



Acquisition Regulation, 48 C.F.R. Part 52.236-7. However, state authorities charged Gartrell with violation of Labor Code section 1021, which provides that any person who does not hold a valid state contractor's license, and who employs persons to perform services for which a contractor's license is required, shall be subject to specified civil penalties. State authorities therefore assessed \$57,600 in penalties against Gartrell for violation of section 1021. Gartrell filed for injunctive and declaratory relief in federal district court, which enjoined California from enforcing Labor Code section 1021 against Gartrell, ruling that federal law preempted state licensing requirements.

Citing *Leslie Miller, Inc. v. Arkansas*, 352 U.S. 187 (1956), a U.S. Supreme Court case decided on very similar facts, the Ninth Circuit held that California's contractor licensing laws conflict with federal "responsibility" determinations; both require consideration of the same or similar factors. Therefore, the Supremacy Clause of the U.S. Constitution precludes California from applying its licensing laws against Gartrell.

In addition, the Ninth Circuit held that requiring compliance with state licensing laws after a contractor has been selected by the federal government would improperly give the state a secondary review right over federal decisionmaking. Finally, the court rejected California's argument that revisions to the federal regulation (48 C.F.R. Part 52.236-7) requiring a federal contractor to be "responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work . . ." enacted after the *Leslie Miller* decision indicate an intent to subject federal contractors to state licensing laws. Noting that, under *Leslie Miller*, a state contractor's license is neither "necessary" nor "applicable," the court found "no legislative or regulatory history to support California's contention that Congress intended [this language] to overrule *Leslie Miller*."

#### RECENT MEETINGS:

At CSLB's July 19 meeting, the Enforcement Committee reported on a staff proposal to change the manner in which CSLB tracks the pendency of consumer complaints. Rather than simply counting the number of complaints, subtracting 6,000 as the number routinely in "the pipeline" at all times, and reporting the excess as the Board's "backlog" or number of "aged complaints," staff pro-

poses to compute its backlog in a "time-sensitive" manner, as proposed by the Center for Public Interest Law at the Enforcement Committee's March meeting. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 66 for background information.) In this manner, older complaints will be given priority attention. Complaints older than 180 days will be considered aged complaints and their investigation will be expedited.

Registrar David Phillips also reported that the median age of a complaint at closure has decreased from 158 days to 61 days. The Enforcement Committee stated that its new goal is to process 90% of all complaints in less than 180 days and to reduce the median number of days to process a complaint to 40.

Finally, Roger Lighthart was elected CSLB Chair for the 1991-92; Jim Frayne was elected Vice-Chair.

#### FUTURE MEETINGS:

January 16-17 in San Diego.

#### BOARD OF COSMETOLOGY

*Executive Officer: Denise Ostton (916) 445-7061*

In 1927, the California legislature enacted the Cosmetology Act, establishing the Board of Cosmetology (BOC). The Board is empowered to require reasonably necessary precautions designed to protect public health and safety in establishments related to any branch of cosmetology. BOC's enabling legislation is found in Business and Professions Code section 7300 *et seq.*; the Board's regulations are codified in Division 9, Title 16 of the California Code of Regulations (CCR).

Pursuant to this legislative mandate, the Board regulates and issues separate licenses to salons, electrologists, manicurists, cosmetologists, and cosmeticians. It sets training requirements, examines applicants, issues certificates of registration and licenses, hires investigators from the Department of Consumer Affairs (DCA) to investigate complaints, and disciplines violators with licensing sanctions.

The Board is comprised of seven members—four public members and three from the industry. It is required to hold meetings at least four times per year.

On July 1, 1992, BOC and the Board of Barber Examiners (BBE) will merge, pursuant to AB 3008 (Eastin) (Chapter 1672, Statutes of 1990). The Business and Professions Code sections which establish BBE and BOC will be repealed

and replaced with an enabling act creating the Board of Barbering and Cosmetology (BBC), which will provide for the licensure and regulation of persons engaged in the practice of performing specified acts relating to barbering, cosmetology, and electrolysis.

