



\$150 to \$230, LCSW license renewal fees from \$150 to \$180, and MFCC intern registration fees from \$60 to \$150. The bill would permit BBSE, after January 1, 1996, to increase renewal fees up to \$400; but fees may not be any more than 10% greater than that charged on December 31, 1995 and may not be increased any more than 10% per calendar year. [S. B&P]

The fee bill is of critical importance to BBSE; in 1994, the Board was forced to curtail its enforcement program due to inadequate revenues and reserves. BBSE sponsored (and Senator Alquist carried) fee increase legislation in 1994, but vociferous opposition by CAMFT caused Senator Alquist to drop the bill. [14:2&3 CRLR 42-43]

## ■ LITIGATION

In *Cohen v. State of California*, No. 960-604 (San Francisco Superior Court), petitioner Maxine Cohen questioned BBSE's practice of requiring verification of out-of-state supervised experience hours for MFCC interns by an outside organization in addition to verification by the supervisor (see MAJOR PROJECTS). Cohen applied to take the MFCC exam in California, and submitted supervised experience hours from Arizona verified by a licensed psychologist. According to Cohen, some of her hours were rejected by BBSE because they could not be verified by AAMFT. Cohen argued that BBSE's policy of requiring verification of out-of-state hours by both the supervisor and by an other-state BBSE counterpart or by AAMFT must be codified in the Board's regulations through the APA rulemaking process before it is enforceable. Judge Stuart Pollak agreed, noting that the dual verification requirement is not published in the Board's regulations regarding admission standards and stressing the importance of codifying licensure requirements so that candidates understand the criteria they must meet in order to be licensed. Judge Pollak ruled that BBSE's dual verification requirement is "a matter of general application which, if it is to be enforced, needs to be spelled out in the regulations."

## ■ RECENT MEETINGS

At BBSE's November meeting, Interim Executive Officer Scott Syphax reported on the progress of the BBSE investigative unit which is to be established within the Department of Consumer Affairs' (DCA) Division of Investigation (DOI). [14:4 CRLR 44] BBSE and DOI are working together to finalize a memorandum of understanding for the operation of the unit. Syphax anticipated that the necessary budget change proposals would be denied, but stated that DOI will work with

BBSE on budget transfers to accomplish the funding of the unit.

Also at its November meeting, BBSE voted to revamp its LEP examination; the revision will be done by DCA's Office of Examination Resources (OER) and will cost BBSE approximately \$21,400. At this writing, OER anticipates completing the revisions by March. The Board also voted to computerize its LCSW and LEP written examinations as soon as possible; BBSE has already automated its MFCC examination. [14:4 CRLR 46-47; 14:2&3 CRLR 44]

Also in November, the Board directed Scott Syphax to request the resources needed for a management study from DCA. [14:4 CRLR 45] Syphax reported that the Board had already spent 50% of its budget in selected areas, and that a problem is developing in the enforcement area because Attorney General costs are very high. Syphax stressed the need for an increase in fees, which may be accomplished by the passage of SB 26 (Alquist), the Board's fee bill (see LEGISLATION).

## ■ FUTURE MEETINGS

February 23-24 in Sacramento.  
May 18-19 (location to be announced).  
August 24-25 (location to be announced).  
November 16-17 (location to be announced).

## CEMETERY BOARD

*Executive Officer:*  
*Raymond Giunta*  
(916) 263-2660

The Cemetery Board's enabling statute is the Cemetery Act, Business and Professions Code section 9600 *et seq.* The Board's regulations appear in Division 23, Title 16 of the California Code of Regulations (CCR).

In addition to cemeteries, the Cemetery Board licenses cemetery brokers, salespersons, and crematories. Religious cemeteries, public cemeteries, and private cemeteries established before 1939 which are less than ten acres in size are all exempt from Board regulation.

Because of these broad exemptions, the Cemetery Board licenses only about 188 cemeteries. It also licenses approximately 142 crematories, 200 brokers, and 1,200 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.

