, "too vague to support effective review."

These problems must be corrected so that the PUC and other interested entities can easily discern PG&E's actual RD&D program, the ratepayers' support of that program, and how it will achieve development of alternative fuels, conservation and alternative resources. (The PUC has been grappling with making RD&D more accountable for several years.)

[PG&E recommendations regarding RD&D included the following:] PG&E should be directed to identify in its filing: (1) barriers to the commercial development of its conservation and load management programs, synthetic fuels, and other alternative resources; (2) RD&D milestones that must be met to overcome the barriers; (3) the RD&D milestones PG&E proposes its program will achieve; and (4) for each such milestone, a schedule of specific PG&E RD&D activities. Such filings should also be required on a regular basis as part of each general rate case application requesting reimbursement for RD&D expenditures.

Second, the PUC should put PG&E on notice that its renewable/alternative resources research should be expanded by its 1982 annual report. Third, PG&E should also be directed to use its membership in EPRI and GRI to encourage aggressive conservation and alternative energy elements within the organizations' RD&D programs. The Company should be put on notice that some of its contributions to EPRI and GRI may be disallowed if it is unable to show clear, cost-effective benefits from them.

Fourth, the filing of the annual RD&D report should be changed from April to coincide with the filing of the general rate case application to avoid reoccurrence of one of the problems of this proceeding—the RD&D material in the application and direct testimony were superceded by a voluminous RD&D report, which was filed on April 15, 1981, after the hearings began, was not served on parties, and was not even proposed by PG&E to be entered into the record.

Customer Charges: The PUC has repeatedly stated that marginal costs should be the basis for rate design. Most rate design experts now agree that fixed customer charges (A customer charge is a fixed monthly charge to all customers in a class for the privilege of receiving electric or gas service, regardless of the amount of gas or electricity used during the month.) prevent customers from facing the marginal cost of energy and thereby reduce the apparent cost effectiveness of conservation to the consumer even where such conservation is very cost effective to ratepayers in general.

The PUC staff proposes to freeze all customer charges at current levels for both electricity and gas, including the residential charges that PG&E proposes to eliminate. Staff's principal argument is that "the customer cost component of marginal cost should be reflected in rates to a moderate extent."

The fundamental point which the PUC staff overlooks is that rates are below the marginal energy and generation and transmission costs—which the PUC staff agrees has more impact than marginal customer costs from the standpoint of conservation—and customer charges keep energy rates farther below these important costs.

A review of the PG&E and PUC staff positions supporting customer charges clearly show that customer charges inhibit conservation and keep rates below marginal costs.

Demand Charges: There has been a fundamental confusion between the existence of demand costs and the reasonableness of demand charges (A demand charge is a charge for the maximum number of kilowatts of demand used by a customer in any half-hour period of the month, or in the peak period of that month for time-differentiated demand charges.) as a means of collecting these costs. Industrial intervenors advocate higher demand charges to reflect demand

costs. PUC staff believes that freezing demand charges at current levels is reasonable because marginal demand costs should be reflected in rates. PG&E counsel's cross-examination of the PUC staff attempted to draw a relationship between marginal demand costs and PG&E proposed demand charges. These positions are flawed because demand charges do not reflect demand costs. A customer using power in *any* one 30-minute period is charged the same demand charge as a customer using the same number of kilowatts in *all* of the hours of the rating period.

The PUC previously has found (Dec. 92553) that the demand costs which a customer causes the system to incur vary with the amount of time the customer uses that demand, i.e., that generation and transmission cost essentially is related to energy use in peak periods. Both PG&E and PUC witnesses agree. In Decision 92553, the PUC made the connection between peak period energy use and demand costs for PG&E's A-21 rate design. The PUC approved a rate with a demand charge of only $1.00/kilowatt-month, and sharply time-differentiated energy charges, based on the finding that:

> "Customers served under schedule No. A-21 who use *energy* during periods of peak consumption on the PG&E system contribute to the additional incremental cost required to maintain and operate peak period generating *capacity*." (Dec. 92553; emphasis added.)

Demand cost is related to energy use over a relatively large number of peak hours for two reasons. First, the loss of load probability (LOLP)—a measure of system stress and thus of shortage costs and new generating capacity costs—is spread out over a relatively large number of hours as opposed to short peak periods. Therefore, a customer using power in all the summer on-peak hours imposes far greater demand costs on the system than a customer who draws power in one hour even if it is coincident with system peak. As TURN witness Wells cogently summarizes the issue, "in essence, the demand charge approach assumes that all shortage costs should be paid during one half-hour of usage, and that is clearly inappropriate."

Second, a customer's energy use in peak periods is related to demand cost because of coincidence or diversity among customers. It is widely recognized that the higher the customer's load factor, the higher the probability the customer's load will be coincident with the system peak and other hours of system stress.

Demand charges do not measure coincidence or customer load factors. Therefore, they do not equitably recover demand costs from customers. Time-of-use energy rates will encourage energy conservation during the peak period, thus reducing coincidence with system peak. High demand charges have the opposite impact. Customers are rewarded for reducing their own peaks. If individual peaks are not coincident with system peak, load will be shifted toward, not away from peak hours.

PG&E witness Reynolds agrees that demand charges blunt the price signals faced by customers. "It is important to get the cost of those price increases out in front of customers in as direct a means as possible. Energy charges provide that kind of direct signal to customers." In his experience, higher energy charges also reduce peak demand. "If you put the price in the energy charge, the demand will follow it." The PUC staff likewise believes that energy charges promote conservation more than demand charges both as a general principle and for specific rates.

Despite the agreement among parties that demand charges do not reflect costs and inhibit conservation, the CEC was the only party to propose a rate design to remedy this problem by eliminating demand charges or reducing them substantially.

Load Management Standards: The CEC adopted load management standards in June 1979, pursuant to Public Resources Code section 25403.5. The standards include four programs currently being undertaken by PG&E. The programs are: (1) residential LM standards for direct cycling of air conditioners and water heaters, (2) LM tariffs based on marginal cost rates, (3) a swimming pool filter pump LM standard to encourage off-peak use by pool owners, and (4) a commercial LM standard consisting of energy audits of commercial buildings. (Cal. Admin. Code, tit. 20, sections 1622-1625.) The LM standards were determined by the CEC to be cost effective and technologically feasible, as required by state law.

Section 25403.5 of the Public Resources Code provides that "any expense or any capital investment required of a utility by the standards shall be an allowable expense or an allowable item in the utility rate base and shall be treated by the PUC as such in a rate proceeding." Despite a clearly articulated legislative directive to authorize expenditures for mandated LM programs, PUC staff has proposed actions which will impair PG&E's ability to comply with the LM standards. Specifically, the PUC staff would require the Company to go through an additional PUC staff review to secure release of funds for programs already mandated in CEC regulations. As noted above, this procedure contravenes the statutory provision that capital investments required to meet the CEC standards "shall be an allowable expense or an allowable item in the utility rate base and shall be treated by the PUC as such *in a rate proceeding*." (Pub. Res. code section 25403.5, emphasis added.) The statute does not authorize the PUC staff to exercise its discretion to grant utility expenditures for load management (LM) programs mandated by the CEC.

The proposed LM contingency fund will reduce rather than add flexibility to LM program design and operations. In addition, the contingency fund proposal contains no clear standards for review by the PUC staff, and no time frame has been designated for rendering a decision on contingency fund filings.

The PUC staff proposes to reduce funding for residential load cycling by 58 percent in 1982 and 36 percent in 1983. PUC staff reasons that "because definitive results of (LM direct control) experiments have not been obtained...a cautious implementation policy is needed." In reaching this conclusion the PUC staff conducted no independent cost effectiveness analysis of its own.

[The CEC also made recommendations regarding improved methods for quantifying conservation, market research and new residential appliance programs. The PUC decision, issued December 30, 1981, will be summarized in the next issue of CRLR.]

LEGISLATION:

AB 781 (Levine):

Provides that after January 1, 1986, all single-family residential homes must be retrofitted with energy-saving devices upon resale. The Commission strongly supports this bill. Versions of this measure have been introduced in the last 2 legislative sessions, and while clearing the Assembly, have died in the Senate. Recent compromises with realtors and local government may aid passage this session.

Status: Senate Committee on Energy and Public Utilies.

