



REGULATORY AGENCY ACTION

The trial court dismissed the action, ruling that plaintiff's claim was barred by Civil Code section 43.5, which states in relevant part that "[n]o cause of action arises for: (a) alienation of affection, (b) criminal conversation, (c) seduction of a person over the age of legal consent."

The First District Court of Appeal reversed the trial court, observing that section 43.5 was enacted to eliminate a class of lawsuits which were "fruitful sources of fraud and extortion and easy methods to embarrass, harass, and besmirch the reputation of one wholly innocent of wrongdoing." However, it found that the section does not create a blanket immunization from liability for conduct which, although technically within the constraints of the section, breaches a duty of care independent of the causes of action barred therein.

As a psychiatrist giving marriage counseling, Dr. D owed plaintiff a special duty of due care toward the patient's health in the conduct of the therapist-patient relationship, and breached that duty. "It is readily foreseeable," wrote the court, "that a patient seeing a psychiatrist for purposes of stabilizing and improving a marriage would feel betrayed and suffer emotional distress upon learning that the psychiatrist, during the course of the patient's treatment, has been engaging in sexual relations with the patient's spouse." The case was remanded.

FUTURE MEETINGS:

September 23 in San Diego.

November 18 in Sacramento.

January 20, 1989 in Los Angeles.

CEMETERY BOARD

Executive Officer: John Gill
(916) 920-6078

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 25 crematories and 1,400 brokers and 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 Goals and Objectives. On June 15, in response to a directive from the Department of Consumer Affairs, the Board established a special subcommittee to draft its goals and objectives. Subcommittee recommendations will be discussed at a future Board meeting.

LEGISLATION:

SB 2359 (Roberti) was amended on April 20 and now pertains to coroner's investigations of deaths and responsibility for disposition of human remains; specification of the cause of death on death certificates by persons other than the last attending physician; and filing of death certificates which include non-material errors by local registrars. (For a complete description of this bill, see *infra* agency report on BOARD OF FUNERAL DIRECTORS AND EMBALMERS; see also CRLR Vol. 8, No. 2 (Spring 1988) pp. 56-57 for related discussions.)

The following is a status update on bills discussed in CRLR Vol. 8, No. 2 (Spring 1988) at page 48:

SB 2775 (Roberti), regarding the definition of unprofessional conduct, is pending in the Assembly Committee on Government Efficiency and Consumer Protection, following its passage by the Senate on May 19.

AB 2866 (LaFollette), as amended in the Assembly on April 19, would no longer specifically address exemptions from Cemetery Board regulation; notice of removal of dedication; or transfer of ownership of a cemetery. As passed by the Assembly on May 12, the measure now deals exclusively with proposed changes in the use of a cemetery. This bill would require local agencies to provide notice to the public, as specified, and hold a public hearing regarding a proposed change in use, for other than cemetery purposes, of a cemetery or part of a cemetery, as specified. As of this writing, AB 2866 is pending in the Senate Committee on Local Government.

AB 4233 (Hannigan), as amended April 5, would require the Board to inspect the books, records, and premises of crematories and holders of certificates of authority to operate crematories. Failure to allow the inspections authorized under this measure would result in disciplinary action which might include suspension or revocation of a license.

This bill would also make it unlawful for any person to remove dental gold or silver from human remains awaiting interment; and would make it unlawful to

cremate the remains of more than one person at the same time in the same chamber. As amended, this bill would prohibit the keeping of the remains or cremated remains of more than one person in the same cremation chamber at the same time, and would specify that the fact that incidental and unavoidable residue remains in the chamber is not a violation of this provision of law.

AB 4233 passed the Assembly on May 19 and is pending in the Senate Committee on Business and Professions. (See CRLR Vol. 8, No. 2 (Spring 1988) pp. 46-47 and Vol. 8, No. 1 (Winter 1988) p. 47 for background information on the issue of commingling of cremated remains.)

FUTURE MEETINGS:

To be announced.

BUREAU OF COLLECTION AND INVESTIGATIVE SERVICES

Chief: Alonzo Hall
(916) 739-3028

The Bureau of Collection and Investigative Services is one of over forty separate regulatory agencies within the Department of Consumer Affairs (DCA). The chief of the Bureau is directly responsible to the director of the Department.

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.

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. 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 for these services is required to register with the Bureau as a security guard. Any security guard who carries a firearm 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. 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. 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 Industry. Alarm company operators install, service, maintain, monitor, and respond to burglar alarms. These services are provided to private individuals, businesses, and public entities. 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. These services are employed by private individuals, business entities and law enforcement agencies. 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.

