AB 2925 (Mojonnier). Existing law provides for the licensing and regulation of schools of cosmetology and electrology by BOC. As amended August 28, this bill repeals those provisions, and instead requires cosmetology training to be taken in specified licensed or public schools, requires BOC to determine required courses, and imposes related requirements. This bill also transfers jurisdiction for disciplinary action against cosmetology schools from BOC to the Council for Private Postsecondary and Vocational Education (CPPVE); requires BOC to develop a health and safety course on hazardous substances to be taught in schools offering vocational training in cosmetology; and provides that the failure of an instructor to provide proof of compliance with the continuing education requirement within 45 days of a request by BOC shall result in the automatic conversion of the license to inactive status until proof of compliance is provided. This bill—which, in effect, vacates the dual licensure scheme created by SB 194 (*see infra*)—was signed by the Governor on September 30 (Chapter 1674, Statutes of 1990).

SB 194 (Morgan), as amended August 22, makes several significant changes to SB 190, which created CPPVE, restructured the state licensing procedure for vocational schools, and enhanced minimum standards for degree-granting institutions. Among other things, SB 194 explicitly limits the application of the minimum standards of SB 190 to private postsecondary educational institutions; requires that the standards and procedures used by CPPVE not unreasonably hinder educational innovation and competition; and eliminates the requirement that every instructor and administrator hold an applicable and valid certificate of authorization for service, and requires instead that every instructor and administrator possess adequate qualifications to teach the assigned course or perform the assigned duties. Although this bill also creates a dual licensure scheme by requiring a private vocational educational institution regulated by a DCA agency to obtain and retain the approval of that agency, in addition to the requirement that it meet CPPVE's requirements, AB 2925 (Mojonnier) removes BOC's authority to license and regulate schools of cosmetology and electrology; therefore, the dual licensure scheme contemplated by SB 194 will apparently have no effect. SB 194 was signed by the Governor on September 29 (Chapter 1479, Statutes of 1990).

SB 1976 (Morgan), which was signed by the Governor on July 10 (Chapter 212, Statutes of 1990), has the effect of requiring BOC to monitor and enforce the educational standards of the Private Postsecondary and Vocational Education Reform Act in the Education Code (SB 190) (*see supra* MAJOR PROJECTS). However, as noted, AB 2925 removes BOC's jurisdiction to regulate cosmetology schools. This bill also requires schools of cosmetology to contribute to the CPPVE Student Tuition Recovery Fund, and removes the requirement that schools post a $5,000 bond with BOC.

AB 1401 (M. Waters) would have clarified existing exemptions from AB 1402 but, contrary to BOC's wishes, would not have exempted cosmetology schools from the provisions of AB 1402 for a one-year period *(see supra* MAJOR PROJECTS). This bill was vetoed by the Governor on July 24.

RECENT MEETINGS:

At BOC's July 8 meeting, Executive Officer Denise Ostton reported on the Board's major accomplishments for fiscal year 1989-90, which include the following: implementing a broadened practical examination; conducting education seminars for instructors of cosmetology; automating the Board's written and practical examinations; expanding the Board's disinfection and sanitation regulations; participating in major legislative efforts to merge BOC and BBE; transferring school licensing jurisdiction to the new CPPVE; and publishing a special edition of its newsletter.

The Executive Officer also reviewed BOC's goals and objectives for fiscal year 1990-91, which include development of a health and safety course on hazardous substances in the cosmetology workplace; sponsorship of clean-up legislation and regulations relative to the merger of BOC and BBE; proposing revised fees in BOC's regulations to implement citations and administrative fines for violations of Board laws and regulations; increasing efforts in the area of consumer and industry awareness; and implementing ongoing improvements in the Board's examination and enforcement programs.

Also at the July meeting, BOC discussed five budget change proposals (BCPs) which are being developed for the 1991-92 fiscal year. BOC believes that BCPs are needed to augment funding in the following areas: clerical workload support at the Board's headquarters and Los Angeles facility; review and validation of its written examination; education programs relating to hazardous substances in the cosmetology workplace; and in-state travel.