AB 2563 (Hart):

Requires the Commission to undertake a pilot project to assist alternative energy companies in foreign export activities. It appropriates $75,000 from the general fund to the Commission to carry out the provisions, to be expended on a equal matching basis with any funds derived from private contributions.

Status: Assembly Committee on Energy and Natural Resources.

SB 1380 (Montoya):

Reorganizes the Energy Commission. Among other provisions, this measure modifies the manner in which commission members are chosen; restricts its present jurisdiction on various matters; and prohibits the commission from making a determination as to the economic conditions and financial ability of any investor owned utility. Versions of this bill have failed in previous sessions.

Status: Senate Committee on Energy and Public Utilities.

ACR 80 (Hallett):

Having no binding effect, this resolution asks the Commission to postpone its now completed residential energy standards from July 1, 1982, until July 1, 1984. The standards are now set to become effective July 13, 1982.

Status: Assembly Committee on Energy and Natural Resources.

LITIGATION:

The Bonneville Power Administration (BPA) recently announced that it will eliminate its discriminatory pricing practice.

As reported in the last issue of the *Reporter,* (Vol. 2, No. 1 (Winter, 1982) p. 74), the BPA, a subdivision of the U.S. Department of Energy, had been sued by the CEC for its discriminatory pricing practices toward California which cost the state substantially more for purchased power than other buyers of the sold excess power.

BPA markets the power produced by 30 federal hydro-electric facilities and 2 publicly-owned nuclear projects in the Pacific Northwest. In 1981 California purchased over 27 billion killowatt-hours from this region — about 16% of the state's total electricity consumption for the year.

In a news release, CEC Commissioner Arturo Gandara explained that in June 1981, Bonneville adopted new, higher rates for the energy it sells on a non-guaranteed "as available" basis. During July and August BPA discriminated against California by charging the state's utilities 60%, 85%, and even up to 145% more than it was charging other Northwest utilities for the same type of service. Noting this blatantly unfair charging practice, the CEC filed a lawsuit in federal court to halt the practice as contrary to set BPA rate schedules.

Bonneville continued to sell power to California utilities at a cost exceeding $40 million or 2.7 cents per kilowatt-hour (KW). Under this practice BPA could have continued to charge the higher price to California utilities while cutting the rate for utilities in the Northwest to as little as 0.6 cents per KW. During the summer of 1981 this type of pricing scheme diverted substantial amounts of BPA surplus energy to the Northwest utilities, which were then able to sell an equivalent amount of energy to California at a higher price and keep the extra profits for themselves.

As a result of a motion in federal court by CEC attorney Dan Meek on September 27, 1981 Bonneville issued a statement in the form of a letter to its customers and the CEC announcing it would not resume its past discriminatory pricing practice.

According to Meek, this acquiescence to the CEC's suit will mean the following for the state:

1. California will save millions of dollars on 1982 power purchases;
2. BPA must reduce the price of excess power to make it more attractive to Northwest utilities than running their own coal-fired plants. Once BPA sells its excess energy in the Northwest at the lowered rate (estimated at 0.7 cents per KW, the same price will apply to the power sold to California instead of the higher price the state is now paying;
3. The Northwest utilities will no longer have a financial incentive to purchase cheap power from BPA and immediately sell it to California at a higher price;
4. California's purchase of approximately 20 billion KW from the Northwest during the first eight months of 1982 will cost no more than $180 million instead of $220 million under the higher rate; and
5. California will now seek a rollback on BPA rates.

"The Commission will also be seeking a refund of $3 million collected from California by BPA under its unfair pricing practices," Gandara said.

"The Commission will be keeping an eye on Bonneville to make sure that California ratepayers don't pay any unnecessary costs," Gandara stated. "And as an extra measure the Commission will also be participating in BPA's 1982 rate proceedings to prevent the federal agency from shifting the enormous cost overruns on BPA's 3 nuclear power plant construction projects—estimated at about $12 billion—to California ratepayers," Gandara added.

According to Gandara, BPA stated that its annual revenue must be increased by $1 billion to pay interest on money borrowed to build these plants. This follows a 90% rate hike in 1979 and a second 80% hike in 1981.

The CEC is being sued in both federal and state court for its decision regarding the transmission line in the PG&E Geysers Geothermal No. 16 certification.

Sonoma County and Lapham et al, a group of homeowners from Porter Creek (an area through which the transmission line is to pass) are separately suing the CEC. Sonoma County filed suit in the state Supreme Court (Public Resources Code section 25531 provides for direct review of plant siting decisions by the state Supreme Court) and Sonoma County Superior Court and charged that it was an abuse of discretion for CEC not to order undergrounding of the *existing* transmission line as well as the new line through the Oakmont area. The County is also unhappy that the CEC did not order, as a mitigation measure, that PG&E repair a certain road.

Steve Cohn, CEC attorney on the case, said that on the last day of evidentiary hearings in July, 1981, the County brought in a resolution establishing that both transmission lines had to be undergrounded and the road had to be repaired to conform to the County General Plan. The issue before the CEC was whether or not to override the County General Plan (Public Resources Code section 25525 gives the CEC override authority).

The CEC contends there is no significant environmental effect to be mitigated in the first place. "There's no evidence that what the county is asking for is a feasible mitigation measure," Cohn said.

CEC contends that the County is attempting to substitute its discretion for CEC's discretion as to what is a feasible mitigation measure. "To allow the County to so substitute its discretion would violate the Warren Alquist Act," Cohn said.

Lapham et al instituted a suit in federal district court, charging that they did not receive administrative due process in the form of adequate notice or opportinity to be heard.

According to Cohn, Lapham participated in the 9-month long certification proceeding. Lapham also presented evidence of alternatives he considered preferable to the CEC treatment of the transmission line.

"This is a classic case for the federal abstention doctrine," Cohn said. "The claim of due process deprivation is a federal constitutional issue on its face, but there are state remedies available and power plants are a traditional subject of state regulation.

"It's interesting to note that in their brief the plaintiffs mainly cited California cases," he said.

CEC is contending that California has a specialized system of state judicial review for power plant siting. "We'd like to have the state courts resolve this issue," Dan Meek, another CEC attorney on the case, said.

The Department of Water and Power and the Northern California Power Agency (a consortium of 11 Northern California municipalities including Palo Alto, Alameda, etc.) are intervenors/real parties in interest in the case. The DWR filed a declaration setting forth the impact of the delay of the transmission line. The declaration states that each month of delay will cost $10 million which could eventually be borne by the ratepayers.

PG&E is building the transmission line but the line is not for PG&E's own use. The completion of the line in June, 1984, will coincide with the completion of other geothermal plants. "Even one month of delay will mean that 270 megawatts of power will be curtailed—will sit idle. The equivalent would be the shutting off of 3 geothermal power plants," Cohn said.

908 megawatts are now actually produced in the Geysers area (roughly equivalent to Rancho Seco or one half of Diablo Canyon) which provides electricity for 900,000 people. Assuming the geothermal plant works regularly, 100 megawatts are sufficient for 100,000 people, on average. "By June, 1984, another 500 megawatts will be on line," said Cohn. "If there is no transmission line, there could be that much power sitting idle.

"We can't afford delays. We want the suits resolved as soon as possible. Even if the court decides we made a mistake, we want to know that right away," Cohn said.

According to Cohn, the plaintiffs' major interest is in delay. They hope, in the meantime, to extract a concession from PG&E.

"If the federal court ruled in Lapham's favor and said his federal constitutional rights were denied, the entire Geysers 16 certification proceeding would have to be redone in order to provide adequate notice. The federal court decision would render moot or unripe Sonoma County's case before the California Supreme Court. The California Supreme Court would tell Sonoma County, 'Come back after PG&E No. 16 is redone.'

"The only thing the California Supreme Court can review is a final decision of the Energy Commission (in this case, the final decision on plant and transmission line siting). That's a basic tenet of administrative law. If the federal court agrees with Lapham, there will be no valid CEC decision to review.

"There are questions being raised in the state court regarding the process by which decisions are reviewed by the state courts—issues about the extent of review available, for example. If the Sonoma County case is heard by the California Supreme Court, those issues will be resolved."

On March 11 the California Supreme Court issued an order granting a writ of review. The Court will probably hear the case in late spring or early summer. The Sonoma County Superior court, which had taken the case under submission, will not be hearing the case.

The federal magistrate hearing the Lapham case has proposed to the U.S. District Court judge that the CEC motion to abstain be granted.

