



CEMETERY BOARD

Executive Officer: John Gill
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The Cemetery Board's enabling statute is the Cemetery Act, Business and Professions Code section 9600 *et seq.* The Board's regulations appear in Chapter 23, Title 16 of the California Code of Regulations (CCR).

In addition to cemeteries, the Cemetery Board licenses cemetery brokers, salespersons, and crematories. Religious cemeteries, public cemeteries, and private cemeteries established before 1939 which are less than ten acres in size are all exempt from Board regulation.

Because of these broad exemptions, the Cemetery Board licenses only about 185 cemeteries. It also licenses approximately 45 crematories, 200 brokers, and 1,200 salespersons. A license as a broker or salesperson is issued if the candidate passes an examination testing knowledge of the English language and elementary arithmetic, and demonstrates a fair understanding of the cemetery business.

MAJOR PROJECTS:

Board Rulemaking. On August 15, the Board submitted to the Office of Administrative Law (OAL) for approval its proposed repeal of section 2370(e), pertaining to the handling of trusts, because it refers to obsolete sections of the Civil Code. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 76 for background information.) At this writing, OAL has not yet published its decision.

Endowment Care Fund Rates. The Board is currently searching for a legislative author to carry a bill to amend section 8738 of the Health and Safety Code to increase endowment care fund rates. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 76; Vol. 10, No. 1 (Winter 1990) p. 60; and Vol. 9, No. 4 (Fall 1989) p. 48 for background information.) At its July meeting, the Board passed a motion to draft regulatory changes to clarify when endowment care fund collections are due.

LEGISLATION:

The following is an update on bills described in detail in CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) at page 76:

SB 2244 (Davis), as amended August 28, increases the fee for a permit to dispose of human remains by \$3; it further requires the local registrar to pay \$1 of that additional fee into the Peace Officers' Training Fund, and the other \$2 to

the county treasury for indigent burials. This bill was signed by the Governor on September 17 (Chapter 990, Statutes of 1990).

AB 2801 (Hauser) exempts the reburial of Native American remains, under an agreement or recommendation between landowners and Native Americans, from misdemeanor charges for depositing human remains in a place other than a cemetery. This bill was signed by the Governor on July 16 (Chapter 277, Statutes of 1990).

AB 2758 (Eastin) exempts a cemetery which disposes specified materials on cemetery grounds from the Solid Waste Disposal Site Hazard Reduction Act of 1989. This bill was signed by the Governor on June 29 (Chapter 183, Statutes of 1990).

AB 3427 (Assembly Committee on Governmental Efficiency and Consumer Protection), as amended August 23, provides that an applicant for a temporary cemetery salesperson's license shall pay the same fee as that of an applicant for a cemetery salesperson's license; that fee shall be fixed by the Board at no more than \$30. This bill, which also makes other technical, corresponding changes, was signed by the Governor on September 26 (Chapter 1393, Statutes of 1990).

LITIGATION:

In *Unidentified Relatives or Family Members Who Claim Standing as Individual Plaintiffs in Sconce/Lamb Cremation Cases v. Superior Court of the State of California for Los Angeles County*, No. B042719 (June 28, 1990), the Second District Court of Appeal reversed the trial court's ruling on the standing of various individuals to sue several mortuaries and crematories for mishandling human remains.

The underlying action is a class action in which the family and friends of 16,000 decedents sued several crematory businesses (including Pasadena Crematorium of Altadena) owned by David W. Sconce, mortuary businesses owned by members of the Lamb family (who are related to Sconce), and a North Carolina biological supply company which allegedly purchased body parts and organs from the crematory defendants. Plaintiffs allege that defendants systematically commingled ashes from cremations, extracted gold and silver from decedents' mouths, stole decedents' personal effects, and disposed of bodies in a disrespectful and undignified manner. The trial court limited standing to those plaintiffs who were entitled to control disposition of their decedent's remains under Health and Safety Code section 7100, or who actually contracted for

such disposition; plaintiffs appealed that ruling.

The appellate court held that close family members (including grandchildren) have standing to sue for negligent mishandling of human remains, under *Thing v. La Chusa*, 48 Cal. 3d 583 (1989), and *Quesada v. Oak Hill Improvement Co.*, 213 Cal. App. 3d 596 (1989). With regard to the tort of intentional mishandling of human remains, the court expanded the standard to include all family members and close friends of the deceased. In so ruling, the court noted that "[m]ortuaries accept human remains for disposition with the knowledge that mishandling will cause distress not only to the person with whom the mortuary contracted or the section 7100 right holder, but potentially to all persons bereaved by the death."