Executive Officer Ostton reported that the number of inspections conducted has increased dramatically over last year due to full staffing of the Board's four inspector positions; further, because of the increased number of inspections, there has been a comparable rise in violations cited. According to Ostton, the number of complaints received by BOC is averaging about the same as last fiscal year.

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 Chapter 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 1990 members are Jean Savage, DDS, president; James Dawson, DDS, vice-president; Gloria Valde, DMD, 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; Hazel Torres, RDA; and Albert Wasserman, DDS.

MAJOR PROJECTS:

Conscious Sedation Permit Procedure. The enactment of AB 1417 (Speier) (Chapter 526, Statutes of 1989) requires BDE to establish a permit procedure for the use of conscious sedation by dentists by January 1, 1992. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 84-85; Vol. 10, No. 1 (Winter 1990) pp. 65-66; and Vol. 9, No. 4 (Fall 1989) p. 55 for background information.) In an effort to implement the new statute, the Board published its proposed regulatory changes this summer and invited all interested persons to present statements, either written or oral, at a September 14 hearing. The proposed conscious sedation (CS) program is virtually identical to that which currently exists for general anesthesia (GA), with certain exceptions. Specifically, the regulatory proposals would make the following changes to the Board's regulations in Title 16 of the CCR:

-amend section 1017(a) to add continuing education requirements for licensees who hold a CS permit;

-amend section 1021(s)-(u) to increase the current fees for GA permits and make those same fees apply to CS permits;

-add section 1043(c) to define when a patient is considered "sedated" under GA or CS and when a patient is "recovering from" CS or GA;

-amend section 1043.1(b) and (c) by adding in the requirements for a CS permit and specifying where the processing times for such permit are found;

-amend section 1043.2(b) and (c) to clarify who is eligible to be an evaluator, make the section apply to CS evaluators, and make other technical changes;

-amend section 1043.3 so that current onsite inspection requirements for GA permits will apply to CS permits; to add to and modify the equipment requirements and specify which ones do not apply to CS permits; to modify the types of anesthesia records to be maintained and make these requirements applicable to CS records as well; and to add to and modify the list of drugs required to be available and specify which drugs are not required for CS permits;

-amend section 1043.4 to conform to changes made in the law regarding patient monitoring; clarify that the anesthesia or sedation procedure observed must also be evaluated; add provisions for demonstrations of CS; require applicants for either type of permit to demonstrate that they have knowledge of the uses of the required equipment and are capable of using that equipment; clarify the method by which simulated emergencies must be demonstrated; and modify the list of emergencies which must be demonstrated;

-amend section 1043.6 to require independent evaluations; clarify the appeal process; delete references to a GA committee; and clarify that the statute requires automatic suspension of a permit under specified circumstances even though the permittee may have an appeal pending;

-amend section 1043.7, which currently pertains to notifying GA applicants or permittees of the date of an evaluation, to make the provision apply to CS permits as well and make other technical changes;

-amend section 1043.8 to change renewal from annual to biennial to conform to the statute; make the section apply to both GA and CS permits; and clarify that permitholders must certify that they have met the continuing education requirements specified in the regulations; and

-amend section 1061 to set forth the processing times for issuance and renewal of conscious sedation permits.

At the hearing, the Board discussed the situation in which one dentist administers GA or CS to another dentist's patient. Only the dentist administering the anesthesia will be required to have a special permit and will not need the authority of an ordering dentist. The Board added specific language in the form of proposed section 1043.1(a) to clarify this matter. The Board also explained that the permit-holding dentist is responsible for the actions of his/her team, whether using his/her own staff or the staff of the ordering dentist.

Following the hearing, the Board adopted the proposed regulatory amendments. BDE staff expects to submit the rulemaking package to the Office of Administrative Law (OAL) in the near future.