CALIFORNIA HORSE RACING BOARD

Chairman: Nathaniel Colley
(916) 322-9228

The California Horse Racing Board is an independent regulatory board consisting of 7 members appointed by the Governor. Each member serves a 4 year term and receives no compensation other than expenses incurred for Board activities. The general purpose of the Board is to encourage agriculture and the breeding of horses in California. The Board has jurisdiction and power to supervise all things and people having to do with horse racing upon which wagering takes place. If an individual, his or her spouse or dependent holds a financial interest or management position in a horse racing track, he or she cannot qualify for Board membership. An individual is also excluded if he/she has an interest in a business which conducts parimutuel horse racing or a management or concession contract with any business entity which conducts parimutuel horse racing. With parimutuel betting, all the bets for a race are pooled and paid out on that race based on the horses' finishing positions absent the States' percentage and the tracks' percentage. Horse owners and breeders are not barred from Board membership. In fact the Legislature has declared that Board representation by these groups is in the public interest.

The Board licenses horse racing tracks and allocates racing dates. The Board also has regulatory power over wagering and horse care. This Board is not subject to the Administrative Procedure Act notice, discovery and hearing requirements, and may regulate more freely than other agencies.

MAJOR PROJECTS:

The Board is currently in the process of allocating racing dates for 1983 and 1984. This is one of the Board's most important regulatory functions. The process begins with a survey of licensed racetracks to determine if improvements can be made over schedules set in previous years. The Board then discusses these findings and formulates tentative schedules. Racetrack operators may then object to the date allocations. The Board considers these objections when reaching its final decision. This allocation function would be a per se antitrust violation if done without state authority.

Another important area of Board concern is the use of drugs on race horses. The Board is constantly formulating standards for drug administration and evaluating the dangers resulting from the use of various drugs. The Board considers this role an important step toward ensuring the safety of race horses.

RECENT MEETINGS:

The Board discussed the possibility of altering its policy relating to the television broadcast of horse racing programs. No final determination was made, and therefore the Board will maintain its current practice of delaying broadcasts a certain amount of time after a race is completed before airing them. The Board wants more information on the effects of live broadcasting before it makes any major policy determination. It feels industry input will control the ultimate disposition of this issue.

The Board also acted on several license applications and racing date amendments. The Board's goal is to assure a fair distribution of dates to each track, and to assure competitive fields during these dates. Since most of the dates are historically established, the Board's function is largely administering cases of hardship, special events or conflicts.

FUTURE MEETINGS:

To be announced.

NEW MOTOR VEHICLE BOARD

Executive Secretary:
Sam W. Jennings
(916) 445-1888

The New Motor Vehicle Board licenses new motor vehicle dealerships and regulates dealership relocations and manufacturer termination of franchises. It reviews disciplinary actions taken against dealers by the Department of Motor Vehicles. Most licensees deal in cars or motorcycles.

The Board also handles disputes arising out of warranty reimbursement schedules. When a dealer services or replaces parts in a car under warranty, the manufacturer reimburses him. The manufacturer sets reimbursement rates which a dealer occasionally challenges as unreasonable. Infrequently, the manufacturer's failure to compensate the dealer for tests performed on vehicles is questioned.

The Board consists of 4 dealer mem-

bers and 5 public members. It has no manufacturer members. The Speaker of the Assembly appoints 1 public member, the Senate Rules Committee appoints 1 public member and the Governor appoints the remaining 7. The Board's support staff consists of an Executive Secretary, 3 assistants (all graduates of or law students at McGeorge Law School) and 2 secretaries.

MAJOR PROJECTS:

The New Motor Vehicle Board's regulatory review pursuant to AB 1111 is nearing completion. The Board had its primary public meeting on this issue in the Fall of 1981. Due to apparent apathy, or a lack of publication, there was little citizen input.

Pursuant to Vehicle Code section 3050, the Board's Consumer Complaint Department resolves disputes, including contract and warranty disputes, between motor vehicle dealers or manufacturers and consumers. The Staff reviews the facts of the specific complaint and attempts to find a compromise solution acceptable to the parties involved.

According to Chris Vaughn, the Assistant Executive Secretary, the Board does not attempt to publicize the Consumer Complaint Department because its staff already receives more complaints than it can effectively handle. The Department is presently resolving approximately 100 complaints.

Vaughn estimated that of the several thousand complaints received, 80-85% are "amicably" resolved. Important factors in this process are the attitudes and cooperativeness of the parties.

Executive Secretary Sam Jennings recently traveled extensively attending and presiding over hearings. He attended a National Automobile Dealers Association Conference in Atlanta, Georgia, to gain insight into problems facing various boards across the country and action taken to resolve those problems.

RECENT MEETINGS:

The Board met on February 5 at the AMFAC hotel in Los Angeles. E. James Hannah was elected President and Loui Fimbrez Vice-president. The Board then heard three petitions.

The Board dismissed the first, *B. C. Bingham and Bingham Toyota, Inc. v. Toyota Motor Distributors, Inc.*

The Board requested the parties to the second, *Harley Davidson of Westminister, Inc., Van Nuys Cycles, Inc., Dale's Modern Cycles and Bill Krause Sportcycles v. Harley Davidson Motor Company, Inc.*, to brief the various issues so that the Board might determine if the conduct alleged violated any law.

The Board set a hearing date for the third petition, *Gervic, Inc., dba Gateway Imports v. Fiat Motors of North America, Inc.*, a dispute over a franchise agreement.

The Board has not yet reached a decision in the petition of *Downtown L.A. Imports v. Fiat*, involving the termination of a franchise pursuant to Vehicle Code section 3060.

LEGISLATION:

AB 2606 (Kapiloff) would include recreational vehicles under NMVB control. The Board opposes this legislation, since present staff provisions are already maximized.

Effective March 6, 1982 Government Code section 553 was amended, increasing the Board's license fee from $60 to $100. Increasing protest activity (see CRLR Vol. 1, No. 1 (Spring, 1981) p. 52) necessitated this increase.

FUTURE MEETINGS:

To be announced.

BOARD OF OSTEOPATHIC EXAMINERS

Executive Secretary:
Gareth T. Williams
(916) 322-4306

The Board of Osteopathic Examiners was created by an initiative approved by California voters in 1922. The Board licenses Osteopathic Physicians (DO's) and medical corporations; administers its examinations; approves schools and colleges of osteopathic medicine (including intern and resident training); and enforces professional standards by disciplining its licensees. The Board consists of five licensed osteopathic physicians. The terms of 2 of the Board members will expire in June, 1982. Dr. S. Paul Sadick, the current President, will seek reappointment to a second term. Dr. Rice, having served 2 full terms, will not seek reappointment.

MAJOR PROJECTS:

The Board filed its statement of Review Completion (required by AB 1111) with OAL in November, 1981. OAL rejected the review, finding it inadequate. The Board reasserted its position that the review is complete, and is awaiting response from OAL. The Board is considering a lawsuit to vindicate its viewpoint if OAL continues to refuse approval of BOE regulations.

On November 13-15, 1981 the Board visited the College of Osteopathic Medicine at Pomona (COMP) to evaluate the administrative and educational quality of that institution. The Board was very pleased with the overall performance of COMP and made only a few formal recommendations including: increased utilization of library resources; earlier student instruction on conducting physical examinations; and prior submission of relevant curricula data for Board inspection before visitation. COMP was pleased with the Board's findings and promised to make an effort to comply with the recommendations.

The Board has been devoting substantial attention to the establishment of an original licensure exam for new graduates entering California to practice medicine. Original licensure should not be confused with reciprocity licensure, the latter involving entry of a previously licensed osteopath into the state. The Board formally adopted an original examination at its meeting of February 27, 1982, in San Diego. The exam will be given on June 14, 15 and 16 at COMP. An oral and practical section will be given on the 14th, and a written portion administered on the 15th and 16th.

The BOE is also very active in the attempt to adopt a national licensing exam geared specifically to the practice of osteopathic medicine. California has 2 members on a national committee which meets to work on the national exam in June in Chicago. The BOE advocates a national examination to standardize the osteopathic licensing function across the nation.

The Board is beginning to document the percentage of successful applicants for licensure from particular Colleges of Osteopathy. Rather than just recording the number of persons from a given school who did not pass, the Board will also record how many applicants from that school actually took the exam. This practice will give the Board a better idea of which schools are consistently successful in preparing their graduates for licensure and will alert the Board if any school starts having problems. The procedure will be prospective as well as retrospective so the Board will have sufficient data to evaluate the individual schools.