FUTURE MEETINGS:

December 4 in San Diego.

BUREAU OF COLLECTION AND INVESTIGATIVE SERVICES

Chief: Alonzo Hall
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The Bureau of Collection and Investigative Services (BCIS) is one of 38 separate regulatory agencies within the Department of Consumer Affairs (DCA). The Chief of the Bureau is directly responsible to the director of the Department.

Pursuant to the Collection Agency Act, Business and Professions Code section 6850 *et seq.*, the Bureau regulates the practices of collection agencies in California. Collection agencies are businesses that collect debts owed to others. The responsibility of the Bureau in regulating collection agencies is two-fold: (1) to protect the consumer/debtor from false, deceptive, and abusive practices and (2) to protect businesses which refer accounts for collection from financial loss. The Bureau also plays an important role in protecting collection agencies from unlawful competition by the detection and prohibition of unlicensed activity within the industry.

In addition, eight other industries are regulated by the Bureau, including private security services (security guards and private patrol operators), repossessioners, private investigators, alarm company operators, protection dog operators, medical provider consultants, security guard training facilities, and locksmiths.

Private Security Services. Regulated by the Bureau pursuant to Business and Professions Code section 7544 *et seq.*,



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private security services encompass those who provide protection for persons and/or property in accordance with a contractual agreement. The types of services provided include private street patrols, security guards, watchpeople, body guards, store detectives, and escort services. Any individual employed to provide these services is required to register with the Bureau as a security guard. Any security guard who carries a firearm and/or baton on the job must possess a firearm permit issued by the Bureau. The Bureau operates to protect consumers from guards who unlawfully detain, conduct illegal searches, exert undue force, and use their authority to intimidate and harass.

Repossessors. Repossession agencies repossess personal property on behalf of a credit grantor when a consumer defaults on a conditional sales contract which contains a repossession clause. Any individual employed by these services is required to be registered with the Bureau. Pursuant to the Repossessors Act, Business and Professions Code section 7500 *et seq.*, the Bureau functions to protect consumers from unethical methods of repossessing personal property, such as physical abuse resulting in bodily harm, threats of violence, illegal entry onto private property, and misrepresentation in order to obtain property or information about property.

Private Investigators. Private investigators conduct investigations for private individuals, businesses, attorneys, insurance companies, and public agencies. The scope of their job generally falls within the areas of civil, criminal, and domestic investigations. Any private investigator who carries a firearm on the job must possess a firearm permit issued by the Bureau. Pursuant to Business and Professions Code section 7540 *et seq.*, the Bureau oversees private investigators to protect consumers and clients against investigators who misrepresent, impersonate, or make threats in order to obtain desired information; perform inadequate or incompetent investigations; fail to substantiate charges or charge more than the amount agreed upon; and alter, falsify, or create evidence.

Alarm Company Operators. Alarm company operators install, service, maintain, monitor, and respond to burglar alarms. These services are provided to private individuals, businesses, and public entities. Any employee responding to alarms who carries a firearm on the job must be registered by the Bureau and possess a Bureau-issued firearm permit. Pursuant to the Alarm Company

Act, Business and Professions Code section 7590 *et seq.*, the Bureau regulates this industry in order to protect clients from potential theft or burglary, invasion of privacy or misrepresentation by alarm companies, and failure on their part to render service as agreed.

Protection Dog Operators. Protection dog operators train, lease, and sell dogs for personal and/or property protection. They also provide patrol services using trained dogs. Individuals employed by any of these services must be registered by the Bureau. These services are employed by private individuals, business entities, and law enforcement agencies. Pursuant to Business and Professions Code section 7550 *et seq.*, the Bureau serves to protect against possible violations in this industry, such as inadequately trained or physically abused dogs, overcharges for services, invasions of privacy, or potential theft or burglary of property.

Medical Provider Consultants. Medical provider consultants are contract collectors who provide in-house collection services to medical facilities. They contact insurance companies and/or patients to try to collect on medical debts on behalf of the medical provider. Nevertheless, consultants cannot themselves collect on delinquent debts. Instead, they must turn the debt over to an independent, licensed collection agency in order to avoid any conflict of interest. Medical provider consultants may be licensed by the Bureau pursuant to Health and Safety Code section 1249.5 *et seq.*

Training Facilities and Instructors. These facilities provide required firearm training to licensed private investigators; power to arrest and firearm training to alarm agents who respond to alarm systems; and power to arrest, firearm, and baton training to security guards. Upon completion of training, individuals must pass examinations before they may be issued the appropriate permits. Pursuant to Business and Professions Code section 7552 *et seq.*, the Bureau regulates these facilities in order to ensure that required training is provided to licensed individuals, and that only those qualified possess the proper permits to provide service to the consumer.

