



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 amended May 22, would prohibit a dentist from using any toxic and carcinogenic materials to repair a patient's oral condition or defect unless the dentist obtains prior informed consent from the patient. This bill, which the Board opposes, is still pending in the Senate Business and Professions Committee.

## LITIGATION:

In *Alexander D. v. State Board of Dental Examiners*, No. A048932 (May 13, 1991), the First District Court of Appeal upheld the constitutionality of Business and Professions Code section 820, which provides that "[w]henver it appears that any person holding a license, certificate or permit under [Division 2 of the Business and Professions Code]...may be unable to practice his or her profession safely because the licentiate's ability to practice is impaired due to mental illness, or physical illness affecting competency, the licensing agency may order the licentiate to be examined by one or more physicians and surgeons or psychologists designated by the agency."

In 1989, the Board served appellant with an order and petition compelling him to undergo a psychiatric examination; the petition alleged a factual basis for the ordered examination based on appellant's bizarre statements and conduct. Appellant challenged the Board's action, contending that his due process rights were violated by the order and that section 820 is unconstitutional because no standards of reasonable cause or guidelines are stated in the statute. The Board countered that section 820 is constitutional and appellant's due process rights were not violated because the order prescribed in the statute is investigatory, not adjudicatory.

The First District agreed with the Board, stating that "both the language of the statute itself and surrounding code sections as well as the legislative history demonstrate the investigatory purpose of the examination....In other words, the psychiatric examination is an investigatory tool, the result of which may be used by the Board to determine if formal adjudicatory proceedings will be brought."

Further, the court reviewed the four factors which must be considered in determining the extent to which state procedural due process is available: the

private interest affected; the risk of erroneous deprivation of such interest through the procedure used, and the value of substitute procedures; the dignitary interest in informing the individual of the nature, grounds, and consequences of the action and enabling him/her to answer to a responsible governmental official; and the governmental interest, including the function involved and additional fiscal or administrative burdens. In weighing these concerns, the court found that appellant's property interest (his license to practice dentistry) is not at stake, his liberty is only minimally affected, and his privacy is protected by a confidential investigation; the risk of erroneous deprivation is remote because any discipline would be the result of a separate adjudicatory hearing; appellant was served with the order and petition setting forth the background facts and the written psychiatric evaluation, and the later adjudicatory hearing provides full opportunity for rebuttal; and the government's interest in protecting the public from unsafe or incompetent practitioners would be severely impacted by the necessity for every preliminary investigation to be conducted with full due process protections.

## FUTURE MEETINGS:

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

## BUREAU OF ELECTRONIC AND APPLIANCE REPAIR

Chief: *K. Martin Keller*  
(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:

*Governor Wilson Appoints New BEAR Chief and Deputy Chief.* On May 2, Governor Wilson announced the appointments of K. Martin Keller as Chief and Curtis L. Augustine as Deputy Chief of BEAR.

Keller, a 39-year-old Republican from San Francisco, is the former Vice President of Pacific Financial Printing, where he has been employed for the past eight years. Keller has been active in California politics as a member of both the San Francisco County and the State Republican Central Committee. In addition, he co-chaired the Wilson for Governor Campaign in San Francisco last year. As Chief of the Bureau, Keller will receive an annual salary of \$58,896.

Currently, Keller is in the process of assisting the Governor in filling the three vacancies on the Bureau's Advisory Board, which include one electronics industry member and two public members. Keller hopes to have a full Board for the October 4 meeting in Sacramento.

Augustine, a 32-year-old Republican from Walnut Creek, is a former Director of Marketing and Sales for Scribner, Jackson Associates. As BEAR Deputy Chief, he will receive an annual salary of \$50,424.

*BEAR to Tackle Service Contract Abuse.* At its May 17 meeting, the Advisory Board once again addressed the issue of service contract abuses by third-party administrators. Although BEAR has no jurisdiction over third-party service contract administrators, it has documented a large number of problems in this area which have victimized both service dealers and consumers. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 73; Vol. 11, No. 1 (Winter 1991) p. 61; and Vol.



## REGULATORY AGENCY ACTION

10, No. 4 (Fall 1990) p. 74 for background information.)

