ministering nitrous oxide in dental operatories. Research has shown that high levels of escaping nitrous oxide can affect the primary reactions of the central nervous system, causing confusion and delayed response by those administering the gas. The concentration of nitrous oxide required to pose these risks is the subject of debate; however, NIOSH has issued a Recommended Exposure Level (REL) of 25 parts per million (ppm) during the time of administration. Dr. McGlothlin ended his presentation by suggesting that those interested in purchasing scavenger systems consider the NIOSH REL of 25 ppm while researching the systems currently available on the market. A member of the audience commented that NIOSH may be encouraging hysteria without any general consensus in the research community as to the actual concentration at which nitrous oxide is dangerous. In addition, the audience member suggested that the manufacturers of the scavenging systems, and not practitioners, should be responsible for ensuring that the equipment meets recommended concentration levels.

Finally, BDE discussed its obligations under the federal Americans with Disabilities Act (ADA), which was enacted on July 26, 1990. According to DCA legal counsel Don Chang, the Board must comply with ADA's self-evaluation requirements before January 23, 1993. The ADA prohibits discrimination in employment and in access to public services based on disability, and primarily requires BDE to make reasonable modifications in its policies and procedures, such as allowing for alternative examination sites, to allow access to individuals with disabilities.

FUTURE MEETINGS

To be announced.

BUREAU OF ELECTRONIC AND APPLIANCE REPAIR

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The Bureau of Electronic and Appliance Repair (BEAR) was created by legislative act in 1963. It registers service dealers who repair major home appliances and electronic equipment. BEAR is authorized under Business and Professions Code section 9800 *et seq.*; BEAR's regulations are located in Division 27, Title 16 of the California Code of Regulations (CCR).

The Electronic and Appliance Repair Dealer Registration Law requires service dealers to provide an accurate written estimate for parts and labor, provide a claim receipt when accepting equipment for repair, return replaced parts, and furnish an itemized invoice describing all labor performed and parts installed.

The Bureau inspects service dealer locations to ensure compliance with BEAR's enabling act and regulations. It also receives, investigates, and resolves consumer complaints. Grounds for revocation or denial 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 Bureau is currently assisted by an Advisory Board comprised of two representatives of the appliance industry, two representatives of the electronic industry, and five public members. However, ABX 66 (Vasconcellos), which was signed by the Governor on September 28 (Chapter 21X, Statutes of 1992), eliminates BEAR's Advisory Board as of January 1, 1993 (*see infra* MAJOR PROJECTS and LEGISLATION).

MAJOR PROJECTS

BEAR Holds Summit Meeting On Service Contracts. On September 24, BEAR held an informational meeting in San Diego for the purpose of receiving industry and public comment on potential service contract legislation. The invitees included representatives of businesses involved in the administration, sale, or servicing of service contracts, representatives of professional associations, and public interest groups such as the Center for Public Interest Law and Consumer Action. BEAR decided to hold the meeting after reviewing the results of its prior public hearings concerning service contract issues. *[12:2&3 CRLR 84; 12:1 CRLR 60]*

According to BEAR, "[t]he overriding consumer interest [regarding service contracts] is two-fold: (1) to *know exactly* what one is buying and (2) to *get exactly* what one is buying." In response to those needs, BEAR has decided to pursue legislation which would require all service contract administrators and sellers, as well as service dealers, to register with BEAR, and is considering the development of legislation to ensure the financial viability of those administrators and sellers. Regarding the registration requirement, BEAR previously drafted and approved legislative language; however, the Department of Consumer Affairs (DCA) declined to include the proposal in its 1992 omnibus bill due to the state's budget crisis *[12:2&3 CRLR 85]*; that proposal will likely be introduced in 1993. Therefore, the focus of the September 24 meeting was to generate feedback on a proposal previously submitted by the Service Contract Industry Council (SCIC) regarding financial viability issues, and to solicit any alternative suggestions. BEAR Chief Keller stressed that SCIC's draft is not a Bureau-endorsed proposal, but is useful as a starting point for discussion regarding financial viability issues.

Specifically, SCIC's proposal would require service contract administrators to either be insured under a service contract reimbursement insurance policy, or demonstrate financial viability by certification on their financial statements of adequate reserves for claims. Such reserves would be held in trust by an independent trustee if they exceed 50% of the administrator's previous year's net worth.

Proponents of SCIC's proposal contended that interests of both consumers and the industry would be served by requiring that protected funds be available for policy reimbursement in the event the selling administrator goes bankrupt during the contract term. Because administrators are commonly seen as third parties who contract solely with retailers, who in turn enter into another independent contract with consumers, retailers usually remain obligated when an administrator fails; some retailers follow through on that contract, while others refuse or are financially unable to do so. Therefore, those in favor of the proposal argued that risk to both consumers and retailers would be directly reduced by requiring administrators to maintain some sort of reimbursement fund, and credibility to the service contract administrator industry would result because those entrepreneurs who fail to meet the financial requirements would not be able to offer service contracts.

Those in opposition to SCIC's proposal generally disfavored the certified reserve claim fund alternative more than the reimbursement insurance policy option. Participants noted that the concept of "adequate reserves" in the proposal is vague and subjective, and that the use of independent certified public accountants to verify such reserve adequacy could result in inconsistencies. Thus, the insurance option was generally considered more reasonable to the industry participants.

