



and the staffing levels required by each workload. Among other things, Systex recommended that a merged structure be approved well before July 1; BBC should operate with considerable delegation and decentralization; and the Department of Consumer Affairs (DCA) should seek the removal of the bureaucratic requirement that boards under its jurisdiction submit budgets to the legislature in order to receive their own money. The study concluded that the new board would run more efficiently and effectively without the control system and compartmentalization present within BOC, and should operate with the delegation and decentralization found within BBE.

On March 16, BOC and BBE held a joint public meeting in Fresno to further discuss proposed draft regulations which were formulated by DCA consultant Kirk Marston for BBC. [11:4 CRLR 63] The proposed regulations primarily consist of all of the existing BBE and BOC regulations condensed into one document. Because many of the regulations are duplicative or in conflict, the merged Board is expected to substantially revise the existing regulations as appropriate following the merger.

**Board Proposes Fee Regulation.** When BBC comes into existence on July 1, it will retain the authority to operate under and enforce both boards' regulations existing prior to July 1, until BBC promulgates new regulations. Currently, BBE—unlike BOC—does not set its fees by regulation, but by Board policy. On March 6, BBE published notice of its intent to adopt section 299, Title 16 of the CCR, which would specify its fees in regulation. For example, section 299 would set the application, examination, and initial license fees for barber or instructor applicants at \$50; the application and initial license fee for apprentice applicants would be \$25; and the license renewal fee for barbers or instructors would be \$40. Section 299 would also specify the fees for establishment licenses, license renewal delinquencies, and duplicate licenses. At its April 26 meeting, BBE held a public hearing on the proposed adoption of section 299. Following that hearing, the Board modified section 299 slightly to reduce the proposed establishment licensing fees. The Board released the modified text for an additional fifteen-day public comment period, which ended on May 11. At this writing, proposed section 299 awaits review and approval by the Office of Administrative Law.

#### LEGISLATION:

**AB 3062 (Wright)**, as amended March 25, would make clarifying changes to the Barbering and Cosmetology Act. For example, the bill would require an application for a license to be made whether the person is operating a new establishment or obtaining ownership of an existing establishment; require BBC to establish methods deemed appropriate for utilizing a photograph of the licensee to verify licensure status; authorize fees for a photographic license or change of ownership of an existing establishment to be established by BBC in an amount sufficient to cover processing costs; and would allow current fees established by BBE to remain in effect until they are changed by BBC. [12:1 CRLR 48] The bill's provisions would become effective on July 1, 1992. [S. B&P]

**SB 2044 (Boatwright)**, as amended April 2, would declare legislative findings regarding unlicensed activity and authorize all DCA boards, bureaus, and commissions, including BBC, to establish by regulation a system for the issuance of an administrative citation to an unlicensed person who is acting in the capacity of a licensee or registrant under the jurisdiction of that board, bureau, or commission. This bill would also provide that the unlicensed performance of activities for which a BBC license is required may be classified as an infraction punishable by a fine not less than \$250 and not more than \$1,000. Also, SB 2044 would provide that if, upon investigation, BBC has probably cause to believe that a person is advertising in a telephone directory with respect to the offering or performance of services, without being properly licensed by the Board to offer or perform those services, the Board may issue a citation containing an order of correction which requires the violator to cease the unlawful advertising and notify the telephone company furnishing services to the violator to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising. [A. CPGE&ED]

#### RECENT MEETINGS:

On April 26, the Board heard appeals from six persons who had taken the barber exam that day, and one person who took the instructor exam; according to BBE, appeals of examination scores are rare, as are seven failures in one day. Among other things, the appellants complained that some of the questions were not job-related to the barber profession; there was adverse discrimination by the examiners; and substantial errors were made in the grading of the practical portion of the exam. All of the

appellants requested to see their examinations, which is against BBE policy. Under section 283, Title 16 of the CCR, persons who fail the exam may appeal their score within fifteen days of receiving their results; however, BBE regulations do not expressly permit persons to review their written exam papers.

Board member Elton Pamplin made a motion to allow barber students who do not pass the examination to see their written exams and the notes made by the examiner grading the practical portion of the exam, at the exam facilities with a BBE representative present. Although Board action on this change in policy was not on the agenda as required by the Bagley-Keene Open Meeting Act, Pamplin's motion was passed by a vote of 2-1 with one abstention; however, at this writing, it is unclear how BBE plans to implement this newly-adopted policy.