LEGISLATION:

Two assembly bills directly affecting the BOE were signed by the Governor in February, 1982. AB 2045, introduced by Assemblymen Rosenthal and Wyman, increases the annual licensing fee for osteopathic physicians from $200.00 to $400.00. The bill also appropriates $110,000 from the BOE fund to the BOE in order to alleviate a severe budget shortage and to provide for operating expenses through June of 1982. The increase in fees is attributed to the small license population (approximately 1,400) of osteopathic physicians in California.

AB 1258, introduced by Assemblyman Rosenthal, was vehemently opposed by the Board. The bill would add 2 public members to the Board on January 1,

1983. The Board does not oppose the addition of public members, however, it asserts that the only way to do so is by constitutional initiative. In *D'Amico v. Board of Medical Examiners*, 11 Cal. 3d 1, 520 P.2d 10, 112 Cal. Rptr. 786 (1974), the Supreme Court of California invalidated portions of the Osteopathic Act as amended by initiative in 1962. In *Board of Osteopathic Examiners v. Board of Medical Examiners*, 53 Cal. App. 3d 78, 86, 125 Cal. Rptr. 619, 624 (1975), the California Court of Appeal specifically ruled, however, that *D'Amico* did not invalidate the provisions that empowered the Legislature to amend the Act. The Board is strongly considering a lawsuit later this year to enjoin enforcement of this provision.

RECENT MEETINGS:

At the BOE meeting held in Sacramento on Jan. 11-12, the Board was very concerned about the attempt to establish an osteopathic student in the University of California Hospital system's externship program. The U.C. system demanded licensure by the Board of Medical Quality Assurance because student externs are legally practicing medicine. The BOE claims it is legally competent to license osteopathic externs and therefore the osteopaths should not be excluded by the U.C. system.

The Board requested an Attorney General opinion and on August 28, 1981 the Attorney General issued Opinion no. 81-509, which clearly upholds the BOE position. The U.C. system has not responded. The BOE discussed the possibility of a "test case"; it would encourage a top osteopathic school graduate to apply for a U.C. position and take action if he or she is rejected because not licensed by the BMQA.

Another problem raised in the January meeting is a possible shortage of intern positions in osteopathic hospitals. Board President Dr. S. Paul Sadick assured the board that there would be no shortage even with the new COMP graduates.

On February 27, 1982 at its meeting in San Diego, the Board adopted the original licensure examination for new graduates. Executive Director Gareth Williams expressed some concern that the adoption of the exam would require amendment of the Board's reciprocity statute. Mr. Williams thought the language would require elimination of the FLEX exam as a basis for reciprocity. The Board's Legal Counsel, Alex Tobin, assured Mr. Williams that the adoption of an original licensing exam should not affect the reciprocity procedure set out in Business and Professions Code section 1637.

The Board refused to approve an osteopathic physician's application for a Physician's Assistant (PA). Board member Dr. Robert Orlando was concerned that the application did not name the PA the doctor in question wanted to hire. Dr. Orlando thought this practice would leave room for abuse of the PA program because the BOE would know nothing of the quality of the PA being hired. The Board passed Dr. Orlando's motion that the application by the physician should include the name of the PA so the Board can check the PA's credentials with the BMQA.

FUTURE MEETINGS:

The Board will conduct a conference call meeting on April 9; and a regular public meeting on May 20 and 21 in the Sacramento office at 921 11th Street.

PUBLIC UTILITIES COMMISSION

Executive Director:
Joseph Bodovitz
(415) 557-1487

The California Public Utilities Commission was created in 1911 and strengthened in 1946 to regulate privately owned utilities and ensure reasonable rates and service for the public. The Commission oversees more than 1,500 utility and transport companies including electric, gas, water, telephone, railroads, airlines, buses, trucks, freight services and numerous smaller services. More than 19,000 highway carriers fall under its jurisdiction.

Overseeing this effort are 5 commissioners appointed by the Governor with Senate approval. The Commissioners serve staggered 6-year terms in an increasingly complex full-time endeavor.

LEGISLATION:

In the wake of the proposed anti-trust settlement between the Department of Justice and American Telephone and Telegraph (AT&T) which will result in divestiture from AT&T of its local operating companies, Congressman Tim Wirth (D-Colorado) has introduced a bill which would restructure the entire telecommunication industry in the United States. The bill, H.R. 5158, would allow eventual deregulation of many operations of the Bell system so that AT&T could compete with products and services now offered by nonregulated telecommunications companies. While the proposed anti-trust settlement between the Department of Justice and AT&T will allow a substantial transfer of assets from the local operating companies to AT&T, H.R. 5158 would enable Congress to maintain some degree of control over the transfer of assets in order to protect any local operating companies from their corporate parent.

While testifying before the House Subcommittee on Telecommunications, Consumer Protection, and Finance, John E. Bryson, President of the California Public Utilities Commission, said the primary goal of telecommunication deregulation should be to assure that adequate telephone service remains available to all at reasonable rates. To achieve this goal, there are 6 essential prerequisites which Bryson feels must be met:

1. Local operating companies must be divested from AT&T intact, before any assets are transferred, to assure fair compensation for loss of valuable lines of business;
2. The mechanism for setting access fees to local exchange networks must assure that such fees will be adequate;
3. The operations of the local operating companies must be broadly defined to preserve local calling patterns which match communities of interest, and to allow continuation of profitable lines of business related to exchange service, such as classified directory advertising;
4. State Commissions must be assured adequate regulatory authority and flexibility to perform effectively;
5. The local operating companies must be made truly independent of AT&T;
6. Presently regulated services and products should not be deregulated until effective and enduring competition is assured for the protection of consumers.

While Congress is restructuring the telecommunication industry to meet the challenges of technological innovation and increased competition, Bryson says it is essential for Congress to preserve the economic health of local operating companies so they can maintain affordable telephone services.

MAJOR PROJECTS:

On January 5, the PUC released a preliminary report criticizing Pacific Gas and electric (PG&E) for its handling of the Helms Pump Storage Project. The Helms Project is a massive underground hydroelectric plant designed to generate electricity during peak hour demand by draining water from a high mountain reservoir down to a lower reservoir during the daytime. At night, when electricity demand is low, water will be pumped from the lower reservoir to the upper reservoir. When PG&E contracted with Granite-Ball-Groves to construct the hydroelectric plant and a series of tunnels connecting the two lakes 50 miles east of Fresno in March, 1977 the targetted time for completion was June, 1981 with an estimated $381 million total project cost. Now, it appears PG&E will be very lucky if the project is completed before the end of 1982 with a total project cost not exceeding $700 million.

The report, compiled by Commission staff engineers and accountants, acknowledges that the project has had more than its share of unforseen difficulties but, much of the time delays and increased costs could have been prevented had PG&E been more prudent in overseeing construction of the project. 3 unusually severe winters, excessive drainage problems, numerous geological obstructions, lack of qualified labor and the remoteness of the project location are cited as unavoidable circumstances which contributed to construction delays and cost overruns. Even so, according to the PUC report, PG&E made a fatal error in electing to use an "incentive" contract for the project rather than a conventional "hard money" or "fixed price" contract. The incentive incorporated in the Helms Project contract provided that if the project was completed early or below the estimated cost, the contractor would split the savings with PG&E; but, should the project not be completed on time or excessive costs occur, PG&E would cover most of the additional costs of the project. The "incentive" contract is best used for large, unprecedented projects which demand a great deal of time and "state of the art" technology to complete. Success under an "incentive" contract requires greater management control over the progress of construction by the utility, which PG&E failed to adequately provide. No specific PG&E officer is assigned responsibility for the utility's monitoring of the construction of the project, nor, has the utility exercised necessary budget controls over the project. The PUC staff report criticizes PG&E for ineffective auditing of the project, inadequate controls over materials used, and an initial failure to deal with on-the-site thefts of tools and equipment.

The report recommends that the PUC continue its surveillance of the Helms Project until completion, when PG&E is expected to file a rate base offset application with the Commission to cover the cost of the project. At that time, the report recommends, the Commission should exclude from the increased rate base the amount of AFUDC (Allowance For Funds Used During Construction) due to management shortcomings and inadequate controls during construction. Yet this highly ambitious project which has incurred numerous difficulties, is still considered cost effective even though PG&E, in handling the project, has fallen short in fully protecting the interests of its ratepayers.