Security Guard Training Facilities. These facilities provide necessary training for those desiring to become security guards. Training is given in legal procedures, public safety, minimum standards, and professional conduct. Firearm training is especially important for those guards who will carry a firearm on the job. Upon completion of training, guards must pass an exam before they can be registered.

Locksmiths. As of July 1987, SB 1540 became effective, resulting in the creation of a locksmith regulation program within the Bureau. (For additional information on SB 1540, see CRLR Vol. 6, No. 3 (Summer 1986) p. 25.)

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.

MAJOR PROJECTS:

New Chief Appointed. On June 13, the Governor appointed Alonzo Hall as the new Bureau Chief. Mr. Hall most recently served as a staff services manager with CalTrans and was a California Highway Patrol officer prior to his tenure with the Department of Transportation. (For background information on Bureau administrative changes, see CRLR Vol. 8, No. 2 (Spring 1988) p. 50.)

Qualified Manager's Examination Revision. The DCA's Central Testing Unit (CTU) has been asked to help the Bureau revise its examination for qualifi-

cation certificate holders. Former Acting Chief Ernest Luzania recently recommended to the Collection Agency Advisory Board (CAAB) that it appoint a steering committee to work with the Bureau and the CTU on the proposed examination revision. According to Luzania, the steering committee would identify areas to be covered in the examination, and recommend individuals who would draft questions and answers, as well as review proposed questions and answers and group categories of questions.

Last fall, the CAAB's Compliance Task Force and the California Association of Collectors recommended that the qualified manager be responsible for all collection activities, and that the licensee (that person licensed as a collection agency) should be accountable for all financial interests and activities in any licensed collection agency. (See CRLR Vol. 8, No. 1 (Winter 1988) p. 49 and Vol. 7, No. 4 (Fall 1987) p. 44 for background information.) They proposed that the qualified manager's certification examination reflect the separation of the manager's duties from the licensee's fiscal responsibilities. Luzania has since determined that the proposed separation is not possible under existing law.

As a result of Luzania's recommendation regarding a group to work with the CTU and the Bureau, the former Compliance Task Force has been named as the exam revision steering committee. Industry representative Ewing Bartgis has been appointed chair of the steering committee. Esther Winston, CAAB public member, will also serve on the steering committee. The balance of the committee is composed of collection industry licensees, including Barbara Levy, Bob Morris, Greg Perry, Roy Wolcott, and Jerald Schroeder.

Conservatorships. The Bureau continues to look for alternatives to its current conservatorship program for out-of-trust collection agencies. (See CRLR Vol. 7, No. 4 (Fall 1987) p. 44; Vol. 7, No. 3 (Summer 1987) pp. 64-65; Vol. 7, No. 1 (Winter 1987) p. 38; and Vol. 6, No. 4 (Fall 1986) p. 32 for background information.) Current obstacles include confidentiality requirements, liability concerns, and criteria for selecting independent consultants to aid the conservator.

Two possible uses of independent, third-party consultants in the conservatorship program are presently being reviewed. Under the first plan, the conservator, who must be an attorney or a certified public accountant, could select



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a consultant from a pool of twelve to fifteen non-active industry members. The consultant would assist the conservator in the identification of problems and the future course of action regarding the troubled agency. The benefit of this proposal is the specialized knowledge of basic agency operations the consultant would bring to the conservatorship program.

The second proposal, again utilizing a consultant pool of both active and non-active industry members, would insert an interim step before the appointment of a conservator. A consultant would be appointed to assist the agency licensee in resolving problems which might otherwise lead to serious financial and fiduciary problems requiring the appointment of a conservator. The advantage of this approach is not only one of cost savings but also the possibility of averting the liquidation of a troubled agency by allowing it to "mend" itself. Bureau staff are scheduled to examine both consultant approaches and report on their feasibility and any accompanying legal considerations at CAAB's September 23 meeting.

Regulations. Section 616, the Bureau's proposed regulation regarding retention of deposits offered in lieu of a surety bond for a period of four years beyond the date of license termination, received approval from the Office of Administrative Law in late April. (See CRLR Vol. 8, No. 1 (Winter 1988) p. 49 for a complete description of the regulation.)

LEGISLATION:

SB 2870 (Robbins), which was introduced in the Senate on February 19, would provide that if the Director of the DCA believes that a person has violated the Private Investigator Act by advertising in an alphabetical or classified directory without being properly licensed, the Director may issue a citation requiring the violator to cease the unlawful advertising. SB 2870 provides that if the person fails to comply with the order, the Director shall inform the Public Utilities Commission and the Commission shall require the telephone company to disconnect the service furnished to any number contained in the unlawful advertising. The bill passed the Senate on May 19 and is pending in the Assembly Committee on Governmental Efficiency and Consumer Protection.