On June 5, Richard Carpeneti was sworn into office as a new public member on the Board. Mr. Carpeneti, a San Francisco attorney, was appointed by Assembly Speaker Willie L. Brown, and previously served as a BOC public member from 1983-87.

#### MAJOR PROJECTS:

**Goals and Objectives for the 1991-92 Fiscal Year.** At its July 28 meeting, BOC reviewed its accomplishments during fiscal year 1990-91, and set forth its goals for the upcoming year. These goals fall into the following categories: administration, legislation and regulations, public awareness, examinations, and enforcement.

BOC's basic administrative goal is to ensure the efficient and cost-effective operation of essential Board services to better meet its consumer protection mandate. During 1991-92, the Board will try to ensure its efficient operation primarily by focusing on an efficient merger of BOC with BBE. BOC has also installed a new phone system, meant to provide better access and more information to consumers and licensees. To enhance the Board's ability to protect consumers, BOC is developing a health and safety course on hazardous substances in the workplace to be taught in cosmetology schools. (See *infra*; see also CRLR Vol. 11, No. 3 (Summer 1991) p. 72 for more detailed information on this project.)

In the areas of legislation and regulation, BOC worked with Assemblymember Eastin's office on AB 1161, the "clean-up" bill to AB 3008 (Eastin), the merger bill. (See *infra* LEGISLATION.) BOC is also working with DCA program analyst Kirk Marston to finalize draft regulations for BBC. BOC also hopes to study the need for health and safety regulations in various areas such as the disposal of hazardous wastes and chemical skin peeling.

In the area of public awareness, BOC's goal is to increase consumer and industry awareness of the Board's role in promoting consumer protection. BOC hopes to increase the scope of its educational activities by creating and disseminating educational information, and maintaining interaction with consumer groups, industry groups, and the media. BOC staff has operated a booth at several trade shows throughout the state



## REGULATORY AGENCY ACTION

where they disseminated almost four tons of literature and spoke to thousands of licensees and students. The Board was also interviewed for a consumer-oriented article which appeared in the *Los Angeles Times Magazine*.

BOC's goal in the examination area is to improve the contents of the Board's examination while maintaining the examination's validity. Among other things, BOC hopes to reduce the length of time an applicant must wait for an examination date by automating the process for handling examination applications and expanding the number of examinations given.

In the area of enforcement, BOC has two goals: (1) to enhance the Board's inspection capabilities to better protect the health and safety of consumers; and (2) to increase program responsiveness and service to consumers who have complaints about licensees. To enhance the Board's inspection capabilities, BOC has developed an inspection procedure manual intended to upgrade inspector skills and techniques, and to ensure consistency among inspectors. BOC has also implemented an automated complaint tracking system which tracks complaints from opening to closure.

**BOC/BBE Continue Joint Hearings on Draft BBC Regulations.** On June 17 in El Segundo, BOC and BBE held their second joint public hearing to receive and discuss comments on proposed draft regulations which have been formulated for BBC by DCA consultant Kirk Marston. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 62 and Vol. 11, No. 2 (Spring 1991) p. 59 for background information.) The proposed regulations and issues relating to them were discussed extensively during the hearing. Although no formal decisions will be reached until the merged Board comes into being in July 1992, the following regulatory proposals did receive considerable attention at the June hearing:

-Proposed section 75, regarding leasing and rental agreements, would prohibit the carrying out of any agreement which divides, limits, or restricts the authority or duties of the licensee supervising and managing the establishment; this regulation would appear to prohibit the practice of booth rental. Under a booth rental arrangement, a licensee is not an employee of the establishment owner or manager, but simply rents space from him/her. Because there is no employer-employee relationship, the owner/manager does not withhold income tax, social security, or other deductions from the licensee's paycheck; the licensee's customers pay him/her personally and the licensee inde-

pendently reports his/her income to tax authorities.