RECENT MEETINGS:

On December 31, 1981 the Commission granted San Diego Gas & Electric Company (SDG&E) a $166.2 million rate increase. The action is expected to cause price increases of 19.9% for average residential customers and 20.7% for industrial users. The decision permits SDG&E to earn a 16.25% return on equity—the highest ever allowed a California energy utility.

The Commission rationalized the increase as aimed at strengthening the utility, which has been described as financially "risky". SDG&E had argued that its "BBB" rating was undermining access to the capital markets. The Commission hopes the unprecedented rate of return will restore the utility's financial rating to an "A".

The rate increase is $54 million less than requested by SDG&E. However, the Commission staff's recommendation was exceeded by close to $50 million in the final compromise. The cuts were made primarily in SDG&E's conservation efforts. The utility had received frequent criticism by the PUC, of an "ineffectual" conservation effort. The Commission refrained from imposing a financial penalty recommended by the staff for failure to meet certain conservation goals. However, the Commissioni did cut $3 million from proposed conservation programs and decided not to fund the zero interest loan program available to PG&E customers. (See CRLR Vol. 2, No. 1 (Winter, 1982), p. 76.)

The PUC also turned down SDG&E's request to include in its rate base the costs of construction on the uncompleted Arizona transmission line. This policy reinforced the Commission's refusal to permit Construction Work In Progress (CWIP) financing in energy generation projects. The Commission repeated its warning that the carrying costs of the $45 million Sundesert power generating site would be excluded from the rate base if SDG&E fails to propose a specific plan for its use. The site is the remainder of the abandoned Sundesert Nuclear Generating Project which cost ratepayers upwards of $100 million.

The rate increase decision met a reaction similar to those exhibited in other California service areas. On January 19, an estimated 44,000 San Diegans participated in a "blackout" designed to protest the rate increase. Many city and town councils joined with consumer representatives and politicians calling for an audit of SDG&E management to reconcile the need for the rate increases with widespread reports of utility mismanagement. In early February, the Commission complied with these demands and orders a complete audit of the utility.

During the same meeting, on December 31, the PUC granted PG&E a $909.4 million rate increase for gas and electric services. The rate hike, which became effective January 1, increased the monthly residential bill for the typical customer using 500 kwh of electricity by $4.78, from $37.01 to $41.79. For the typical gas customer using 100 therms of gas during the winter months, the bill increased by $4.25, from $31.03 to $35.28. The massive rate increase consists of 4 components: a $656.2 million general rate increase to cover increased costs for labor, equipment and the cost of money; $34.8 million to cover increased costs for natural gas; $41.0 million for zero and low interest insulation loans given to customers; and $177.4 million to meet the 1981 Federal Economic Recovery Act requirement that the PUC permit utilities to recover rate tax savings previously passed on to ratepayers. Though this is the largest rate increase in history, it is substantially less than the $1.5 billion originally requested by PG&E.

Fallout from the December 31 rate decisions resulted in modification of the Commission's decisions. On February 18, the PUC ordered the speedup of a $100 million cut in electric rates charged by PG&E. An abundance of hydroelectric power available from abnormally heavy season rainfall is responsible for a rate decrease originally scheduled for April 1. On the same day, the Commission restored part of an allowance granted to all-electric residences in response to the doubling and tripling of rates in these homes due to a rate redesign. In its December 31 decision, the PUC endeavored to encourage conservation by reducing the "kilowatt hours" allowance for middle-tier electricity usage. The drastic response to this modification led the Commission to rollback part of the rate design pending a reexamination.

The PUC has been receiving formidable negative response to its SDG&E and PG&E decisions. On February 16, the California Assembly voted 45 to 1 in favor of a non-binding resolution demanding a roll-back of the PG&E increase. The Los Angeles Times reported angry consumers marching in front of utility offices, burning utility bills at bonfires, sending bills to the PUC in lieu of payment, conducting statewide "blackouts" and calling for public election of PUC commissioners. State Senator Ross Ann Vuich and state Assemblyman Pete Chacon proposed legislation required election of the Commissioners.

On January 21, the Commission ordered all California electric utilities to establish standard price offers to encourage development of cogeneration and small power production in the state. These price offers must be based upon "avoided cost" — the amount it would

cost a utility to produce the energy itself. The State's dependence upon oil and gas for more than 50% of its electricity has contributed to the dramatic rate increases of the past two years. The Commission argues that cogeneration and small power facilities will diversify the energy supply in California, promote maximum efficiency in power generation and consequently lower consumer rates for electricity.

The order requires filing of these standard offer options by mid-March. Unless suspended by the Commission, the utility offers will become effective 2 weeks later. The decision also establishes guidelines for terms of interconnection costs, line losses and other contract items. In mid-1982 California utilities are required to propose offers for energy payments based on projected variable operating costs which may be fixed up to 5 years in advance and long-term energy supply contracts with small power facilities based on a long-run avoided cost concept.

The PUC order is a response to state legislation designed to promote alternative energy generation and the federal Public Utilities Regulatory Policies Act (PURPA).

FUTURE MEETINGS:

To be announced.

STATE BAR OF CALIFORNIA

President: Sam Williams
(415) 561-8200

The State Bar of California licenses and regulates all attorneys practicing law in the State of California, subject to the supervision of the State Supreme Court. The Bar is administered by a Board of Governors composed of 16 attorneys and 6 public members.

MAJOR PROJECTS:

The Bar's current projects include: analysis of the pilot program on specialization, formulation of a formal opinion on responsibilities of legal-services attorneys to their clients, and changes in admission rules for graduates of foreign law schools.

The Bar has been administering its pilot program on specialization for 9 years. The program, which involves certification of specialists in various legal areas, has encountered severe opposition, particularly from young lawyers who charge that the program is unfair to those trying to build careers. At its October, 1981 meeting, the State Bar Conference of Delegates voted overwhelmingly to kill the program. However, that vote was merely advisory. The Board of Governors, which will decide the fate of the program, will discuss whether to terminate or continue it at the March meeting.

The Bar's Standing Committee on Professional Responsibility and Conduct has prepared a formal ethics opinion on the responsibilities to their clients of attorneys who may be laid off because of funding reductions in legal services programs. The legal-services programs and their attorney-employees must take all reasonable steps to avoid foreseeable prejudice to their clients. Having satisfied that requirement, attorneys may withdraw. They may even be required to withdraw if continued representation would be incompetent because of reduced staff or the unavailability of resources. The attorney must obtain the permission of the tribunal hearing the case to withdraw if the tribunal's rules so require. The legal profession as a whole should share in the responsibility of assuring that the legal rights of legal-services clients are protected.

The Board of Governors is seeking comments until April 1, 1982 on a proposed amendment to rules governing admission to practice in California after attending a law school outside the United States. According to the proposed rule, the Committee of Bar Examiners would consider each application on a case-by-case basis to determine whether the academic program of the foreign school is "substantially equivalent" to that required of unaccredited law schools generally. The proposed rule is favored by the Committee of Bar Examiners because foreign law students are probably not aware of the rule and may not intend to apply for admission to the California Bar when they begin law study.

RECENT MEETINGS:

The December 19 Board of Governors meeting was held at the Bar's San Francisco headquarters, 555 Franklin Street. The Board adopted new Rules of Procedure, effective January 1, 1982 which provide for auditing an attorney's client-trust-fund accounts if the State Bar Court referee finds reasonable cause to believe the attorney has violated the Rules of Professional Conduct relating to preserving the identity of funds and property of clients. Under the old rule, audits were not available until formal disciplinary proceedings were begun, and even then they were limited in scope.

Other actions taken by the Board at the December 19 meeting include approval of: a 1982 budget of $14.5 million for the State Bar General Fund; a proposal to create a special Committee on Labor Law to explore the feasibility of establishing a permanent Labor Law Section; merger of the overlapping Committee on Jury Instructions and Committee on Rules and Procedures of Court; and publication of a handbook on attorney discipline to be used by the 500 volunteer State Bar Court referees, who hear and decide attorney discipline cases.

At its January 16 meeting, also held at the Bar's San Francisco headquarters, the Board of Governors authorized the creation of an ad hoc Legal Services Trust Fund Committee to implement SB 713, which authorizes the use of interest from certain client-trust accounts to provide funding for legal services for the poor. The committee will administer the drafting of regulations for distribution of the funds and establishment of bank accounts to which the interest will be forwarded.