The following is a status update of bills discussed in CRLR Vol. 8, No. 2 (Spring 1988) at pages 50-51:

AB 1072 (Floyd) was substantially

amended on May 16 in the Senate Judiciary Committee, where it remains at this writing. The measure would expand Bureau rulemaking authority to cover specified areas of conduct relating to private investigators and bodyguards, including the carrying of concealed firearms. With AB 1072's passage, professional bodyguards would specifically be brought under the Bureau's regulatory jurisdiction for the first time.

The bill would also increase the membership of the Private Security Services Advisory Board from nine to eleven members, and would change the composition of the Board to accommodate the seating of one private investigator, one security trainer, and one active member of law enforcement. The number of public members would be increased from five to six. The membership on the Private Security Services disciplinary review committees (DRCs) would undergo similar changes, to facilitate DRC handling of matters involving private investigator discipline. The measure would also specifically exempt persons licensed as private investigators or professional bodyguards from existing prohibitions against the carrying of concealed weapons.

AB 2527 (Peace), which would prohibit the wearing of a badge by a private patrol licensee or registrant, remains pending in the Senate Business and Professions Committee.

AB 3072 (Seastrand) was amended on March 16 to extend the sunset date for the Collection Agency Act to June 30, 1992. The bill passed the Assembly on May 12 and is pending in the Senate Committee on Insurance, Claims and Corporations.

AB 2753 (Lewis) would authorize any employer or any person designated by an employer who is licensed under the Private Investigator Act to request the Department of Justice to furnish conviction records regarding sex and drug crimes and crimes of violence with respect to employees or applicants for employment. The bill was scheduled for an April 11 hearing, which was cancelled at the author's request.

AB 2807 (Duplissee), as amended June 8, would exempt specified repossession agencies from tow truck equipment provisions and permit those agencies to substitute their DCA license number in lieu of a business address on the sign required under existing law to be displayed on their tow trucks. The bill would specify requirements for the numbers, as well as the letters, on the required sign. The measure is pending in

the Senate Committee on Transportation.

AB 4007 (Lancaster), a DCA omnibus bill, would amend existing law which defines an alarm company operator for purposes of licensing and regulation, and exempts from that definition a telephone answering service which does not engage in specified activities performed by an alarm company operator. This bill would include in the prohibited activities of the answering service the maintaining and altering of alarm systems. AB 4007 passed the Assembly on May 19 and is pending in the Senate Committee on Business and Professions.

SB 1955 (Beverly), as amended June 9, would amend section 7539 of the Business and Professions Code relating to private investigators. Existing law prohibits any licensee, officer, director, partner, manager, or employee of a private investigator from knowingly and directly soliciting employment from any injured person. SB 1955 would prohibit that solicitation from any injured person or from that person's spouse or other family member.

Existing law exempts from that prohibition the solicitation of employment from the injured person's attorney. This measure would exempt from that prohibition the solicitation of employment from the injured person's insurance company, self-insured administrator, insurance adjuster, employer, or any other person having an indirect interest in the investigation of the injured person. SB 1955 passed the Senate on May 12 and is pending in the Assembly Committee on Governmental Efficiency and Consumer Protection.

SB 2054 (Davis) would require a security guard or patrolperson to file a written report with the DCA Director and the local police or sheriff's department describing the circumstances surrounding any incident involving the discharge of any firearm in which he/she was involved while acting within the course and scope of his/her employment within seven days after the incident. SB 2054 would authorize the Director to assess a specified administrative fine for a violation of the provision. The bill passed the Senate on May 19 and is pending in the Assembly Committee on Governmental Efficiency and Consumer Protection.

RECENT MEETINGS:

Private Security Services Advisory Board. At the Board's March 24 meeting in Sacramento, appointments and reappointments to the Alarm Company Operator and Private Security Services disciplinary review committees (DRCs)



were made. This issue had been carried forward from the February meeting, at which Advisory Board members requested that the Bureau provide them with information such as the meeting attendance records of DRC members for the last six months, interest of DRC members in remaining on the committees, and whether DRC members are fulfilling the responsibilities of their appointments. Alarm Company Operator DRC members George Weinstock, Frank Meiners, and Dean Morehous, having expressed interest in continuing to serve, were reappointed. DRC member Phillip Oppenheim did not submit a resume nor did he contact Chair John Roberts expressing an interest in being reappointed. The Board elected Kenneth Olmsted to replace Oppenheim. Also appointed was Madelyn Blakeman. Clara Came, a current DRC member, is not subject to reappointment until January 17, 1990.