At the June hearing, much of the discussion centered on methods of allowing the practice of booth rental while enabling the establishment owner/manager to maintain health and safety control, such the possibility of issuing two classes of licenses—an establishment license and a booth renter's license. Although booth rental has been criticized as creating an "underground economy" within the cosmetology profession, BOC representatives and audience members emphasized that prohibiting booth rental may drive practitioners from a salon setting into the home, resulting in more unlicensed activity. The two boards decided to defer this controversial issue to BBC.

-Proposed section 97 sets forth the requirements which must be met for a barber college seeking to teach the 400-hour course prescribed in Business and Professions Code section 7321.5; proposed section 105 sets forth the curriculum for students enrolled in a 400-hour cosmetology crossover course for barbers. Members of the Board and public reiterated comments made at the May hearing regarding the possibility of increasing the number of curriculum hours for the cosmetology crossover course to 600.

-Proposed section 108 specifies that a student enrolled in a school specified in the Barbering and Cosmetology Act shall not be permitted to work upon a patron paying for services until he/she has completed the freshman period of 150 hours of training and instruction. At the hearing, discussion centered on raising the 150-hour freshman period to 250 or 300 hours.

Another joint public hearing to receive additional comments was scheduled for March 15, 1992, in Fresno.

**Other Regulatory Changes.** On May 19, BOC adopted new section 963.5, Division 9, Title 16 of the CCR. New section 963.5 would specify what proof of training BOC requires for admission to licensure examinations, and provides that such proof must be in the form of a document generated by the school in which the applicant finished training which contains specified required information about the applicant's training. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 72 for background information.) The rulemaking file on this proposed regulatory change was expected to be sent to the Office of Administrative Law for approval by October.

**Hazardous Substance Project.** At its July 28 meeting, BOC discussed its

progress in developing a health and safety course on hazardous substances in the cosmetology workplace to be taught in licensed cosmetology schools, as required by AB 2925 (Mojonnier). (See CRLR Vol. 11, No. 3 (Summer 1991) p. 72 for background information.) Phase I was nearing completion and Phase II began in July. Phase II involves curriculum development, pilot testing of the curriculum, and a "train the trainers" program in which instructors will become trained on how to use the curriculum.

The Board had hoped to develop videos on hazardous substances for use by licensees and consumers to coincide with the development of the health and safety course on hazardous substances. However, the Board's budget change proposal to develop the videos was not approved and therefore resources were not available to pursue this goal. Thus, the Board hopes to conduct a comprehensive health survey as a less costly alternative. BOC has requested \$23,000 to fund this survey, which is scheduled to begin in January 1992. In addition, the Board is offering free copies of its report entitled *Hazardous Substances in the Cosmetology Workplace*. This report, completed in October 1988, reviews potentially hazardous substances in the hair and nail industries.

### LEGISLATION:

The following is a status update on bills reported in detail in CRLR Vol. 11, No. 3 (Summer 1991) at page 72:

**SB 985 (Deddeh)**, as amended August 28, requires BBC, after July 1, 1992, to adopt regulations providing for the submittal of "pre-applications" for admission to the examination from students of approved cosmetology, electrology, or barbering schools who have completed at least 75% of the required course clock hours and curriculum requirements (60% for students of the manicurist course). This bill was signed by the Governor on October 13 (Chapter 1015, Statutes of 1991).

**AB 1161 (Eastin)**, as amended August 29, deletes an existing provision which requires that the BBC member who finishes second in the vote for Board president shall become vice president. This bill also specifies that both a rejection and a recommendation for dismissal of BBC's executive officer by the DCA Director must be for good cause and specifically stated to the Board in writing. This bill also requires BBC to inspect every establishment where any licensed barbering or cosmetology activity is practiced for compliance with



applicable laws relating to the public health and safety at least once per year, rather than twice per year. This bill was signed by the Governor on October 14 (Chapter 1172, Statutes of 1991).

