



REGULATORY AGENCY ACTION

subject to confirmation by the Director of the Department of Consumer Affairs. The Director may reject the board's appointment of its executive officer, or may recommend dismissal of the executive officer to the board, provided that the recommendation be for good cause specifically stated to the board in writing. As introduced March 6, this bill would specify that both the rejection and the recommendation for dismissal must be for good cause specifically stated to the board in writing.

Existing law requires, commencing July 1, 1992, that every establishment where any licensed barbering or cosmetology activity is practiced, shall be inspected by the board or its agents or assistants at least twice per year for compliance with applicable laws relating to the public health and safety and the conduct and operation of such establishments. This bill would delete that inspection requirement. This bill is pending in the Assembly Committee on Consumer Protection, Governmental Efficiency and Economic Development.

AB 223 (Felando), as amended March 12, would permit persons who have completed an apprenticeship program in cosmetology, skin care, nail care, or electrology to be examined and licensed as cosmetologists, estheticians, manicurists, and electrologists, and would require minimum preapprentice training as established by the Board. It would also provide that no person holding a license as an apprentice shall, after completing the required training, work for more than three months, instead of the six months allowed under existing law, without applying for and taking the examination for licensure. This bill is pending in the Assembly Consumer Protection Committee.

SB 985 (Deddeh). Section 7332 of the Business and Professions Code provides that any person applying for licensing as a cosmetologist must meet specified qualifications. One criteria for qualification is that the person has engaged in the practice of cosmetology, as specified, for a period of four years outside of California. As introduced March 8, this bill would increase that time period from four to five years; this provision would be operative until July 1, 1992. This bill is pending in the Senate Business and Professions Committee.

AB 2180 (Baker), as introduced March 8, would direct the new Board of Barbering and Cosmetology, on or before January 1, 1993, to promulgate regulations concerning the practice of booth rental. This bill, which would become operative July 1, 1992, is pend-

ing in the Assembly Consumer Protection Committee.

RECENT MEETINGS:

At BOC's January 20 meeting, Myrna Powell was sworn in as a new BOC public member; she replaces Patricia Oststott, whose term expired.

Also at its January meeting, BOC announced that it has been meeting with the Franchise Tax Board (FTB) and the Employment Development Department (EDD) to address the underground economy associated with the cosmetology profession. BOC will be sending out letters to all licensees with their license renewal notices detailing EDD and FTB requirements, penalties for noncompliance, and EDD and FTB enforcement activities.

Finally, BOC discussed AB 2925 (Mojonnier) (Chapter 1674, Statutes of 1990), which transferred cosmetology school licensing and enforcement jurisdiction, including prior and pending disciplinary cases and investigations, from the Board to the Council for Private and Postsecondary and Vocational Education (CPPVE) as of January 1, 1991. (See CRLR Vol. 10, No. 4 (Fall 1990) pp. 69-70 for detailed background information on this issue.) BOC is currently working with the CPPVE to transfer its records and coordinate any matters of joint concern.

FUTURE MEETINGS:

To be announced.

BOARD OF DENTAL EXAMINERS

Executive Officer: Georgetta Coleman (916) 920-7197

The Board of Dental Examiners (BDE) is charged with enforcing the Dental Practice Act, Business and Professions Code sections 1600 *et seq.* This includes establishing guidelines for the dental schools' curricula, approving dental training facilities, licensing dental applicants who successfully pass the examination administered by the Board, and establishing guidelines for continuing education requirements of dentists and dental auxiliaries. The Board is also responsible for ensuring that dentists and dental auxiliaries maintain a level of competency adequate to protect the consumer from negligent, unethical, and incompetent practice. The Board's regulations are located in Division 10, Title 16 of the California Code of Regulations (CCR).

The Committee on Dental Auxiliaries (COMDA) is required by law to be a part of the Board. The Committee assists in

efforts to regulate dental auxiliaries. A "dental auxiliary" is a person who may perform dental supportive procedures, such as a dental hygienist or a dental assistant. One of the Committee's primary tasks is to create a career ladder, permitting continual advancement of dental auxiliaries to higher levels of licensure.