Locksmiths. Locksmiths install, repair, open, modify, and make keys for locks. These services are provided to private individuals, businesses, and public entities. Pursuant to Business and Professions Code section 6980 *et seq.*, the Bureau regulates this industry in order to protect clients from potential theft or burglary, invasion of privacy, and misuse of a locksmith's skills, tools, or facilities for the commission of a crime.

The purpose of the Bureau is to protect the health, welfare and safety of those affected by these industries. To accomplish this, the Bureau regulates and reviews these industries by its licensing procedures and by the adoption and enforcement of regulations. For example, the Bureau reviews all complaints for possible violations and takes disciplinary action when violations are found. The Bureau's primary method of regulating, however, is through the granting or denial of initial/renewal license or registration applications. Education is also utilized to assist in achieving Bureau goals.

Consumers and clients may pursue civil remedies to resolve complaints and disputes currently within the regulatory authority of the Bureau. In addition, class action suits may be filed on behalf of consumers by the Attorney General's office and local district attorneys against businesses which engage in repetitive unethical business practices.

Two advisory boards function within the Bureau to advise the Chief and the DCA Director on policy matters relating to their respective industries. The Collection Agency Board (CAB) acts pursuant to Business and Professions Code section 6863.5 *et seq.*, and the Private Security Services Advisory Board (PSSAB) is created under Business and Professions Code section 7516 *et seq.*

MAJOR PROJECTS:

Conservatorships. At CAB's September 14 meeting, Chief Hall updated the Board and audience members on the issue of conservatorships. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 78; Vol. 10, No. 1 (Winter 1990) p. 62; and Vol. 8, No. 4 (Fall 1988) p. 48 for background information.) According to Chief Hall, the Bureau is preparing cases for referral to the district attorney against collection agencies under conservatorship, where the conservator determines that criminal activity was involved in the handling of trust account funds. Agencies identified by the conservator as being solvent and not involved in criminal activity are being placed back in the hands of their owners. Some of these agencies may be subject to a probationary period of six months to one year, during which time the Bureau will monitor their activities. Chief Hall also stated that the Bureau had recently placed one agency up for sale.

Board members and audience participants voiced concerns about how and when the public may be notified that there is a fiduciary problem within an agency. DCA attorney Steve Martini



explained that while the Bureau's investigation is pending, all information is confidential, and becomes public only when a conservator is appointed. Chief Hall stated that the Bureau is concerned about the possibility of a lawsuit if accusations which later prove to be meritless are released about an agency, causing a loss of clientele.

An audience member expressed his objections to the Bureau's policy of returning control of an agency to its owners when the conservator determines that the agency's problems stem from poor management and not criminal activity. Chief Hall stated that he has no legal authority to take a business away from its owner solely for bad management practices. According to the Chief, the Bureau can only put the business back into the hands of the owner and monitor it for a period of time.

BCIS Releases Revised Edition of Collection Agency Laws, Rules and Regulations. In early September, the Bureau released the July 1990 version of the Collection Agency Laws, Rules and Regulations, which is a compilation of the federal Fair Debt Collection Practices Act, 15 U.S.C. section 801 (1601) *et seq.*; the California Robbins-Rosenthal Fair Debt Collection Practices Act, Civil Code section 1788 *et seq.*; the Collection Agency Act (CAA), Business and Professions Code section 6850 *et seq.*; and the California Code of Regulations (CCR), Title 16, Chapter 7, section 600 *et seq.* Included in this publication are recent amendments to the CAA, including those made by AB 4007 (Lancaster) (Chapter 1448, Statutes of 1988) and AB 1529 (Lancaster) (Chapter 1104, Statutes of 1989), and to the CCR (amendments effective September 29, 1989).

The following is a summary of some of the sections of the CAA which have been added or revised as a result of these recent amendments:

-Section 6864.1 states, among other things, that all BCIS applications for registration or licensure shall contain a statement informing the applicant that the address or phone number they provide may be given to other governmental or law enforcement agencies, as well as to anyone who makes a written request for it, including but not limited to debtors from whom they have attempted to collect. (*See infra* SB 2106 for recent amendments to this provision.)

-Section 6885 lists the information which is required to be included in an application for examination, and states when and where applications are to be filed.

-Section 6886 lists the eligibility criteria which must be met by an applicant for a qualification certificate.