In closed session, the Board reviewed the examinations and decided to grant two of the appeals and deny the other four; no reasons were given for the decisions. The seventh appeal was considered moot by BBE since the appellant immediately retook and passed the licensing examination.

#### FUTURE MEETINGS:

The Board's last meeting was scheduled for June 22 in Sacramento.

#### BOARD OF BEHAVIORAL SCIENCE EXAMINERS

*Executive Officer: Kathleen Callanan (916) 322-4910 and (916) 445-4933*

Authorized by Business and Professions Code section 4980 *et seq.*, the eleven-member Board of Behavioral Science Examiners (BBSE) licenses marriage, family and child counselors (MFCCs), licensed clinical social workers (LCSWs) and educational psychologists (LEPs). The Board administers tests to license applicants, adopts regulations regarding education and experience requirements for each group of licensees, and appropriately channels complaints against its licensees. The Board also has the power to suspend or revoke licenses. The Board consists of six public members, two LCSWs, one LEP, and two MFCCs. The Board's regulations appear in Division 18, Title 16 of the California Code of Regulations (CCR).

At its January 23-24 meeting in Los Angeles, the Board welcomed new member Dr. Thomas J. Knutson, a professor of communications at the California State University at Sacramento.



## REGULATORY AGENCY ACTION

### MAJOR PROJECTS:

**Board Abandons Plan to Create Task Force to Address MFCC/LCSW Experience/Supervision Issues.** For over one year, BBSE has struggled with several issues related to the prelicensure supervised experience requirements for MFCCs and LCSWs. For example, BBSE considered a proposal to effectively forbid trainees, MFCC interns, and associate clinical social workers in nonprivate practice settings to pay their supervisors for the supervision. According to BBSE staff, payment for such supervision undermines the supervisor/intern relationship since the intern may hire and fire his/her supervisors as he/she chooses. However, after several public hearings at which representatives of the California Association of Marriage and Family Therapists (CAMFT) expressed strong opposition to the prohibition on payment, BBSE abandoned the proposal. [12:1 CRLR 48-49]

Also, BBSE is apparently unsure about the acceptability of out-of-state MFCC experience gained by an individual who resides in California, has a qualifying degree from a California institution, and is under supervision by a California licensee. Although Business and Professions Code section 4980.90 provides that BBSE "may allow any person to be examined who, in its opinion, has met the education and experience requirements for licensure while residing outside of California, or education outside California and experience within California, that are substantially the equivalent" of BBSE's requirements, the Code does not address the Board's authority to accept experience obtained outside California by California residents. Thus far, BBSE staff has adopted a policy of rejecting out-of-state experience from California residents—despite strong opposition by CAMFT. [12:1 CRLR 49]

The Board's inability to resolve these issues appears to have given rise to a wholesale reexamination of both licensure schemes, with particular focus on their supervised experience components. At its November 1991 meeting, the Board agreed to review all complaints, disciplinary actions, and files of candidates who have failed the licensing exam to determine whether a pattern emerges which is indicative of the failures of the current training system. BBSE also approved—in concept only—the creation of a 35-member task force to develop models for the education, experience, and supervision factors which would eliminate any problems or failures of the current training system.

At its January 23 meeting, however,

the Board cancelled its plan to create the task force and instead agreed to consider each issue individually at future Board meetings—as it has been doing for at least the past year. At the first such meeting, held on April 30 in Sacramento, BBSE heard testimony from interested parties on supervisory and experience issues concerning MFCCs and LCSWs. At that meeting, much of the testimony was provided by Board licensees and educators, some of whom supported the continuation of paid supervision as an acceptable form of obtaining the required hours of training for licensure. However, other participants advocated the use of more controlled settings, such as academic clinics, for the training of interns. At the conclusion of the meeting, BBSE stated that it would review all oral and written comments received and begin to formulate a proposed solution to some of the issues addressed. However, the Board also noted that the complicated issues involved could take several more years to completely resolve.

**BBSE Responds to DCA Annual Planning Request.** By letter of April 10, BBSE Executive Officer Kathleen Callanan responded to a request from Department of Consumer Affairs (DCA) Director Jim Conran regarding ways to streamline the annual planning process of both DCA and BBSE. In her response, Callanan noted that specific support services provided by DCA to BBSE are excellent, such as the services provided by DCA's Central Testing Unit and its Legal Unit. However, Callanan suggested that DCA create a position whose primary responsibility would be negotiating and contracting for space to be utilized for written and oral examinations, noting that if one individual were negotiating for the entire Department on an annual basis, examination costs for all participating boards may decrease.