The Board is chaired by industry member Keith Hargrave. Just prior to the Board's

September meeting, Governor Wilson appointed two new public members: Jeff Wallack, a Republican, former Assistant Secretary of the State and Consumer Services Agency, a real estate broker, and owner of a property tax consulting firm in Manhattan Beach; and Jane Emerson, a Democrat, former member of the Board of Behavioral Science Examiners, and owner of the Emerson Development Group in Del Mar. Other Board members include industry member Steve Doukas and public members Lilyan Joslin and Linda Trujillo.

## ■ MAJOR PROJECTS

**Cemetery Board Shuts Its Doors.** The end of 1994 also spelled the end of funding for the Cemetery Board. With no money to continue operating, the Board was forced to shut its doors at the end of December.

The defunding of the Board is the culmination of a lengthy effort by the legislature to remedy the Board's longstanding ineffectiveness in fulfilling its primary duty of consumer protection through its licensing, standardsetting, and enforcement programs. During the late 1980s and early 1990s, legislative attempts to abolish the Board or merge it with the Board of Funeral Directors and Embalmers (BFDE) stalled due to industry opposition, but were revitalized in 1993 when Assemblymember Jackie Speier and then-Department of Consumer Affairs (DCA) Director Jim Conran joined forces to compel the executive officers of both boards to resign. [13:4 CRLR 47; 13:2&3 CRLR 57]

In September 1993, DCA sponsored a statewide "Death Summit" in San Diego to discuss the boards' problems; in October 1993, the performance of both boards was reviewed by the Senate Subcommittee on Efficiency and Effectiveness in State Boards and Commissions. The Subcommittee concluded that both boards were generally ineffective and recommended that they be merged into a bureau within DCA, and that the new entity be required to adopt licensing and performance standards which protect the consumer and effectively regulate the death services industry. Subcommittee Chair Senator Dan McCorquodale adopted the recommendation by amending SB 2037 (McCorquodale) to include a provision merging the Board and BFDE into a single bureau. Following intense industry lobbying in opposition to the "bureau-izing" of the boards, the Senate Business and Professions Committee relented in May 1994, and agreed to amend SB 2037 to merge the boards into a single board instead of a bureau. [14:2&3 CRLR 45; 14:1 CRLR 44-45]



## REGULATORY AGENCY ACTION

During the summer of 1994, the legislature underscored its support for the proposed merger by appropriating only six months' worth of funding for the separate boards in the 1994-95 Budget Act, and amending SB 2037 to include the balance of 1994-95 funding for the merged board—thus tying continuation funding to the merger provision. Not content with the Senate's compromise, the death services industry and both boards organized a campaign to convince the Assembly to kill the merger provision; under intense pressure, the Assembly Consumer Protection Committee deleted the merger provision on August 10 and returned the bill to the Senate for concurrence in its amendments. On August 31, the Senate refused to concur in the Assembly's removal of the merger provision, and SB 2037 died on the Senate floor—taking with it the funding for both boards beyond January 1, 1995. [14:4 CRLR 4, 47]

At its September 29 meeting, the Board considered several options for obtaining additional funding or ensuring that essential Board functions continue after its existing funds are depleted. Executive Officer Ray Giunta outlined five options for Board consideration: (1) seek deficit funding from the legislature, either through an emergency request via DCA, the Department of Finance, or an urgency appropriations bill; (2) transfer Board staff to DCA and adopt a resolution delegating licensing and enforcement functions to DCA until more funding can be secured or a new regulatory structure is determined; (3) transfer enforcement and audit functions to DCA, but retain responsibility for inspections; (4) transfer initial licensing of salespersons and all renewal licensing to DCA; and (5) take no action and continue operating until funds are extinguished.

