



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
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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).

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



presents further risk of substantial harm. In the past, BEAR could not initiate a request for a phone disconnect order without first revoking the license of, or obtaining a criminal conviction against, the business owner. Recent decisions, however, indicate that the Bureau need only obtain evidence that the phone in question is being used for criminal purposes in order to obtain a court order requiring the PUC to order the disconnect. However, the fact that a business owner is not properly registered with BEAR is insufficient to obtain the court order; BEAR must receive substantial consumer complaints which link the owner to fraud or dishonest dealing.

According to Mr. Busman, BEAR recently utilized the telephone disconnect provision in its enforcement program. In December 1990, BEAR successfully sought the telephone disconnection of Robert Leslie, dba Arctic Refrigeration, Penguin Refrigeration, and Electro-Kold Refrigeration, which advertised in numerous telephone directories in the Bay Area. BEAR initiated the investigation based on numerous consumer complaints. In one complaint, an elderly invalid woman whose refrigerator had been repaired by Arctic Refrigeration was verbally abused over the telephone when calling Arctic to report a foul odor coming from the refrigerator. Several weeks later, the refrigerator caught fire while the woman was sleeping. The fire was suppressed and another repair facility determined that Arctic had improperly wired an installed part, causing the fire. Subsequently, investigators for the Santa Clara County District Attorney placed the business owner under arrest for operating an appliance repair business without a current and valid registration and failing to return parts as required by law.

The second recent disconnect order was obtained against Cesar Valderrama of AC Refrigeration, All Refrigeration Major Appliance Repair, All Mechanical Engineering, Tru Temp Engineering, CC Appliance, and A&D Air Conditioning and Appliance Service. In the affidavit supporting the order to terminate phone service, charges against Valderrama included operating a business without a registration, fraud and dishonest dealings, and incompetent or negligent repairs. In one complaint, agents for Valderrama are alleged to have defrauded an elderly widow out of more than \$600 on a refrigeration repair.

Cyclical Renewal. Currently, all BEAR registrations must be renewed on June 30, the end of the state's fiscal year. Under a cyclical renewal system, registration would be renewed one year from

the date of original issuance; the benefit of such a system is a more efficiently distributed workload for the Bureau. At the February 22 Advisory Board meeting, Mr. Busman announced that a proposed fee schedule to phase in a cyclical renewal system has been developed. The fees would be adjusted accordingly and new applications processed during the phase-in would be renewed on their anniversary date.

After reviewing the proposal, the Advisory Board suggested that the proposal be sent to the DCA Director for inclusion in the Department's omnibus bill (AB 1893). If the proposal is included and the bill is successful, the system should become effective January 1, 1991.

LEGISLATION:

SB 101 (Lockyer), as amended February 25, provides that if a retailer enters into a contract for the service or repair of merchandise, whether or not sold by it to the consumer, the retailer is required to specify a four-hour period to make the service or repair requested by the consumer under the contract if the consumer's presence is required, and provides a cause of action in small claims court for failure of the retailer to commence service or repair within that time period, subject to certain exceptions. This bill is pending in the Senate Appropriations Committee.

RECENT MEETINGS:

At the January 24 meeting of the Bureau's Executive Committee, Assistant Chief Gordon Boranian provided an update on the toxic parts issue. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 61 and Vol. 10, No. 4 (Fall 1990) p. 74 for background information.) He noted that regulations of the state Department of Health Services require warning labels for appliances which vent to the outside and have a gas or oil energy source; the label must warn consumers that the by-products of the appliances present a danger to human health. At the February 22 Advisory Board meeting, Mr. Boranian stated that BEAR is currently gathering information on the dumping and recycling of toxic parts overseas, and reviewing U.S. Environmental Protection Agency rules proposing further restrictions on the use of lead and lead-based substances (such as solder).

At its February 22 meeting, BEAR's Advisory Board continued its discussion of several issues relating to service contracts. Service contracts allow consumers to purchase extended warranty coverage for appliances and home elec-

tronic equipment, and are often sold by companies in the exclusive business of service contracts. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 61 and Vol. 10, No. 4 (Fall 1990) p. 74 for background information.) Specifically, the Board again addressed the problem of service contract companies which refuse to pay certain service dealer charges following repairs made under the contract. As a result, some service dealers have decided to charge the consumer up front for work covered by the service contract and then assist the consumer in getting reimbursement from the service contract company. Zeferino Lopez, BEAR's Senior Field Representative, emphasized that when service dealers seek up-front payment for repairs, a written estimate is required and all applicable rules of the Bureau apply.

The Advisory Board also suggested that an effort be made to educate consumers and service dealers regarding service contracts. President Fay Wood noted that BEAR will be sending letters to consumer affairs agencies and the Better Business Bureau to solicit their assistance. An audience member suggested that BEAR consider requiring the sellers of service contracts to publish its name, address, and phone number on the service contract so that consumers will know how to register their complaints.

FUTURE MEETINGS:

August 16 in the Seaside/Monterey area.

November 8 in Long Beach.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

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The Board of Funeral Directors and Embalmers licenses funeral establishments and embalmers. It registers apprentice embalmers and approves funeral establishments for apprenticeship training. The Board annually accredits embalming schools and administers licensing examinations. The Board inspects the physical and sanitary conditions in funeral establishments, enforces price disclosure laws, and approves changes in business name or location. The Board also audits preneed funeral trust accounts maintained by its licensees, which is statutorily mandated prior to transfer or cancellation of a license. Finally, the Board investigates, mediates, and resolves consumer complaints.