The Board also took a stand opposing ABA Standard 211(d), which was adopted under pressure of a suit by the O.W. Coburn School of Law at Oral Roberts University in Tulsa, and which provides an exception to the general rule denying ABA accreditation to any school discriminating on the basis of race, sex, religion or national origin. The exception allows schools "having a religious affiliation and purpose" to adopt admission and employment policies directly relating to that affiliation as long as all applicants are informed. Though graduation from an ABA accredited school is not a requirement for admission to the California Bar, it is a requirement for bar admission in most states.

The Board approved creation of a Department of Probation of the State Bar Court in which volunteer referees will supervise attorneys placed on probation by order of the California Supreme Court. This procedure will replace probation-monitoring through affidavits by the disciplined attorneys.

Other actions taken by the Board at its January meeting include: agreement to sponsor amendments to Article 13 of the Business and Professions Code, making arbitration in attorney-client fee disputes mandatory if the client so requests and requiring an attorney to give the client 30-days notice of the right to arbitration before filing suit to recover fees; amendment of Rule of Procedure 224, which allows the State Bar president to issue public statements confirming the fact of a disciplinary investigation or proceeding and clarifying its procedural aspect under certain conditions, to require the president to designate a vice-president to act in his behalf if he declines to exercise his discretion under the rule; and authorization to the Legal Services Section to publish and distribute a manual on how to use a *habeus corpus* writ to test the legality of a prisoner's conditions of confinement.

The Board of Governors met February

5 and 6 at the Bar's Los Angeles office, 1230 West Third Street. The Board adopted a resolution from the Conference of Delegates recommending amendments to the Rules of Professional Conduct to forbid judicial nominees from agreeing or disagreeing with specific past decisions or from indicating how they would rule on a specific issue while appearing before a judicial selection or confirmation commission. The amendments must now be approved by the California Supreme Court.

The Board also approved two other Conference of Delegates resolutions, urging the Regents of the University of California to implement part-time degree programs (including night programs) in the university's law schools, and prohibiting sections and committees of the State Bar from expressing a position to the state legislature on a matter originating with the Conference of Delegates except with approval of and in coordination with the Conference Executive Committee. The Board declined to take action on Conference of Delegates resolutions supporting U.S. Senate ratification of the Convention on the Prevention and Punishment of the Crime of Genocide and supporting the principle that the California constitutional right to privacy includes the right of women to choose freely in matters of contraception and abortion and opposing legislative efforts to abridge that right.

In other actions, the Board approved publication of a formal opinion on the ethical responsibilities of legal-services attorneys (see MAJOR PROJECTS, above), approved for publication the text of a consumer-information pamphlet explaining the lawyer-discipline system, and approved a proposal urging legislative amendment of the statute governing the Commission on Judicial Nominees Evaluation to eliminate from the rating system the "exceptionally well-qualified" and "well-qualified" ratings, leaving only "qualified or not qualified." The Board also approved amendments to the Rules and Procedures of the Commission on Judicial Nominees Evaluation. The amendments require: notice to a nominee of an investigation before confidential questionnaires are sent out; distribution of questionnaires to the public as well as the bench and bar; omission from evaluation of negative comments that cannot be disclosed to the nominee for confidentiality reasons; and commencement of a completely new investivation of a nominee whose name has been resubmitted by the governor after the nominee has been rated "not qualified."

FUTURE MEETINGS:

The Board of Governors will meet April 2 and 3 in Los Angeles and May 1 in San Francisco.

TOXIC SUBSTANCES COORDINATING COUNCIL

Coordinator: Peter H. Weiner
Governor's Office
Statue Capitol Building
Sacramento, CA 95814
(916) 322-7691

On February 11, 1980 by Executive Order, Governor Brown created the Toxic Substances Coordinating Council. The Council is comprised of the following members: Director of the Department of Food and Agriculture, Director of the Department of Industrial Relations, Director of the Department of Health Services, Chairpersons of the Air Resources Board, Chairperson of the State Water Resources Control Board, Secretary of the Resources Agency, Secretary of the Business and Transportation Agency, Director of the Office of Planning and Research, and the Council's Coordinator, Mr. Peter Weiner, Special Assistant to the Governor for Toxic Substances Control.

The Executive Order states that the Council shall:

- Promote the use of safer chemicals, encourage recycling and minimize the need for landfill waste disposal;
- Monitor the state's efforts in protecting the citizenry from toxic materials;
- Encourage interagency cooperation and joint projects;
- Promote regulatory consistency and reform;
- Coordinate epidemiological research; and,
- Develop policy to minimize the hazards of toxic substances use and disposal.

RECENT MEETINGS:

The Council has not met since September, 1981 and as of March 1, 1982 no meetings were scheduled. Conversation with a Council spokesperson revealed that the Council felt too constrained by having to meet in public and in such large numbers. Greater progress is being made as the result of informal, behind-the-scenes meetings between fewer Council members. However, future public hearings are anticipated. The Council has not yet been disbanded.

The Council's annual report will be released in the Spring. The report has been delayed because a significant amount of "toxics" legislation did not win approval before the Legislature recessed in 1981. Consequently, the report was delayed so that legislation approved in 1982 could be included.

LITIGATION SECTION

UNITED STATES SUPREME COURT

In re R. M. J., _____ **U.S.** _____ (January 25, 1982)

State regulation of attorney advertising limited by First Amendment.

As is the case in most states, the attorneys of Missouri are regulated by the State Supreme Court. Rule 4 of the Missouri Supreme Court specifically regulates advertising by attorneys. The rule specifies ten kinds of information which may be included in an advertisement. The Rule is unclear as to whether information may go beyond the ten categories of information specified. The Rule also lists 23 "areas of practice" an attorney may identify in his advertising. The Rule requires that the precise wording of the 23 areas of practice listed in the rule must be adopted in the advertising when referring to possible areas of specialty. And the Rule specifies guidelines for sending out the traditional professional announcement cards.

A Missouri attorney was charged in an information by the Advisory Committee of the Missouri Supreme Court with violating Rule 4. The Bar contended that claims were made beyond the ten categories of information specified in Rule 4 and that the wording used to describe areas of specialty did not conform to the precise wording of the 23 "areas of practice" as listed in the Rule. The attorney was also charged with sending announcement cards to persons not specified under the Rule.

The attorney argued that the advertising restrictions violated the First and Fourteenth Amendments to the U.S. Constitution. The Missouri Supreme Court held the advertising restrictions valid and issued a private reprimand to the attorney.

Justice Powell, writing for a unanimous court, held that the advertising restrictions of the Missouri Supreme Court violated the First Amendment to the Constitution. The Court wrote that while states may regulate misleading advertising, there was no showing that the appellant attorney's advertising was in any way misleading. To wit, the attorney's violation of the Rule consisted of mentioning that he was licensed to practice law in *Illinois* and Missouri and that he is a member of the Bar of the United States Supreme Court. Both claims were accurate. The Court held that unless an advertisement is misleading it may be restricted only where reasonably necessary "to further substantial interests." The Supreme Court could find no such substantial interest behind the advertising restrictions of the Missouri Supreme Court.

CALIFORNIA SUPREME COURT

In re David D. Trebilcock, 30 Cal.3d 312 (1/1/82)

Attorney disbarred after committing six robberies.

Shortly before his admission to the Bar in 1979, Attorney David Trebilcock committed six robberies of savings and loan associations. The crimes occurred during a ten week period. After Attorney Trebilcock was found guilty under federal law of bank robbery, a state Bar Panel recommended the disbarment of the newly admitted attorney.

The California Supreme Court upheld the State Bar Panel, disbarring the attorney based on the federal convictions. The Court noted that the burden is on an attorney to demonstrate that the recommendations of the State Bar Panel were erroneous or unlawful and that the Court afforded a great deal of weight to the findings of the State Bar Panel. The Court stated that Attorney Trebilcock may have potential for reform since his crimes ended when his financial needs were "temporarily satisfied." The Court noted that the hearing panel had correctly concluded that a "sufficient time had not elapsed to show remorse and rehabilitation."

CALIFORNIA COURTS OF APPEAL

Carl S. v. Commission for Teacher Preparation and Licensing, 126 Cal.App. 3d 365 (1/5/82).