**AB 223 (Felando)**, as amended September 3, 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 BBC. This bill is pending in the Senate Rules Committee.

## RECENT MEETINGS:

At BOC's September 8 meeting, Karen McGagin, Special Assistant to the Director of the Department of Consumer Affairs, discussed DCA's desire to aid the Board in its upcoming merger with BBE. The Board also discussed its recent office move from 1020 N Street to 400 R Street, Suite 4080, in Sacramento, and its recent installation of a new telephone system; the new system allows all calls to be tracked and provides consumers and licensees easier access to the Board.

BOC also discussed section 967, Title 16 of the CCR, which requires, among other things, that a copy of BOC's health and safety regulations be conspicuously posted in the reception area of both cosmetology schools and establishments. Additionally, regulatory section 986.1 requires the health and safety poster to include a bold-print "Message to the Consumer" at the bottom of the page. This section was added to alert consumers to the existence of the Board and its commitment to providing a safe and healthy environment for cosmetology customers. The posted message notifies consumers of the Board's jurisdiction and provides consumers with the Board's address and phone number. Although the health and safety rules poster containing the consumer information message was supposed to have been conspicuously posted since the adoption of section 986.1 in 1989, many licensees in attendance were unaware of the requirement. All agreed that the consumer information message is needed and of great importance.

## FUTURE MEETINGS:

January 5 in Ontario.  
March 16 in Fresno.  
May 3 in Redding.

## BOARD OF DENTAL EXAMINERS

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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; Jean Savage, DDS; Jack Saroyan, DDS; and Albert Wasserman, DDS.

## MAJOR PROJECTS:

**OAL Approves Fee Increases.** At its May 10 meeting, the Board unanimously adopted proposed amendments to section 1021, Division 10, Title 16 of the CCR, which increase various BDE fees. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 73 for background information.) The Office of Administrative Law (OAL) approved these revisions on August 2.

**BDE Seeks RDHEF Rule Changes.** On July 26, BDE held a public hearing

on proposed revisions to its regulations affecting registered dental hygienists in extended functions (RDHEF). Specifically, the Board seeks to adopt new section 1089(c) and 1089(d), amend sections 1082.2(a), 1082.2(c), and 1083(d), and repeal section 1067(g), (r), and (s). (See CRLR Vol. 11, No. 3 (Summer 1991) pp. 73-74 and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 85 for detailed background information.) Following the hearing, BDE adopted the entire proposal as it was presented; the revisions await review and approval by OAL.

## LEGISLATION:

**SB 1070 (Thompson)**, the Patient Protection Act of 1991, was signed by the Governor on October 14 (Chapter 1180, Statutes of 1991). This bill requires the Department of Health Services to promulgate guidelines and regulations to minimize the risk of transmission of blood-borne infectious diseases in the health care setting by January 1993. It further requires BDE, in addition to the Medical Board, the Board of Registered Nursing, and the Board of Vocational Nurse and Psychiatric Technician Examiners, to ensure that its licentiates are informed of their responsibility to minimize the risk of transmission of blood-borne infectious diseases from health care provider to patient, from patient to patient, and from patient to health care provider, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission. This bill amends the Dental Practice Act's definition of unprofessional conduct to include, except for good cause, a knowing failure to protect patients by failing to follow infection control guidelines and, thereby, risking the transmission of blood-borne infectious diseases.

The following is a status update on bills reported in detail in CRLR Vol. 11, No. 3 (Summer 1991) at pages 74-75:

**AB 1918 (Moore)**, as amended June 28, prohibits persons and specified entities from discriminating, with respect to employment, staff privileges, or the provision of, or contracts for, professional services, against a licensed dentist on the basis of the educational degree held by the dentist. This bill was signed by the Governor on October 7 (Chapter 729, Statutes of 1991).

**AB 1158 (Speier)**, as amended August 20, permits 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 for a special permit in oral and maxillofacial surgery, and