The Board is composed of fourteen members: eight practicing dentists (DDS/DMD), one registered dental hygienist (RDH), one registered dental assistant (RDA), and four public members. The 1991 members are James Dawson, DDS, president; Gloria Valde, DMD, vice-president; Hazel Torres, RDA, secretary; Pamela Benjamin, public member; Victoria Camilli, public member; Joe Frisch, DDS; Henry Garabedian, DDS; Martha Hickey, public member; Carl Lindstrom, public member; Alfred Otero, DDS; Evelyn Pangborn, RDH; Jack Saroyan, DDS; and Albert Wasserman, DDS. At this writing, one practicing dentist position is vacant.

MAJOR PROJECTS:

COMDA Fee Increases Approved. At the request of BDE, a four-member task force studied several options for COMDA fee increases. At BDE's January meeting, the task force presented its recommendations for fee increases in specific areas. Pursuant to section 1725 of the Business and Professions Code, the Board adopted the task force's recommendations for the following new fees: the application fee for an original dental auxiliary license is \$20; the license examination fee for dental assistants is \$40 for the written exam and \$50 for the practical exam; the license examination fee for registered dental assistants in extended functions is \$250; the license examination fee for registered dental hygienists is \$175; the license examination fee for registered dental hygienists in extended functions is \$250; the fee for issuance of a duplicate registration, license, or certificate to replace one that has been lost or destroyed, or in the event of a name change, is \$25; and the fee for each curriculum review and site evaluation is \$1,400 for unaccredited RDA educational programs and \$300 for unaccredited radiation safety courses.

Reevaluation of Grading System for Dental Licensing Examination. In 1990, BDE adopted a new five-point system for grading dental licensing exams which replaced the previous eight-point system. The numerical scores of the new system are as follows: 5 (or 95% equivalent), 4 (85% equivalent), 3 (75% equivalent), 2 (70% equivalent), and 0 (0%



equivalent). At its January meeting, however, BDE voiced concern that the new system is not evenly balanced because of the very small differentiation between a minimal passing score of 3 (with a value of 75%) and a minimal fail score of 2 (with a value of 70%). Furthermore, the current system only allows examiners to choose minimal fail (70%) or gross fail (0%) for candidates' work that is not of passing quality.

At its January meeting, BDE created an ad hoc committee to study alternative grading systems and make recommendations to the Board. The committee will consider a possible six-point scale, which would create equal intervals between scoring categories. The six-point system would reduce the value of a 2 from 70% to 65% and would create a score of 1 with a 55% value. The ad hoc committee will also consider retaining the five-point system and adding an arbitrating grader when an individual receives scores of 0 and 2, along with the current practice of using an arbitrating grader for an individual receiving scores of 3 and 2. Finally, the committee will consider eliminating numerical scoring completely. A pass/fail method would be used in place of number grades. If this proposal were selected, regulatory changes would be necessary.

Regulatory Update. At this writing, BDE is awaiting approval from the Office of Administrative Law of its conscious sedation permit procedure regulations. (See CRLR Vol. 11, No. 1 (Winter 1991) pp. 58-59; Vol. 10, No. 4 (Fall 1990) p. 71; and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 84-85 for detailed background information on these regulations.)

Medical Waste Legislation Update. Board staff recently met with representatives of the Department of Health Services (DHS) and the California Dental Association to clarify the impact of the Medical Waste Management Act. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 59 and Vol. 10, No. 4 (Fall 1990) p. 72 for background information.) At its January meeting, the Board was informed that dentists are only minimally impacted by the new legislation, and that dental medical waste is primarily identified as sharps. Dentists must prepare a written plan for disposal of medical waste and keep that plan in the office. Several methods of disposal were recommended to the Board, such as contracting with a medical waste hauler to pick up and dispose of medical waste on a routine schedule. The Board was also advised that DHS expects to begin enforcement efforts in April.

LEGISLATION:

AB 194 (Tucker), as introduced January 4, would provide that, notwithstanding existing law, on and after January 1, 1993, an applicant for a license to practice dentistry in this state who fails to pass the skills examination after three attempts shall not be eligible for further reexamination until the applicant has successfully completed a minimum of 50 hours of additional education at an approved dental school.