Callanan also commented on BBSE's enforcement efforts, stating that complaint information tracking assists the Board in identifying potential problem areas, such as sexual misconduct by therapists, and is utilized to formulate planning for cost and staffing requirements. Regarding BBSE's efforts to discourage unlicensed activity, Callanan stated that whenever BBSE learns of possible unlicensed activity, an investigation is initiated; DCA's Division of Investigation pursues those investigations and forwards evidence of unlicensed activity to the relevant district attorney for prosecution. Callanan estimated that approximately 7% of BBSE's enforcement activity focuses on unlicensed activity.

Regarding BBSE's plans for fiscal year 1992-93, Callanan noted that one of the Board's major goals will be a review of the laws and regulations governing the clinical supervision requirements for licensure (*see supra*). Callanan acknowledged that some groups would probably oppose various reforms pursued by the Board, and asked DCA to support the Board in its efforts.

**Rulemaking Update.** On January 23, BBSE adopted proposed amendments to section 1833, Division 18, Title 16 of the CCR, which prescribes the log sheet containing a weekly summary of hours of experience gained toward licensure as an MFCC. [12:1 CRLR 50] At this writing, the amendments—which would modify the form to provide a place for certain identifying information, a place to report telephone counseling and telephone practicum, and a line showing the total number of hours per week—await review and approval by the Office of Administrative Law.

Also in January, BBSE agreed to pursue a number of regulatory amendments. At this writing, however, BBSE has not yet published notice of its intent to pursue the following regulatory proposals in the *California Regulatory Notice Register*:

—Advertising Regulation. BBSE intends to pursue amendments to section 1811, which would prohibit any registrant from using initials in any advertisement for their services rather than the full title indicating the type of license held.

—Criteria for Use of Hypnosis. BBSE intends to repeal section 1834.6, which specifies the criteria for the use of hypnosis. Section 1834.6 is unnecessary due to the enactment of SB 2214 (Boatwright) (Chapter 1086, Statutes of 1990), which repealed provisions in the Business and Professions Code authorizing the use of hypnosis by MFCCs and requiring Board certification of hypnosis training.

—Notification of Employment and Termination of an Apprentice Clinical Social Worker. BBSE intends to repeal section 1880.1, regarding the notification of employment and termination of an apprentice clinical social worker, on the basis that since 1988, Business and Professions Code section 4996.18 has specified the associate clinical social worker registration requirement and the notification of employment/termination requirements.

—Unprofessional Conduct. BBSE intends to repeal section 1881, regarding unprofessional conduct; according to the Board, all language and requirements of that section have been codified in the Business and Professions Code.



**Implementation of SB 899.** At its January 23-24 meeting, the Board discussed its implementation of SB 899 (Boatwright) (Chapter 1114, Statutes of 1991), which permits an MFCC intern to annually extend his/her intern registration with BBSE beyond the existing six-year maximum so long as the intern meets the educational requirements in effect at the time of the application for extension and no grounds exist for its denial, suspension, or revocation; the bill provides a maximum of three annual extensions. BBSE Executive Officer Kathleen Callanan reported that staff has developed an Application for Extension packet, which was mailed to each individual identified by staff as potentially benefitting from the opportunity to apply for an extension.

#### LEGISLATION:

**SB 2044 (Boatwright),** as amended April 2, would declare legislative findings regarding unlicensed activity and authorize all DCA boards, bureaus, and commissions, including BBSE, to establish by regulation a system for the issuance of an administrative citation to an unlicensed person who is acting in the capacity of a licensee or registrant under the jurisdiction of that board, bureau, or commission. [A. CPGE&ED]

**AB 3535 (Speier).** Existing law requires an MFCC applicant to possess a doctorate or master's degree in one of certain subjects from a school, college, or university accredited by specified accrediting agencies or their equivalent, as determined by BBSE or as approved by the Superintendent of Public Instruction. As amended May 9, this BBSE-sponsored bill would delete the authorization for approval by the Superintendent and would instead provide for the approval of the equivalent accrediting agency by the Council for Private Postsecondary and Vocational Education. This bill would also require that the degree program shall be offered only through classroom instruction with the exception of a certain required practicum, and would shift a required two-semester unit or three-quarter unit class with certain content relating to California law and professional ethics for MFCCs from the requirements to sit for licensure to the requirements of the degree program. [A. Floor]