Hearsay evidence insufficient grounds for license revocation.

The Commission for Teacher Preparation and Licensing had revoked Carl's general secondary teaching credential based on evidence of alleged homosexual activity with a minor in Denver, Colorado. At the revocation hearing before an administrative law judge, the relevant evidence submitted on behalf of the Commission for Teacher Preparation and Licensing consisted entirely of hearsay statements by three persons who were possible witnesses at the trial in Denver.

Carl received notice and filed a response but did not personally attend the proceedings. His attorney, appearing on his behalf, sought to introduce evidence of a motion to withdraw the plea of no contest entered by Carl in the Denver incident, as well as a minute order by the Denver court limiting access to and sealing the arrest records on the case, and an affidavit of a witness changing statements allegedly made earlier in the case. The Commission refused to accept these items proffered by counsel for Carl.

Carl filed suit to invalidate the revocation hearing and regain his teaching certificate. The trial court refused mandate and denied his petition. The Court of Appeals reversed the trial court, granting Carl's petition and reinstating him. The Court noted that although under section 1151.3 of the Administrative Procedure Act the hearing does not have to be conducted according to technical rules, it nevertheless must include evidence capable of supporting its findings which would be admissible over objection in a civil action. The purely hearsay evidence considered by the hearing officer, apparently the sole basis for his decision, did not meet this test.

Sanchez v. Grain Growers Association, 126 Cal.App. 3d 665 (2/19/82)

Agricultural co-op regulation grain distribution included proper by-laws for recompense of expelled member during crop year.

Part of the state regulatory system over agriculture involves the use and regulation of cooperative agricultural associations, and agricultural marketing orders. The Grain Growers Association operates a marketing order pursuant to section 5400 of the Food and Agricultural Code. Members operating under the marketing order contribute to the Association running it on a yearly basis. The Association processes, uses and markets grain in a cooperative manner for the benefit of its members. Each member contributes based on tons of grain contributed into the cooperative effort. Surplus funds left over after each crop year are then returned to the members based on the proportion of contribution made.

Plaintiff Sanchez was expelled from the association during the year, and sued it for money due, declaratory relief and an accounting. The trial court held for the plaintiff, finding that the by-laws of the Association failed to provide a procedure for valuing an expelled member's

share of the surplus in violation of statutory requirement.

The Court of Appeal reversed the trial court, holding that the procedure for the return of monies due expelled members during the year was provided for in the by-laws. The Court noted that co-op membership was to be "without financial value" and that extra funds left over were to be distributed to everyone, including plaintiff Sanchez. The Court held that plaintiff Sanchez did not get his money at the time of expulsion because the cooperative association did not have it when the expulsion occurred.

ATTORNEY GENERAL OPINIONS

Department of Forestry Fees for Timber Harvesting (81-710)

There is no statutory authority authorizing the Department of Forestry to charge a filing fee to cover its costs in processing timber harvesting plans. The state must bear such costs.

Department of Fish and Game Law Enforcement Actions (81-714)

Although the Director of the Department of Fish and Game may make staff assignments and otherwise exercise supervision of the wildlife protective branch of the Department, he may not instruct it to refuse to arrest persons charged with a criminal offense. Those persons working in the wildlife protection branch are designated "peace officers" by the Legislature and as such, must perform functions beyond the narrower jurisdiction of the Department of Fish and Game. These responsibilities include receiving and arresting persons charged with criminal offenses, even where those offenses do not involve transgression of fish and game statutes and rules.

GENERAL LEGISLATION

ADMINISTRATIVE AGENCIES:

AB 2546 (Vicencia):

Would limit the authority of state agencies to adopt regulations to those particular subjects expressly authorized by statute. Agencies could no longer rely on implied authority to adopt regulations, except when adopting emergency regulations.

The bill would require each state agency, by March 1, 1983, to introduce legislation that clearly and concisely defines the subject matter areas where the agency would be authorized to adopt regulations.

The bill is also revolutionary in another sense, in that it assigns much of the blame for "overregulation" to the Legislature. The bill states:

"Regulatory authority is too often delegated to state agencies without clear and precise guidelines and limitations on its use..."

"Overly broad delegations of rule-making authority are at the root of the regulatory crisis and must be effectively addressed if the Legislature is to successfully implement a program of regulatory reform in California."

Of course, there are dangers inherent in a sweeping proposal such as AB 2546. Clear and undisputed agency authority could be held hostage by the demands of special interest groups. The codes could become a patchwork of nonsensical exemptions, exceptions, and caveats (e.g. - "The Air Resources Board shall regulate all stationary sources of emission except oil refineries in Kern County").

Some agencies are thankful for the opportunity to settle disputes with their regulated communities. Areas of arguable authority will now be ruled on by the Legislature — one way or the other.

AB 2546 will only become law if ACA 72 is approved by a vote of the people.

ACA 72 (Vicencia) states that an agency has no power "to adopt a regulation to govern any subject unless the Constitution or the Legislature by statute has granted to the administrative agency express authority to regulate the subject."

AB 2305 (Katz):

Would require a state agency to prepare a "small business impact statement" if a proposed regulatory action would have a "regulatory impact" on a small business. The impact statement would identify additional costs to small businesses imposed by the regulation.

The term "regulatory impact" is not defined.

AB 2355 (Rogers):

Would require a state agency to prepare a "regulatory flexibility analysis" if a proposed regulatory action would have a "significant economic impact" on a "substantial number of small businesses" as defined by the Office of Small Business Development.

AB 2355 requires both an initial and final regulatory flexibility analysis (the latter would respond to comments received after the initial analysis was released to the public), but exempts emergency regulations from the analysis requirement until adopted as normal regulations.

SB 575 (Carpenter; Chapter 814):

Enacts the Carpenter-Katz Small Business Equal Access to Justice Act of 1981. The Act provides that if a small business or licensee prevails in an action between a small business or licensee and a state agency, the former, in the discretion of the court, may be awarded "reasonable litigation expenses", including expenses incurred in "administrative proceedings, attorney's fees, and witness fees", not to exceed $7,500.

The awarded amount would be paid from the agency's regular operating budget.

AB 912 (Katz):

Is similar to SB 575. AB 912 provides for an award not in excess of $10,000 to a prevailing small business or licensee when a court determines that the action of the agency was "undertaken without any substantial justification". AB 912 has been on the inactive file since September 9, 1981.

AB 1828 (Naylor) requires OAL to establish a schedule that will accomplish a complete review of all agency regulations at least once every five years.

Status: AB 1828 has passed the Assembly and is in Senate Finance Committee.

MEDICAL RECORDS; OPTOMETRISTS — OPTICIANS:

AB 610 (Berman; Chapter 15, Statutes of 1982):

Guarantees patients and former patients of most health care providers the right to inspect that patient's records within 5 days after so requesting and payment of reasonable clerical costs.

The health care provider may refuse inspection of defined mental health records if the provider determines that disclosure would adversely affect the patient.

In lieu of permitting inspection, the provider may prepare a summary of the health care records to give to the patient.

SB 1035 (Maddy):

Prohibits specified business arrangements (landlord-tenant) between optometrists and dispensing opticians or other suppliers of optometric devices wherein one party directly or indirectly controls the professional judgment or practice of the other. SB 1035 died in committee but Senator Maddy has indicated he will introduce a similar bill this year.

THE COMMISSION ON JUDICIAL APPOINTMENTS:

ACA 49 (Willie Brown):

Increases the members on the Commission from 3 to 9. The new commission members would be: the Chief Justice as chair, the Attorney General, 2 active justices of the courts of appeal to be selected by all active justices of the courts of appeal; 2 State Bar members to be appointed by the State Bar's governing body; 3 citizens who are not judges, retired judges, legislators, or State Bar members, 1 appointed by the Speaker of the Assembly, 1 by the President pro Tempore of the Senate, and 1 by the Joint Rules Committee of the Legislature. No more than 2 of the citizen members shall be from the same political party.

Status: ACA 49 is awaiting a full vote by the Assembly.

SCA 27 (Davis):

Would abolish the Commission on Judicial Appointments and require that all nominations by the Governor to the Supreme Court and courts of appeal be subject to confirmation by the Senate. Failure by the Senate to confirm or reject within 60 days would constitute confirmation. The 60 day period would be tolled during any joint recess of the Legislature.

Status: SCA 27 has been approved by the Senate and is now in Assembly Ways and Means Committee.