Board staff distributed a package of supporting materials on Option 1, including a format for the funding request. Option 2 was advocated in testimony by DCA Deputy Director Traci Stevens, who attended the Board meeting to offer assistance and strategic planning. However, the Board directed its anger about the legislature's decisions towards DCA, Stevens, and Senate Business and Professions Committee Chair Senator Dan Boatwright. Several Board members misunderstood the role of the legislature in the appropriations process, and repeatedly demanded that DCA simply give it the needed funds. Stevens explained that DCA lacks authority to loan or appropriate funds, and that—given the clarity of the legislature's intent—any attempts to request a direct appropriation would be futile. Further, she added, such attempts might enrage legislators and therefore DCA would not par-

ticipate in any such requests. However, Stevens urged the Board to consider Option 2, and relayed DCA's offer to shoulder the costs of staff and all functions transferred from the Board and to work with the Board to develop viable options to obtain funding. After grilling Stevens, the Board asked whether a representative from Senator Boatwright's office would testify; Boatwright consultant Michael Gomez replied from the audience that he was at the meeting to observe only. Some Board members were unsatisfied with this response and continued to berate Senator Boatwright throughout its discussion of the Board's problems.

New Board members Janie Emerson and Jeff Wallack spoke in favor of Option 2, and highlighted their concerns for consumer protection in the immediate future. Emerson opined that the only way to continue enforcement without funding is via DCA's proposal; Wallack called on the Board to "be fiscally responsible and protect the consumer" at the same time, and suggested that the delay inherent in a legislative appropriation would leave the Board unfunded and the consumer unprotected. Both Emerson and Wallack urged the Board to take DCA up on its offer and approve a resolution delegating its responsibilities to DCA until more funding and a new regulatory structure can be agreed upon. However, the Board passed a motion approving Option 1 on a 4-2 vote (with Emerson and Wallack opposed).

Accordingly, in October the Board requested a deficiency appropriation pursuant to section 27 of the 1994-95 Budget Act. Department of Finance Director Russell Gould informed the Joint Legislative Budget Committee (JLBC) of his intent to grant the request. This action prompted Senator Boatwright to write a letter to JLBC Chair Senator Mike Thompson, in which he outlined the history of the boards' defunding through the budget process. Senator Boatwright wrote, "The Cemetery Board's request is simply an attempt to circumvent the Legislature's budget process. I strongly urge you to deny requests from the Cemetery Board [or BFDE] pursuant to Section 27 of the Budget Act." Likewise, the JLBC Legislative Analyst Mac Taylor wrote to Senator Thompson that "[i]n view of the Legislature's actions concerning these boards, it is not appropriate for the administration to use the Section 27 notification process to provide funds that the Legislature specifically denied." In November, Senator Thompson refused to concur in the proposed deficiency funding.

The Board ran out of money on December 1. On December 5, DCA Interim Director Lance Barnett transferred the Board's

civil service staff to DCA, took possession of Giunta's state car, and disconnected telephone service at the Board's office. At this writing, a telephone call to the Board's number will yield the following recording: "Effective immediately, the Cemetery Board has exhausted its expenditure authority and as a result currently has no salaried staff to perform the Board's functions. If you have a health or safety concern, contact your county health department. If you have a financial concern, call your local police or district attorney's office. If you have additional concerns, contact the Department of Consumer Affairs' Information Center at (800) 952-5210."

It is widely expected that legislation will be introduced in the near future to merge the boards or create a new entity within DCA to regulate the death services industry.

**License Fee Hike Stalled.** In May 1994, the Board approved proposed regulatory changes which increase virtually all of the fees it charges to the statutory maximums established in Business and Professions Code sections 9750-70. The fee increases were necessary to address a projected 1993-94 operating deficit and further projected shortfalls in coming years. [14:4 CRLR 47] As the Board failed to submit this rulemaking file to the DCA Director or the Office of Administrative Law prior to its December 5 closure, the proposed fee increases are not expected to take effect.

### RECENT MEETINGS

At the Board's September 29 meeting, Executive Officer Ray Giunta reported that, according to recent audits, \$1.9 million in endowment care funds is in jeopardy; Giunta noted that he had issued three citations in connection with these matters. Giunta also noted that Board staff had completed 15% of its scheduled field inspections of licensees; 63% of those inspected were not in compliance with state law, and Giunta had issued 14 citations (nine of which also included fines).

### FUTURE MEETINGS

To be announced.

### CONTRACTORS STATE LICENSE BOARD

*Registrar: Gail W. Jesswein*

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*Toll-Free Information Number:*

*1-800-321-2752*

The Contractors State License Board (CSLB) licenses contractors to work in California, handles consumer com-