This bill would further provide that, notwithstanding existing law, on and after January 1, 1993, a foreign-trained dental applicant who fails to pass the required restorative technique examination after three attempts shall not be eligible for further reexamination until the applicant has successfully completed a minimum of two academic years of education at an approved dental school. This bill would also provide that a foreign-trained dental applicant shall be deemed to have passed the restorative technique examination if he/she obtains an overall average of 75% with a grade of 75% or more in two of the three subsections of the restorative technique examination. This bill is pending in the Assembly Health Committee.

AB 1158 (Speier), as introduced March 5, would permit any person licensed under the Medical Practice Act as a physician who is not licensed to practice dentistry under the Dental Practice Act to apply to BDE to be examined for a special permit in oral and maxillofacial surgery; authorize BDE to issue a special permit if the applicant furnishes evidence satisfactory to the Board that he/she meets certain eligibility requirements, including having a license to practice dentistry in another state; provide that except for the provisions relating to the subjects in which the applicant for a dental license is required to be examined, every provision of the Dental Practice Act applicable to an applicant for a license to practice dentistry applies to an applicant for a special permit in oral and maxillofacial surgery; require the subjects in which an applicant for a special permit in oral and maxillofacial surgery is to be examined to be limited to those subjects related to oral and maxillofacial surgery; authorize any person to whom a special permit is issued to identify himself/herself to the public as an oral and maxillofacial surgeon, which is a recognized branch of dentistry; and require every provision of the Dental Practice Act applicable to a person licensed to practice dentistry to apply to a person to whom a special permit is issued. This bill is pending in the Assembly Health Committee.

AB 2120 (Cortese). Under existing law, a dental assistant may perform basic supportive dental procedures as authorized by certain provisions of law under the supervision of a licensed dentist, and BDE is required to license as an RDA any person who submits written evidence, satisfactory to the Board, of satisfaction of either one of two specified requirements. As introduced March 8, this bill would instead provide that an RDA may perform basic supportive dental procedures as authorized by certain provisions of law under the supervision of a licensed dentist; make it unlawful for any person to use the designation "dental assistant" or "registered dental assistant" unless he/she has obtained a license as an RDA on January 1, 1992; and require any person who is not licensed as an RDA, but who is employed as a dental assistant, to comply with the licensure requirements on or before January 1, 1994. This bill is pending in the Assembly Health Committee.

SB 650 (Alquist), as introduced March 5, would authorize BDE to establish by regulation a system for issuing a citation, which may contain an order of abatement or an order to pay an administrative fine, for violation of the applicable licensing law or any regulation adopted pursuant to that law. This bill would also authorize BDE to inspect the books, records, and premises of any dentist licensed under the Dental Practice Act in response to a complaint that the licensee has violated the applicable licensing law, and would allow the Board to employ inspectors for this purpose. The failure of the licensee to allow such an inspection shall be grounds for disciplinary action.

This bill would also delete an existing law providing BDE and DCA inspectors with the powers and authority of peace officers when acting under the direction of the Board or the Department in the performance of their duties as inspectors. This bill is pending in the Senate Business and Professions Committee.

SB 777 (Robbins) would, commencing July 1, 1992, provide for the certification and licensure of dental technicians and dental laboratories under the Board's jurisdiction. As introduced March 7, the bill would enlarge the membership of the Board by adding a certified dental technician as a member, and would create a Dental Laboratory and Technology Committee, commencing July 1, 1992, under the Board's jurisdiction, consisting of five members appointed by the Board. This bill, which is opposed by the Board, is pending in the Senate Business and Professions Committee.



AB 91 (Moore), as introduced December 4, would require a dentist, dental health professional, or other licensed health professional to sign his/her name or enter his/her identification number and initials in the patient's record next to the service performed, and to date those treatment entries. This bill would also prohibit a person licensed under the Dental Practice Act from requiring or utilizing a policy for the delivery of dental care that discourages necessary care or dictates clearly excessive, inadequate, or unnecessary treatment, the violation of which would constitute unprofessional conduct. This bill was passed by the Assembly on March 14 and is pending in the Senate Business and Professions Committee.

SB 934 (Watson), as introduced March 8, would prohibit a dentist from using any material containing mercury to repair a patient's oral condition or defect unless the dentist obtains informed consent from the patient. This bill, which the Board opposes, is pending in the Senate Business and Professions Committee.