ATTORNEYS, FEES, AWARDS AND SCHOOL:

AB 490 (Nolan):

Requires an attorney who contracts to represent a plaintiff on a contingency fee basis to provide a copy of the contract to the client which would disclose the contingency fee rate and other specified items.

As originally written, AB 490 prohibited attorneys from contracting, in negligence cases, for a contingency fee in

excess of 33 1/3% of the amount recovered or 40% if the plaintiff prevailed on appeal. These provisions were amended out, leaving only the disclosure requirements.

Status: AB 490 has passed the Assembly on a vote of 67-1.

AB 2155 (Imbrecht):

Would have required 25% of all punitive or exemplary damages in excess of $5,000 to be distributed to one or more nonprofit, public interest organizations. The bill established procedures for the distribution, but died in committee.

AB 661 (Nolan):

Would have limited and made more difficult an award of attorney's fees to a successful party in an action which resulted in the enforcement of an important public right (Code of Civil Procedure section 1021.5). The bill died in committee.

AB 304 (Ingalls):

Would have limited the number of people in the State of California who could practice law by denying certification to anyone who had not attended and graduated from an accredited law school. The bill died in committee.

LOBBYISTS:

AB 2327 (Hannigan):

Would require state employees who attempt to influence legislative action when acting within the scope of employment to register as lobbyists.

AUDITING THE LEGISLATURE:

SCA 43 (Speraw):

Would limit the amount of money that the Legislature could spend on itself (not including salaries) to that amount expended in FY 1976-77, plus or minus the amounts equal to the increase or decrease in the California Consumer Price Index as published by the U.S. Department of Labor.

SCA 43 would also require the Controller to annually audit and report on the Legislature's expenditures.

STATE CONSULTANT CONTRACTS:

SB 1398 (Presley):

Would require each state agency or department to reduce over a 2 year period the current total monetary amount of consulting services contracts let by the agency or department by 50%.

PUBLIC CAMPAIGN FINANCING:

AB 2193 (Harris):

Proposes partial public financing of campaigns. Basically, the bill would:

* Provide public money to candidates who accept strict limitations on the amount of money that individuals or groups can give to their campaigns;
* Repeal the $100 per year political contribution tax deduction; and
* Finance the public financing of campaigns by providing for a $1 checkoff on state income tax forms.

AB 2193 failed to secure passage on the Assembly floor when Republicans, voting as a bloc, denied AB 2193 the required 2/3 vote.

LEGISLATIVE ETHICS:

SB 884 (Presley):

Would prohibit any member of the Legislature from "accepting or agreeing to accept, or being in partnership with any person who accepts or agrees to accept, any employment, fee, or other thing of monetary value, or portion thereof, in consideration of his appearing, agreeing to appear, or taking any other action on behalf of another person before any state, regional, or local board or agency in this state."

SB 884 extends the period of time during which a complaint can be filed with the Joint Legislative Ethics Committee from 6 to 12 months, and requires the Committee to act within 90 days of receipt of a complaint.

SB 884 has passed the Senate and has been assigned to the Assembly Rules Committee.

CONSUMER CREDIT REPORTS AND TENANTS:

SB 1406 (Boatwright):

Extends existing consumer credit reporting requirements and protections to those instances in which consumer "credit, worthiness, standing or capacity" reports are prepared for determining the consumer's eligibility to rent a dwelling unit. Among other things, the bill:

1. Requires a consumer reporting agency, when preparing a report in connection with renting a dwelling unit, "to notify the consumer in writing that a report will be made regarding the consumer's character, general reputation, personal characteristics, and mode of living".

2. Requires an individual who refuses to rent a dwelling unit to a consumer on the basis of a consumer agency report, to so notify the consumer, and provide the consumer the name and address of the consumer credit reporting agency.

3. Prohibits the inclusion of information in the credit report about unlawful detainer actions filed against the consumer when the consumer was adjudged the prevailing party.

CALIFORNIA INSURANCE CONSUMER ACTION GROUP:

AB 1909 (Waters and Torres):

Would have created the California Insurance Consumer Action Group. The Group, a nonprofit corporation comprised of individual insurance consumers who contribute a specified amount to the corporation, would be empowered to "effectively represent and protect the interests of individual insurance consumers in this state" by, among other things, intervening in regulatory agency proceedings and specified civil actions and bringing civil actions on behalf of any member or group of members. AB 1909 died in committee.

PUBLIC UTILITIES COMMISSION:

The PUC has attracted a tremendous amount of legislative attention in 1982. Some of the bills propose radical changes that, if enacted, would drastically alter the PUC's structure and operations. Listed below are a sampling of such bills. The resolutions listed below are revelatory of the Legislature's utter frustration with the PUC's inability and/or unwillingness to control escalating utility bills.

SCA 32 (Mello):

Would amend the Constitution to require that PUC commissioners be elected from 5 districts each comprised of 8 state senatorial districts. Presently, PUC commissioners are appointed by the Governor, confirmed by the Senate and do not represent geographical areas within the state.

SB 1490 (Greene):

Would create the Citizens Utility Board to represent residential utility consumers before the PUC and other public bodies. The CUB would be funded by consumer subscribers who have paid at least $3 but not more than $100. Utilities would be required to mail CUB enclosures and information to all ratepayer's in their monthly statements.

Consumer subscribers would elect a board of directors, which, in turn, would hire professional staff to represent the consumer-subscribers before the PUC.

(Note: The Center for Public Interest Law has recently petitioned the PUC to allow the formation of a regional CUB in the San Diego region. Assemblyman

Levine has introduced similar legislation in the Assembly.)

AB 2537 (Duffy):

Required the PUC to designate one of its staff as public advisor to assist members of the public and ratepayers in testifying before the PUC.

SB 1467 (Garamendi):

Would prohibit the PUC from including in the rate base any capital expenditures related to construction work in progress (CWIP) or any hydroelectric or thermal electric plant over 50 megawatts generating capacity, electric transmission line over 200,000 volts, or gas plant.

AB 2443 (Sher):

Would require the PUC to designate a baseline quantity of electricity and volume of gas necessary for the reasonable energy needs of the average residential user. The baseline amount could not be less than 500 KWH of electricity and 120 therms of gas per month. The baseline rate would be exactly 20% below the system average rate for residential consumption.

Lastly, the bill would delete existing special additional allowances for customers dependent on life support equipment, paraplegic and quadriplegic persons, and multiple sclerosis patients.

AB 2361 (Vasconcellos; Section 40-41):

Would eliminate General Fund support of the PUC ($24 million in the Governor's proposed 1982-83 budget) and, instead, require all entities regulated by the PUC to pay user fees for the cost of PUC services and regulation.

The bill provides that all such user fees shall be allowed as ordinary operating expenses for purposes of establishing rates, and, thus, passed on to the ratepayer.

(On March 1, 1982, the Assembly Committee on Utilities and Energy held a hearing on AB 2361. Vasconcellos stated that his only concern was "to balance the budget". Although most individuals testified against the bill (including consumers and utilities) there was general acknowledgment that some type of user fee is inevitable. The real debate will focus on erecting a fair fee schedule (there is no real correlation between the value of a utility's property and the amount of time spent by PUC staff on that utility), ensuring adequate legislative supervision of the PUC's budget (traditionally, Special Funds are less scrutinized by the Legislature), and exempting some consumers from paying the increased rates (elderly, infirm).

The PUC supports the concept of user fees because it believes user fees are a more secure source of revenue than the shrinking General Fund. The PUC wants to insulate itself from the growing competition among state government for General Fund dollars by having an independent, stable source of income.)

The Senate counterpart to AB 2361 is SB 1326 (Alquist).

ACR 90 (Chacon):

Would request the PUC to conduct an examination into the rate increases recently granted San Diego Gas and Electric Company, and to conduct an audit to determine if recently announced losses will be passed on to ratepayers.

SCR 54 (Craven):

Would request the PUC to defer approval of the most recent rate increases granted San Diego Gas and Electric Company until the PUC completes a management audit of the company.

Assembly House Resolution No. 4 (Katz; approved in the Assembly on February 16, 1982):

Requests the PUC to suspend all rate increases granted Pacific Gas and Electric Company since January 1, 1982 (and reinstate the former rates) until the Auditor General completes a management investigation of the company. (See the report on the Office of the Auditor General in this *Reporter*.)

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