The consistent failure on the part of some third-party administrators to reimburse the service dealer at all for repairs under a service contract ("no pay") or extreme delay in reimbursements ("slow pay") have caused some service dealers to adopt a policy of collecting in advance from consumers who request repairs under a service contract, leaving the consumer to attempt to collect reimbursement from the third-party administrator. This practice may be in violation of the service contract held by the consumer or the service dealer's contract with the service contract administrator. At the May 17 meeting, BEAR staff again reminded service dealers that they have a duty of full and fair disclosure to the consumer. If a service dealer intends to charge the consumer for a repair under a service contract, that fact should be clearly stated to the consumer before the item is accepted for service or repair. In addition, if the consumer is to be responsible for paying the service dealer for the repair, the service dealer must comply in full with the Electronic and Appliance Repair Dealer Registration Law, including the provision of a written estimate, a claim receipt, and an itemized invoice, and the return of replaced parts.

New BEAR Chief Marty Keller expects the service contract issue to be a major project for the Bureau during the next year. He plans to conduct public hearings on the issue during the fall to determine the problems extant and the best ways of resolving them. One issue which will be developed is the potential classification of a service contract as insurance, such that the state Department of Insurance would take jurisdiction over third-party administrators.

**BEAR Resubmits Rulemaking Package.** 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. 2 (Spring 1991) p. 72; Vol. 11, No. 1 (Winter 1991) p. 60; and Vol. 10, No. 4 (Fall 1990) p. 73 for detailed background information.) OAL determined that the proposed regulations did not meet the necessity, consistency, and clarity standards of Government Code section 11349.1. According to BEAR Program Manager George Busman, the Bureau made the changes necessary to comply with section 11349.1, including the deletion of the proposed amendments to sections 2710 and 2717, and resubmitted the proposed regulatory

package to OAL on May 16. At this writing, BEAR is awaiting OAL's approval.

**Cyclical Renewal.** In February, BEAR developed a proposed fee schedule to phase in a cyclical renewal system for Bureau registrations. 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. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 73 for background information.) The proposal has been included in the Department of Consumer Affairs' omnibus bill (AB 1893); if the bill is enacted, the cyclical system should become effective January 1, 1992. (See *infra* LEGISLATION.)

**Technician Registration/Certification.** At the Advisory Board's May 17 meeting, George Brownyard of the California State Electronic Association (CSEA) updated the Board on CSEA's continuing attempt to draft and sponsor legislation authorizing BEAR to test and certify or register service technicians. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 88-89; Vol. 10, No. 1 (Winter 1990) p. 67; and Vol. 9, No. 4 (Fall 1989) p. 56 for background information.) Mr. Brownyard indicated that there is national interest in this proposal, and that other states are looking to California as a role model for electronic and appliance technician licensing. He indicated he is still gathering statistics and completing DCA's "sunrise questionnaire" which is required before DCA will consider the addition of a new licensing program.

### LEGISLATION:

**AB 1893 (Lancaster)**, as amended May 24, would revise the issue, expiration, and renewal dates for BEAR registrations (see *supra* MAJOR PROJECTS). This bill is pending in the Assembly Ways and Means Committee.

**SB 101 (Lockyer)**, reported in CRLR Vol. 11, No. 2 (Spring 1991) at page 73, was substantially amended in June and is no longer relevant to BEAR.

### RECENT MEETINGS:

At the April 23 meeting of BEAR's Executive Committee, then-Chief Jack Hayes reported that he plans to write an article for publication in computer periodicals advising computer repair dealers of their responsibility to register with BEAR.

At the Advisory Board's May 17 meeting, new DCA Director Jim Conran

and Deputy Director Tom Maddock were on hand to introduce themselves and discuss the new direction of DCA. Conran stated that two principles will be guiding him as DCA Director—protection of consumers from those who would victimize them, and the provision of a wide range of marketplace choices to consumers. He further stated that under his leadership, DCA will have a strong enforcement program, and urged those in state government to be responsive to consumer complaints.

At the Advisory Board's May 17 meeting, retiring Chief Jack Hayes was presented with several plaques and cakes in appreciation for his 25 years with the Bureau. Hayes is retiring effective July 2, and has spent the past 17 years as BEAR Chief. New Bureau Chief Marty Keller took over after the May 17 meeting; new Deputy Chief Curt Augustine is expected to join BEAR on July 2.

### FUTURE MEETINGS:

October 4 in Sacramento.

### BOARD OF FUNERAL DIRECTORS AND EMBALMERS

*Executive Officer: James B. Allen  
(916) 445-2413*

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.

The Board is authorized under Business and Professions Code section 7600 *et seq.* The Board consists of five members: two Board licensees and three public members. In carrying out its primary responsibilities, the Board is empowered to adopt and enforce reasonably necessary rules and regulations; these regulations are codified in Division 12, Title 16 of the California Code of Regulations (CCR).

### MAJOR PROJECTS:

*Proposed Regulatory Changes.* On March 28, the Board held another public