-Section 6894.2 provides that every person required to be registered pursuant to section 6894 shall file with the Chief an application for registration within fifteen days after the commencement of employment. Any licensee who fails to notify the Chief in writing of the employment of a registrant within fifteen days of that person's employment is subject to suspension or revocation of his/her license.

-Section 6895 provides that an applicant for a license shall file with the Chief a bond in the penal sum of \$10,000 upon notification by the Chief that the applicant's fictitious business name has been approved.

-Section 6911 provides that a license is not transferable.

-Section 6911.1 provides for the issuance of a duplicate license upon the loss or destruction of the original license.

-Section 6923 sets forth those persons who are not qualified to be in charge of a licensed collection agency.

-Section 6928 lists the criteria that the DCA Director shall consider before denying, suspending, revoking, or reinstating a license, registration, or certificate. Included in this list are the nature and severity of the act under consideration; evidence of any act committed subsequent to the act under consideration; the time that has elapsed since the commission of the act; the extent to which the applicant has complied with any lawfully imposed sanctions; and evidence of any rehabilitation.

LEGISLATION:

The following is a status update on bills reported in detail in CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) at pages 78-79:

SB 2101 (Deddeh) authorizes the Attorney General, a district attorney, a city attorney, or city prosecutor to bring an action for injunctive relief against an unlicensed collection agency, and provides for distribution of applicable civil fines depending on who brings the action. This bill was signed by the Governor on August 10 (Chapter 503, Statutes of 1990).

SB 2106 (Doolittle). Existing law prohibits BCIS from releasing the home address or home telephone number of an applicant for registration or a license, other than to a governmental agency or law enforcement agency, unless the Bureau has received a written request for that information; and requires BCIS applications to contain a statement that

the address or telephone number of the applicant may be given to any person pursuant to the California Public Records Act. As amended August 20, this bill deletes that provision and adds, as an exception to the disclosure provisions of the California Public Records Act, residence addresses contained in licensure applications and registration applications required by BCIS. The bill requires a statement of that exception to be contained on all applications for registration or licensure made pursuant to the Collection Agency Act. This bill was signed by the Governor on September 19 (Chapter 1106, Statutes of 1990).

AB 3242 (Lancaster), as amended July 27, is DCA's omnibus bill and makes numerous changes in statutes affecting BCIS licensees. Among other things, it requires any applicant for a collection agency license to submit specified documents to BCIS rather than only requiring an applicant for an examination to submit those documents; deletes bad moral character, intemperate habits, or a bad reputation as grounds for the refusal of permission to take the collection agency examination or to issue a qualification certificate; deletes an obsolete provision relating to approval of an application for a collection agency certificate; deletes an exemption for a collection agency licensed prior to May 2, 1941, from the requirement that every office be under the charge of a qualified certificate holder; provides that the license of a locksmith shall expire two years from the date of issuance or an assigned date and makes related changes; deletes the requirement that private patrol operators must report the loss or theft of a deadly weapon to the BCIS Chief; specifies that a specified training requirement for purposes of the Private Investigator Act applies to the carrying of a firearm rather than the carrying of a deadly weapon in the course of employment as a security guard or patrolperson; and expands the exemption from licensure as an alarm company operator to include any entity retained by the alarm company operator to monitor alarm systems. This bill was signed by the Governor on September 21 (Chapter 1207, Statutes of 1990).

SB 2525 (Vuich), as amended August 20, provides that an assignment, for purposes of recovering personal property sold under a security agreement, means an authorization by the lessee, in addition to the legal owner, lienholder, or lessor; and that an assignment also includes an authorization by a registered owner to recover personal property registered under the Vehicle Code where there is or was an employer-employee



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relationship between the registered owner and the possessor of the property. The bill also empowers superior courts to enjoyn unlicensed repossession agency activity and to impose civil fines; increases the experience requirement for a qualification certificate from one year to two years of lawful experience for those applying on or after January 1, 1992; increases the time in which an applicant has to file with BCIS in order that he/she may be eligible for examination to not later than 30 days prior to the next scheduled examination; provides that employees of a multiple licensee, as defined, need only file one application for registration for each multiple licensee; and exempts employees of a licensee who engage exclusively in in-office skiptracing from registration. This bill was signed by the Governor on September 17 (Chapter 1015, Statutes of 1990).

SB 2420 (Royce), as amended July 5, provides that specified requirements relating to licensure by BCIS apply to a security guard registrant and an applicant for registration as a security guard; and requires an applicant for an alarm company operator license or alarm agent registration to be at least 18 years old. This bill was signed by the Governor on September 8 (Chapter 649, Statutes of 1990).