The southern Private Security Services DRC appointments include Carlo J. Picogna, reappointed to his current position on the committee, and Dave Hetzel, elected to replace Samuel Cogar. DRC member Arleen Gloria was reappointed on April 6. Roy Lee Pharis was appointed to replace Michael Cantrell. Current DRC member Alex Guerrero is not subject to reappointment until September 15, 1989.

Tom Sutak and John Banuelos were reappointed by the Board to the northern Private Security Services DRC. William C. Bergmeister was appointed as a new member on May 6. DRC members Gwen Dilworth-Battle and Winifred Breslin did not submit resumes for reappointment consideration. Since no other resumes were submitted regarding the appointment to the northern committee, the Board decided to contact Dilworth-Battle to see if she is still interested in the committee position. Breslin's private patrol operator license expired in September 1987 and has not been renewed so there was some question as to whether she could continue to serve on the committee. Legal counsel Barbara King was to check into this matter. DRC member Jan Marie Vasquez is not subject to reappointment until January 23, 1991.

Collection Agency Advisory Board. At the March meeting of the CAAB, former Acting Chief Luzania described a management study then underway, which was intended to improve the Bureau's systems and functions by expediting the processing of transactions and improving services to both consumers and industry members.

The Bureau's revised complaint form was one of the improvements Luzania cited. Bureau staff anticipate that the revised complaint form will result in a reduction of unfounded complaints and a more timely notification to consumers and licensees. Board Chair Jerry Springer requested that the Bureau furnish Collector's Ink, a collection industry publication, with details regarding the new form and related Bureau procedures, such as information on when an allegation becomes a formal complaint. Luzania stated that the Bureau is currently considering this type of awareness program.

Although not an official agenda item, the topic of unethical advertising was discussed. CAAB member Bob Morris presented a series of six industry sales letters/notices/agreements containing questionable claims, statements, or service offerings by out-of-state agencies. Morris questioned whether the Bureau has a responsibility to contact the parties offering such advertising in an attempt to clarify their claims. Acting Chief Luzania stated that the Bureau's jurisdiction is limited by statute to cover only agencies located in California. He suggested that the Bureau bring the out-of-state advertisement to the attention of the appropriate state's consumer protection agency. Deputy Director Baiz mentioned that the National Clearinghouse on Licensure, Enforcement, and Regulation (CLEAR) might provide assistance in resolving issues involving out-of-state advertisements.

Bureau representative Chris Rury advised the CAAB that he was reviewing the matter of a recent change in federal laws governing the student loan program, including loan collection. The change authorizes a collection agency to recover its fees from the consumer. Rury indicated that the matter would be presented to the DCA's legal unit for its opinion in light of potentially conflicting state laws related to the collection of agency commissions from consumers. A report on this issue will be forthcoming.

FUTURE MEETINGS:

Collection Agency Advisory Board: September 23 in San Diego.

Private Security Services Advisory Board: To be announced.

CONTRACTORS STATE LICENSE BOARD

*Registrar: David Phillips
(916) 366-5153*

The Contractors State License Board (CSLB) licenses contractors to work in California, handles consumer complaints, and enforces existing laws pertaining to contractors.

The thirteen-member Board, consisting of seven public members, five contractors and one labor member, generally meets every other month. The Board maintains four committees: legislative, which monitors legislation affecting the Board; enforcement, which oversees enforcement of existing rules and regulations, including licensing requirements; licensing, which oversees the Board's licensing procedures; and administration/public information/liaison, which oversees the Board's operations and public contact. Committees meet monthly, making recommendations to the full Board for requested action.

Former CSLB Registrar John Maloney resigned on April 21. New Registrar David Phillips was hired effective June 13.

Governor Deukmejian recently appointed Marla B. Marshall of San Diego to fill a CSLB public member vacancy. Ms. Marshall has served as an administrative assistant to the deputy mayor of San Diego since 1983.

MAJOR PROJECTS:

Regulatory Changes. At its April 21 meeting, CSLB held a public hearing on the proposed addition of section 869 to Chapter 8, Title 16 of the California Code of Regulations (CCR), regarding relicensure. This proposed regulation would allow the Registrar to determine the length of time that a contractor is ineligible for relicensure following license revocation. The registrar may impose a range of from one to five years, to be assessed based on the gravity of the violation, history of previous violations, and history of criminal convictions. The Board adopted the new section and has forwarded the rulemaking file to the Office of Administrative Law (OAL).

Also awaiting OAL approval at this writing is CSLB's amendment to section 832, which would add a Low Voltage Systems Contractor classification. (See CRLR Vol. 8, No. 2 (Spring 1988) p. 52 and Vol. 8, No. 2 (Winter 1988) p. 50 for background information.)

On June 1, the OAL approved CSLB's proposed amendment to section