"Wasserman Letter" Challenge Still Pending. In September 1989, then-Board President Albert Wasserman, DDS, issued a statement condemning as illegal any office practice under which auxiliaries are allowed to perform dental treatment procedures on a new patient without specific instructions and prior to the patient having been examined by the dentist. The California Dental Hygienists Association (CDHA) filed a request for determination by OAL, contending that the so-called "Wasserman letter" is an "underground regulation" which must be adopted pursuant to the Administrative Procedure Act before it may be enforced. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 85; Vol. 9, No. 4 (Fall 1989) p. 54; and Vol. 9, No. 2 (Spring 1989) p. 54 for extensive background information.)

BDE submitted its response to the request for determination in June; OAL was scheduled to release its decision by July 25, but at this writing, OAL has not yet published its decision.

Regulatory Changes. In November 1989, the Board adopted proposed amendments to regulatory section 1086(d), which would remove several restrictions on the authority of RDAs to perform coronal polishing. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 85; Vol. 10, No. 1 (Winter 1990) p. 66; and Vol. 9, No. 4 (Fall 1989) p. 54 for background information.) The Board submitted its rulemaking package to OAL in late September and, at this writing, is awaiting OAL's response.

Continuing Education. At its August 15 meeting, the Continuing Education Subcommittee discussed a request to waive the Board's CPR requirements for licensees with disabilities. Staff informed the Subcommittee that, presently, they are advising individuals to request the American Heart Association to issue a certificate if the licensee participates in the lecture portion and observes the mannequin portion. The Subcommittee determined that such requests should be handled on a case-by-case basis. Also, the Subcommittee may recommend modifying existing regulation 1017(d) to state that a licensee must certify that he/she is eligible for a waiver of the continuing education requirement and provide documentation from a licensed physician.

The Subcommittee also discussed section 1016 of BDE's regulations, which defines acceptable continuing education (CE) courses. Staff reported that there seems to be a lack of clarity concerning the definition of appropriate "dental administration" courses. The Subcommittee agreed that CE course providers need more direction on acceptable CE courses under the general heading of dental administration. The Subcommittee expected to discuss this matter again at its October meeting.

National Practitioner Data Bank. Pursuant to the federal Health Care Quality Improvement Act of 1986, 42 U.S.C. section 11101, BDE is one of several state agencies which must report all adverse disciplinary actions taken against dentists to a newly-created national data bank. The Board must also forward to the data bank information on malpractice judgments and settlements

against dentists, as well as reports from hospitals, health maintenance organizations, and professional societies regarding peer review actions. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 66 for background information.) The data bank was expected to open in April 1990; however, data bank officials announced in mid-March that the opening would be delayed until further notice. In August, the Board was informed that the data bank was open and mandatory reporting began on September 1.

Currently, BDE is required to report actions against dentists only, but expects that reporting actions against auxiliaries will become required in the future. There is no cost to make reports to the data bank; however, the Board will be charged when it requests information from the data bank about a specific individual. No specific costs have yet been announced.

LEGISLATION:

The following is a status update on bills reported in CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) at page 86:

SB 2243 (Davis), as amended May 10, revises and increases fees for the licensing and regulation of dentists. BDE will be required to report to the fiscal committees of each house of the legislature whenever it increases any fee, with rationale and justification for the increase. This bill was signed by the Governor on August 10 (Chapter 515, Statutes of 1990).

AB 2806 (Hauser), as amended May 29, authorizes the increase of dental auxiliary fees, not to exceed specified amounts. These increases may be accomplished by resolution of BDE; that is, they need not be adopted in a formal rulemaking proceeding pursuant to the Administrative Procedure Act and need not be approved by OAL. This bill was signed by the Governor on August 10 (Chapter 497, Statutes of 1990).

AB 3037 (Speier), as amended July 3, requires dental advertising or referral services which make over 50% of their referrals to one individual, association, partnership, corporation, or group of three or more dentists, to disclose that fact in all public communications. This bill was signed by the Governor on September 12 (Chapter 844, Statutes of 1990).