AB 1644 (Peace). Section 7546.3 of the Business and Professions Code provides for the issuance of a temporary registration card for employees of private patrol operators, subject to specified conditions. The law provides that a temporary registration card shall not be valid for more than 120 days except that the 120 days may be extended when there is an additional delay in processing applications. As amended August 24, this bill provides that the 120-day period commences on the date the applicant signs the application for registration. This bill was signed by the Governor on September 21 (Chapter 1179, Statutes of 1990).

SB 104 (Robbins), which would have permitted the filing of an approved insurance policy in lieu of the \$10,000 surety bond now required of collection agency licensees, died in the Assembly Finance and Insurance Committee.

LITIGATION:

In *People v. Adam Jason Taylor*, No. H006114 (July 26, 1990), the Sixth District Court of Appeal upheld a trial court's denial of appellant's motion to suppress evidence, which was based on his assertion that a search conducted by private security guards was illegal. The case arose when two security guards

confronted appellant, who had a plastic bag containing a green substance on his lap, and a companion, who was smoking a marijuana cigarette. Upon request, appellant consented to a search, which resulted in the discovery of four bags containing marijuana and two individually-wrapped bags containing several sheets of colored perforated paper (which the security guard believed to contain LSD) in appellant's pocket. The security guard returned these items to appellant's pocket and brought appellant to the security guard station, where police were summoned.

Appellant made four contentions on appeal. First, he claimed that since private individuals may not search each other for contraband under California law, the evidence was illegally seized and should be excluded. Second, he claimed that since the security guards were private individuals who arrested him without complying with statutes defining how private citizens may exercise the power to arrest, the court should refuse to give binding legal effect to his consent. In the alternative, he claimed that the guards were not acting in a purely private capacity, since they were carrying out a police function properly reserved to the state, and because the guards were acting jointly with the police. Finally, he claimed that the conduct of the guards must be imputed to the state because they were subject to the state's licensing and regulatory scheme.

Although the court agreed that a private citizen is not authorized to conduct a search for contraband incident to an arrest, or to seize such contraband upon recovering it, it stated that the exclusionary rule is intended to discourage unconstitutional police conduct, and the protection of the Fourth Amendment does not apply to searches carried out by private persons.

Regarding the issue of consent, the court again found that since the security guards were acting in a private capacity, the exclusionary rule does not apply.

As to Taylor's contention that the guards were not acting in a purely private capacity, the court noted that, under federal law, searches and seizures by private security employees have traditionally been viewed as those of a private citizen and are consequently not subject to Fourth Amendment proscriptions.

Further, the court used a two-pronged test to determine whether state action is involved in the deprivation of a federal right. First, the deprivation must be caused by the exercise of some right or privilege created by the state or by a rule of conduct imposed by the state or by a person for whom the state is responsible.

Second, the party charged with the deprivation must be a person who may fairly be said to be a state actor. In addressing the first prong, the court found that federal courts generally agree that arrest is not an exclusively governmental function. Because appellant failed to satisfy the first prong of the test by not showing that the right to arrest is traditionally exclusive to the state, the court rejected this argument.

Finally, the court rejected appellant's claim that the security guards were operating jointly with the police, and that their actions should be imputed to the state, finding that appellant failed to show that the state "so far insinuated itself into a position of interdependence with [the private entity] that it must be recognized as a joint participant in the challenged activity." The court concluded by noting that the mere fact that California licenses security guards and regulates their conduct does not transform them into state agents.

RECENT MEETINGS:

At CAB's September 14 meeting, member Bob Morris reminded the Board and BCIS that the name of the Board as stated in Business and Professions Code section 6865 is the Collection Agency Board (CAB), not the Collection Agency Advisory Board (CAAB). Mr. Morris noted that all documentation emanating from BCIS still incorrectly refers to the Board as CAAB. CAB agreed that referring to the Board correctly is one important step in its efforts to move from an advisory board to a regulatory board.

Also at the September meeting, CAB and audience members discussed whether educational requirements and standards for collection agency licensing should be stiffened. A representative from the California Association of Collectors (CAC) said CAC is in the process of setting up an educational program for people who are new to the business, as well as those who have been in the business for some time.

Finally, CAB discussed the issue of remote computer terminals being used by individual collection agency licensees in their houses. CAB decided that the industry, the Bureau, and DCA should look into ways to accommodate offsite collectors while still ensuring that proper procedures are being followed.

FUTURE MEETINGS:

PSSAB: January 17 in Los Angeles.
CAB: January 18 in San Diego.