Regarding the appropriate scope of the term "administrator," representatives of

large retailers such as Sears and Circuit City urged the adoption of a narrow definition which would exclude retailers which both administer and sell company-based service contracts. In support, such companies contend that their contracts present far less risk of failure to the consumer than those which are issued to retailers by smaller, independent, third-party administrators.

Those in favor of imposing insurance requirements on sellers pointed out the significant risk which still remains for the consumer when the retailer goes out of business. Since many retailers also sell third-party policies in which they often remain the obligor, insurance required of the administrator would provide no relief for the consumer.

Although noting that there is no single perfect answer to the problems discussed, the majority of meeting participants reached general agreement on an appropriate course of action aimed at minimizing the possibility of, as well as the effects of, service contract administrators reneging on their contracts. Specifically, the proposal would (1) require that only third-party administrators be insured by a California-licensed insurer; (2) require prominent disclosure of the actual contract obligor on the face of the service contract; and (3) create a registration program which would generate a sufficient level of fees to enable BEAR to enforce these requirements. Further, entities other than third-party administrators who sell service contracts must disclose on either the face of the contract or the customer's receipt that the contract is being purchased from the dealer and is not backed up by insurance. Although exempted from the proposed insurance requirement, representatives from several retailers complained that even this minimal disclosure requirement could adversely affect sales if customers read the disclosure to be a negative indication of the retailer's ability to follow through on the contract. Although rebutting that most consumers do not shop around for a service contract, and that such a disclosure would most likely not result in any lost sales, the majority of participants agreed that the disclosure could be drafted in a way as to minimize any negative implications.

BEAR's proposed registration scheme would enable the Bureau to enforce these requirements as well as the existing language of the Song-Beverly Consumer Warranty Act; it would require a $60 registration and annual renewal fee for every service contract administrator's and seller's place of business in California. Additionally, the proposal establishes a fee schedule for out-of-state businesses dealing within California. BEAR would have the authority to seek license revocation for those who fail to conform to disclosure requirements.

Following the meeting, BEAR Chief Keller requested that a representative from each industry present participate on a committee to revise the proposal as appropriate. The committee's result was expected to be disseminated at the Bureau's meeting on November 6 in San Pedro or by written notification to all interested parties.

BEAR To Lose Advisory Board. On September 28, Governor Wilson signed ABX 66 (Vasconcellos) (Chapter 21X, Statutes of 1992), which abolishes—as of January 1, 1993—47 specified advisory boards, including BEAR's Advisory Board. However, in a July 1 letter, Bureau Chief Marty Keller informed Advisory Board members and all interested parties that "the Bureau has no intention of abandoning the interaction it has historically had with it [sic] registrants and with consumers through the vehicle of the Advisory Board." According to Keller, BEAR will hold ad hoc meetings from time to time to solicit input on issues of importance to servicers and consumers, such as the September 24 summit meeting regarding service contracts (*see supra*).

BEAR Enforcement Activities. BEAR reported the following enforcement activities during recent months:

–On May 22, BEAR announced that it ordered Petaluma Car Stereo to pay a $500 fine for engaging in electronics repair without a valid registration. The owner, Timothy Edward Reynolds, pled no contest to operating an electronics repair shop without a registration; Reynolds had been ordered twice previously to register his shop and refused both times.

–On May 29, BEAR announced that a Santa Rosa television repairperson pled no contest to one charge of operating without a license and was ordered to pay restitution to four consumers in the amount of $1,088.95. Paul Meeh, operating as Home TV Service, accepted a plea bargain in which he made the no contest plea in return for the state's agreement to drop two other counts of Business and Professions Code violations; Meeh was placed on three years' probation. The charges resulted from BEAR's investigation into complaints by Sonoma County consumers, who alleged that Meeh failed to make repairs for which he charged them. According to DCA Director Jim Conran, BEAR worked with the Sonoma County District Attorney's office in this case, which demonstrates DCA's "strong commitment to protecting consumers from fraud and negligence."

LEGISLATION

ABX 66 (Vasconcellos) abolishes 47 specified advisory boards, including BEAR's Advisory Board (*see supra* MAJOR PROJECTS). This bill, which will take effect January 1, 1993, was signed by the Governor on September 28 (Chapter 21X, Statutes of 1992).

SB 2044 (Boatwright) declares legislative findings regarding unlicensed activity and authorizes all DCA boards, bureaus, and commissions, including BEAR, 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 also provides that the unlicensed performance of activities for which a BEAR license is required may be classified as an infraction punishable by a fine not less than $250 and not more than $1,000. SB 2044 also provides that if, upon investigation, BEAR has probable 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 Bureau to offer or perform those services, the Bureau 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.

This bill also expands BEAR's jurisdiction to include photocopiers, facsimile machines, and cellular telephones, and to cover equipment used or sold for home office use. Previous language which would have increased the statutory ceiling on specified service dealer fees was deleted on August 24. This bill was signed by the Governor on September 28 (Chapter 1135, Statutes of 1992).

FUTURE MEETINGS

On July 1, BEAR cancelled all remaining Advisory Board meetings for the year due to mandatory budget cuts. Shortly thereafter, the Board was abolished.