SB 1799 (Alquist), as amended August 20, would have required the Director of the Department of Health Services (DHS) to report to the legislature the number and percentage of dentists in each county who provide services to Medi-Cal beneficiaries, and would have required DHS to advise the legislature regarding the most cost-effective options for providing improved access to dental services. This bill was vetoed by the Governor on September 26.

AB 2124 (Felando) provides that dental professional society peer review bodies may be represented by an attorney in a peer review proceeding even if the licentiate declines to be represented by an attorney, provided the licentiate has the option to be so represented. This bill was signed by the Governor on July 18 (Chapter 332, Statutes of 1990).

AB 109 (Hayden), as amended August 29, is the Medical Waste Management Act, enacting provisions governing the handling, storage, treatment, disposal, and transportation of medical waste. This bill was signed by the Governor on September 30 (Chapter 1613, Statutes of 1990).

AB 2798 (Moore) would have required applicants for dental licenses who fail to pass the skills examination after three attempts to complete a minimum of 50 hours of education at an approved dental school in each subject they failed, before they may take the examination again. AB 2798 died in the Senate inactive file.

AB 2799 (Moore), as amended August 6, would have stated the intent of the legislature that all persons licensed in this state to practice dentistry shall be accorded equal professional status and privileges without regard to the degree earned, and would have prohibited 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 died in the Senate Business and Professions Committee.

AB 2934 (Moore), as amended June 12, would have required, among other things, a dentist or dental health professional to sign his/her name in the patient record, or to place his/her identification number and initials next to the service performed, and to date those treatment entries. This bill died in the Senate Business and Professions Committee.

AB 3187 (Statham), as amended August 27, would have (among other things) authorized BDE to establish a system to issue a citation with an administrative fine to licensees for violations of the Board's statutes or regulations, and would have required BDE to establish a regular inspection program. This bill died in the Assembly inactive file.

AB 1703 (Vasconcellos) would no longer have prohibited the advertising by dentists as "superior" and "painless" services as unprofessional conduct, so long as the advertising is not false and misleading. This bill died in the Senate Business and Professions Committee.

LITIGATION:

On July 17, in *California Dental Association v. California Dental Hygienists' Association*, No. B040189, the Second District Court of Appeal affirmed the dismissal of CDA's complaint, which alleged that CDHA had conspired to fix and inflate compensation paid by dentists to hygienists serving under them, in violation of the Cartwright Act. Specifically, CDA alleged that CDHA: (1) conducted "secret" surveys of its members and others, ascertaining the fees paid by dentists to hygienists in CDHA's 24 geographic reasons, the results of which were circulated to CDHA's individual members and local components; (2) conducted seminars and workshops at which they disseminated the survey results to CDHA members; (3) conducted employment referral programs for its members; (4) encouraged hygienists to refuse to work for dentists who did not pay the cost or price fixed by CDHA; and (5) conspired with non-CDHA entities, including commercial employment agencies, to suppress competitive price and commission information.

The court held that any such "price-fixing" activities are exempt from the Cartwright Act under the so-called "labor exemption" found in Business and Professions Code section 16703, based on its findings that what CDA complained of as a restraint of trade is "nothing more or less than organizational and concerted activities of a sector of working people, for the classically legitimate labor objective of increasing the wages they are paid—the subject matter held exempt from the Cartwright Act...." In affirming the dismissal of CDA's complaint, the court noted that section 16703 "was intended to insulate from antitrust liability concerted activities by workers seeking to improve their working terms and conditions."

California Dental Association v. Board of Dental Examiners, No. 511723 (Sacramento County Superior Court), is a declaratory relief action in which CDA seeks to prevent BDE from enforcing a cease and desist letter ordering CDA to stop a particular advertising campaign. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 87 and Vol. 10, No. 1 (Winter 1990) p. 66 for background information.) At this writing, the parties are still engaged in discovery and no motion for summary judgment has yet been filed.

RECENT MEETINGS:

At its September meeting, BDE discussed its year-end budget status. At the beginning of the fiscal year, BDE projected receiving revenues of approximately $3,052,000; actual revenues received totalled $3,072,000. The Board projected a reversion of $96,000 (3%); the actual reversion was $116,000 (4%).