**AB 3654 (Statham).** Existing law requires that certain peer review bodies which review the quality of professional care provided by various healing arts professionals submit a report to the appropriate licensing agency whenever action is taken with regard to the discipline of a licensee as a result of a determination

of that peer review body; an intentional failure to make a report is a public offense subject to a fine. As introduced February 21, this bill would include MFCC peer review bodies within this requirement, and would add the proceedings and records of MFCC peer review bodies and marriage, family, and child counseling committees in hospitals to those proceedings and records which are prohibited from being subject to discovery in court proceedings, with certain exceptions. [A. Jud]

**AB 3718 (Eaves).** Existing law requires, among other things, that a clinical social worker obtain a master's degree from an accredited school of social work and two years of post-master's degree supervised experience, and pass an examination, prior to the issuance of a clinical social worker license. Existing law requires any person who wishes to be credited with post-master's degree experience to apply to BBSE for registration as an associate clinical social worker; an applicant must possess a master's degree from an accredited school of social work and must not have committed certain crimes. As amended April 21, this bill would change the definition of an approved school of social work to mean a school that is accredited by the Commission on Accreditation of the Council on Social Work Education. This bill would additionally permit any person who possesses a master's degree from a school or department of social work whose accreditation is in candidacy status and who meets other prescribed requirements to be eligible to register as an associate clinical social worker and gain post-master's degree supervised experience. However, this bill would provide that such a person is not eligible to sit for the licensure examination until the school or department is accredited.

Existing law provides that registration as an associate clinical social worker may be annually renewed in a prescribed manner for a maximum of five years so that a person may be registered as an associate clinical social worker for a total of six years. This bill would provide that an associate clinical social worker registration may be extended for three additional one-year extensions if prescribed requirements are met. [A. Floor]

**SB 1565 (Watson).** Existing law requires any psychotherapist or employer of a psychotherapist who becomes aware through a patient that the patient had alleged sexual intercourse or alleged sexual contact with a previous psychotherapist during the course of a prior treatment to provide to and discuss with the patient a

Department of Consumer Affairs-prepared brochure entitled *Professional Therapy Never Includes Sex!*. Existing law establishes a cause of action against a psychotherapist for sexual contact under prescribed conditions. As introduced February 18, this bill would expand the definition of psychotherapist to include an MFCC trainee for purposes of the above-described provisions of law. [A. Jud]

**SB 1773 (Boatwright),** as amended March 30, is a BBSE-sponsored bill which would authorize BBSE to refuse to issue a license or registration to any applicant for licensure, registration, or certification as an LEP, MFCC, or LCSW whenever it appears that the applicant may be unable to practice safely due to mental illness, and make specified procedures regarding the examination of licentiates by a Board-designated physician or psychologist also applicable to applicants for licensure. [A. Health]

**SB 1394 (Torres).** Existing law requires an MFCC applicant to obtain 3,000 hours of supervised experience as a trainee enrolled in a master's or doctor's degree program and as an intern who has earned the qualifying degree; trainees and interns may only perform services at the place where their employer regularly conducts business. As amended April 1, this bill would provide that this restriction is not to be interpreted to prevent interns or trainees from performing services at locations other than the employer's office, provided the services are performed under the direction and control of the employer, and in the ordinary course of business.

Existing law provides that a licensee in private practice as a therapist may supervise or employ no more than two registered interns at one time. This bill would provide that MFCC corporations may employ no more than two registered interns for each employed psychotherapist or shareholder psychotherapist at one time; an employed psychotherapist or shareholder psychotherapist shall not supervise more than two registered interns employed by an MFCC corporation at one time.

Among other things, this bill would also provide that engaging in sexual relations with a former client within two years following the termination of therapy is unprofessional conduct. [A. Health]

The following is a status update on bills reported in detail in CRLR Vol. 12, No. 1 (Winter 1992) at page 50:

**SB 664 (Calderon).** Existing law prohibits MFCCs and LCSWs, among others, from charging, billing, or otherwise soliciting payment from any patient, client, customer, or third-party payor for



## REGULATORY AGENCY ACTION

any clinical laboratory test or service if the test or service was not actually rendered by that person or under his/her direct supervision, unless the patient is apprised at the first solicitation for payment of the name, address, and charges of the clinical laboratory performing the service. As amended March 12, this bill would also make this prohibition applicable to any subsequent charge, bill, or solicitation. This bill would also make it unlawful for any MFCC or LCSW to assess additional charges for any clinical laboratory service that is not actually rendered by the MFCC or LCSW to the patient and itemized in the charge, bill, or other solicitation of payment. This bill passed both the Senate and the Assembly; at this writing, it is pending Senate concurrence in Assembly amendments.