LITIGATION:

In early January, the parties agreed to settle *California Dental Association v. Board of Dental Examiners*, No. 511723 (Sacramento County Superior Court), a declaratory relief action in which CDA sought to prevent BDE from enforcing a cease and desist letter ordering CDA to refrain from advertising themselves as "the dentists who set the standards." (See CRLR Vol. 11, No. 1 (Winter 1991) p. 59; Vol. 10, No. 4 (Fall 1990) p. 72; and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 87 for background information.) Although CDA still disputes the Board's jurisdiction in this matter and continues to maintain that the slogan is not an improper claim of superiority, CDA has agreed to discontinue use of that particular phrase. In return, BDE agreed that CDA would not have to register as a referral service since each of CDA's 32 components which conduct referrals are registered. CDA does not expect this settlement to impact its future decisions if and when it creates a new slogan, maintaining that it agreed only to discontinue use of the particular slogan at issue in this case.

RECENT MEETINGS:

At its January meeting, BDE announced its proposed rulemaking calendar for the upcoming year. The Board expects to hold a regulatory hearing on increases in BDE program fees in May; in that same month, the Board hopes to hold a hearing on amendments which

clarify continuing education requirements for disabled licensees. In July, the Board plans to hold a hearing involving implementation of a registered dental hygienist in extended functions (RDHEF) program. Finally, BDE will consider refinements to its substance abuse diversion program for impaired dentists and changes to its Restorative Technique Examination in September hearings.

At its January meeting, the Board agreed to incorporate the following provision into its disciplinary guidelines' tolling clause for licensees not practicing: "In the event respondent would cease to actively practice dentistry in California, respondent must provide written notification of that fact to the Board. The period when the dentist is not practicing will not apply to the reduction of the probationary period." The change was recommended by the Enforcement Committee and adopted by the full Board.

FUTURE MEETINGS:

July 26-27 in San Francisco.
September 20-21 in Los Angeles.
November 15 in San Francisco.

BUREAU OF ELECTRONIC AND APPLIANCE REPAIR

Chief: Jack Hayes
(916) 445-4751

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).

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, 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 continually inspects service dealer locations to ensure compliance with the Electronic and Appliance

Repair Dealers Registration Law and regulations. It also receives, investigates and resolves consumer complaints.

The Bureau is assisted by an Advisory Board comprised of two representatives of the appliance industry, two representatives of the electronic industry, and five public representatives, all appointed for four-year terms. Of the five public members, three are appointed by the Governor, one by the Speaker of the Assembly, and one by the Senate President pro Tempore.

MAJOR PROJECTS:

OAL Disapproves BEAR's Proposed Rulemaking. On February 25, the Office of Administrative Law (OAL) disapproved BEAR's proposed rulemaking package which consisted of modifications and additions to twelve sections of Division 27, Title 16 of the CCR. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 60; Vol. 10, No. 4 (Fall 1990) p. 73; and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 87-88 for detailed background information.) According to OAL, the proposed regulations did not meet the necessity, consistency, and clarity standards of Government Code section 11349.1.

OAL's objections to BEAR's rulemaking package include the following: the rulemaking file failed to provide substantial evidence of the need for the proposed amendment to section 2710; section 2710 failed to comply with the clarity standard because the language of the regulation conflicts with BEAR's description of the effect of the regulation; sections 2717 and 2721(e) failed to comply with the clarity standard because the regulation uses language incorrectly; section 2765 failed to comply with the clarity standard because it contains a vague phrase; and section 2710 failed to comply with the consistency standard of Government Code section 11349.1 because it conflicts with existing law.

According to Program Manager George Busman, BEAR's disapproved regulatory package is undergoing the necessary changes, including the deletion of the proposed amendments to sections 2710 and 2717, and was expected to be resubmitted to OAL in mid-April.

BEAR's Use of Telephone Disconnects in Enforcement. At the February 22 Advisory Board meeting, Mr. Busman discussed the Bureau's use of a statute which allows the Public Utilities Commission (PUC) to order the phone company to disconnect phone service to a business when it is shown that the business telephone is being used for criminal activity, has caused harm to the consuming public, and its continued operation