FUTURE MEETINGS:

To be announced.

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 Chapter 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:

BEAR Holds Regulatory Hearing. On September 19, BEAR conducted a regulatory hearing on proposed modifications and additions to twelve sections of Chapter 27, Title of the CCR. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 87-88 for background information.) Following the hearing, BEAR adopted the rule changes and subsequently submitted the rulemaking record to the Office of Administrative Law (OAL) for approval. At this writing, BEAR is awaiting OAL's response.

The Bureau amended section 2702 to define the term "clamp-on line piercing valve," and section 2741 to regulate clamp-on piercing valve use. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 67; Vol. 9, No. 4 (Fall 1989) p. 56; and Vol. 9, No. 3 (Summer 1989) p. 50 for background information.) Section 2702 was amended to define the term "range".

BEAR amended section 2710 to prohibit any person serving as an officer of a corporation at the time it is served with an accusation, placed on suspension, or has its registration revoked by BEAR from obtaining registration prior to the completion of disciplinary proceedings and/or discharge of penalties imposed by BEAR. Section 2717 was modified to prevent issuance of a BEAR registration to a person attempting to acquire the firm name and/or telephone number of a registered service dealer who has been served with an accusation.

Section 2713 was amended to define the term "place of business" to mean any location which (through advertising) accepts equipment or requests for repair or installation of equipment, or at which service contracts are offered for sale.

The Bureau amended section 2721 to require every receipt issued by a service dealer to include either the signature of the service dealer or the service dealer's employee or that employee's employee number. Section 2724 was amended to require service dealers to maintain a copy of all invoices for at least two years.

Section 2736 was amended to provide that where no guarantee is provided on a repair, the invoice must clearly disclose this fact; failure to disclaim a guarantee in this manner shall cause the service dealer to be deemed to have provided a 30-day labor and 90-day parts guarantee on the repair. Section 2751 was amended to provide that if the price of a service call is advertised, no additional charges shall be made unless done in accordance with a written estimate.

BEAR amended section 2765 to provide that a service dealer is not required to return to a customer parts which contain toxic materials. Finally, sections 2730 and 2754 were amended to correct internal references to definitions with the chapter.

International Community Bans CFC Production and Use. Faced with escalating restrictions on chlorofluorocarbon (CFC) production and use in the refrigeration industry, BEAR is tracking the development of CFC recovery and recycling equipment, as well as alternative compounds being developed to replace CFCs, both of which may soon be required of BEAR-registered technicians. CFCs are the primary refrigerant compounds used in domestic and commercial refrigeration systems and air conditioners, and have been cited as a primary catalyst in the deterioration of the ozone layer. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 88 for background information.)

In late June, responding to international concern over the depletion of the earth's ozone layer, delegates from 53 nations met in London and agreed to an international ban on CFC production and use. The delegates' actions, which must be formally ratified by their governments, were viewed as a major advance in the worldwide efforts to restore the ozone layer. U.S. Environmental Protection Agency chief William K. Reilly, who led the American delegation, called the agreement "a marvelous example of worldwide cooperation without any precedent on an environmental issue."

Through revisions of a 1987 treaty known as the Montreal Protocol (see CRLR Vol. 10, No. 1 (Winter 1990) p. 67 for background information), the delegates stipulated that CFCs will be replaced by a variety of other chemicals that could possibly have one-fiftieth to one-tenth the destructive effect to the ozone layer as is caused by CFCs. Under the terms of the agreement, CFCs will be totally phased out by industrialized nations by the year 2000.

Enforcement of these restrictions will increasingly expose the complex interplay between environmental protection and the economics of industrialized society. BEAR registrants affected by restrictions will be faced with the costs of purchasing CFC recovery and recycling equipment and/or making the transition to alternatives to CFC use. As a result, consumers will inevitably be faced with increased costs. There are also concerns that small business service dealers using minimal amounts of CFCs will not be able to distribute the costs of the new requirements. BEAR will continue to monitor new developments in this critical area.