The following bills died in committee: **AB 756 (Bates)**, which would have provided that on or after January 1, 1993, any person applying for or renewing a license, credential, or registration as an LCSW, MFCC, school counselor, school psychologist, or school social worker, shall, in addition to all other requirements for licensure or renewal, have completed coursework or training in suicide prevention and intervention; **AB 1106 (Felando)**, which would have created the Alcohol and Drug Counselor Examining Committee within BBSE and required the Committee to adopt regulations establishing certification standards and requirements relating to education, training, and experience for persons who practice alcohol and drug abuse counseling; **SB 738 (Killea)**, which would have required BBSE and the Board of Psychology to establish required training or coursework in the area of domestic violence assessment, intervention, and reporting for all persons applying for an initial license and the renewal of a license of a psychologist, LCSW, or MFCC; and **AB 2085 (Polanco)**, which would have required the trustees of the California State University and the regents of the University of California to collaborate with the California Conference of Local Mental Health Directors to develop a curriculum and practicum within their respective graduate social work programs to train social workers to work with seriously emotionally disturbed children and severely mentally ill adults, and to provide culturally appropriate services to ethnic minority populations.

### RECENT MEETINGS:

At its January 23-24 meeting in Los Angeles, the Board elected Dr. Joyce Deshler as Board chair and Sarah Flores as vice-chair for 1992.

Also at the Board's January 23-24 meeting, Executive Officer Kathleen Callanan reported that the Board is going to offer its licensing examinations every four months, rather than every six months as is now the case. Dr. Callanan also noted that the Board is in the process of implementing year-round oral examinations.

At its April 30 meeting, BBSE considered a request of the California Society for Clinical Social Work (CSCSW) that BBSE consider board-certified diplomate status conferred by the American Board of Examiners in Clinical Social Work (ABECSW) as evidence that an individual has met or exceeded minimum requirements to sit for the LCSW licensure examination; this proposal is based on the assumption that the individual has taken all additional courses required by law. According to CSCSW's Executive Director, ABECSW is a free-standing accrediting body, unaffiliated with any membership organization, which functions solely to promote and protect a minimum national advanced standard for clinical social work practice. BBSE took no action on this request.

### FUTURE MEETINGS:

August 6-7 in San Diego.

November 5-6 in Sacramento.

### CEMETERY BOARD

Executive Officer: John Gill  
(916) 920-6078

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.

### MAJOR PROJECTS:

*DCA Expresses Concern About Ef-*

### *fectiveness, Public Image of the Board.*

In a January 8 letter to all Board members, Department of Consumer Affairs (DCA) Director Jim Conran noted current public discontent with the Cemetery Board's ability to protect consumer interests and proposed several actions to remedy the problem. Conran's recommendations included conducting an education campaign to better inform consumers about the Board and the cemetery industry in general; adopting citation and fine regulations; adopting regulations that require licensed cemeteries and crematories to post the Board's telephone number; adopting regulations to require all industry contracts to include the Board's telephone number; and raising licensing fees to accomplish the above goals.

The Board is currently considering a tentative draft of citation and fine regulations that would enhance its enforcement powers over Board licensees. [12:1 CRLR 51] These regulations would implement Business and Professions Code section 125.9, which enables the Board to fine licensees who violate its statutes or regulations. The tentative citation and fine regulations the Board is reviewing are modeled largely upon other regulatory agency implementations of section 125.9.

Conran's criticisms of the Board are in no way an isolated event. The Cemetery Board, which has traditionally enjoyed a relatively low profile in California's regulatory system, has been steadily gaining the attention of lawmakers, consumers, and the media. This increased attention is due largely to a flurry of complaints and lawsuits involving the mishandling of remains and lack of ground maintenance by licensees. (See *infra* LITIGATION.) The Board has also come under heightened scrutiny from the legislature; last October, the Assembly Committee on Consumer Protection, Governmental Efficiency and Economic Development held interim hearings to evaluate the respective performances of the Cemetery Board and Board of Funeral Directors and Embalmers. The hearings were peppered with consumer, agency, and industry criticism of the boards' enforcement and monitoring programs [12:1 CRLR 50], and have resulted in the introduction of a number of bills to reform the Board and its enforcement system (see *infra* LEGISLATION). The Cemetery Board's more prominent profile will likely continue until consumer interests are more adequately protected from industry abuse.

*Complaints for 1990-91 Fiscal Year Reviewed.* At the Board's March 6 meeting, Executive Officer John Gill presented a summary of the complaints received