

THE TOLLING BELL

WINTER 2010

Editor's Corner

DCA up close

by Joy Korstjens, Cemetery and Funeral Bureau analyst

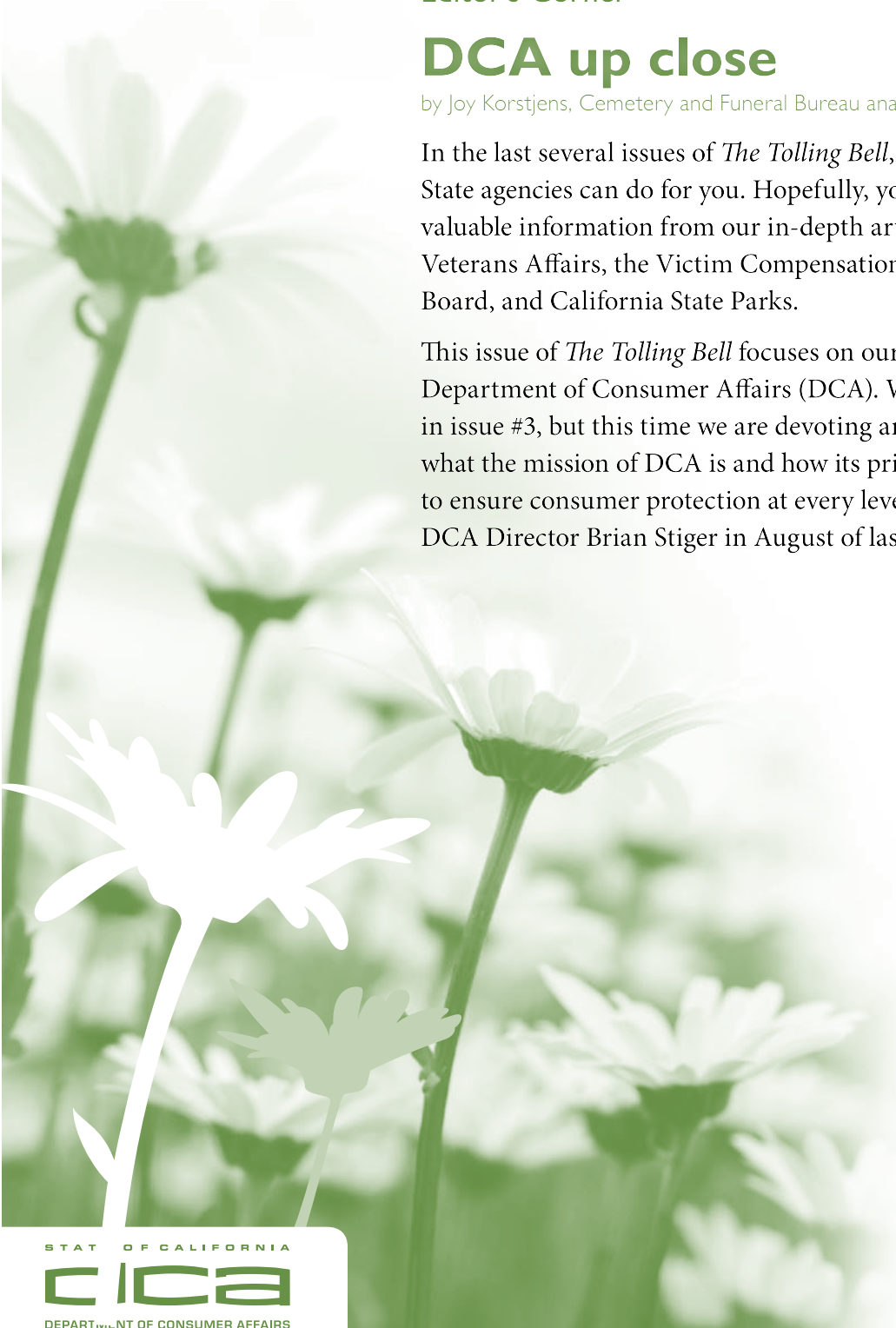
In the last several issues of *The Tolling Bell*, we've looked at what other State agencies can do for you. Hopefully, you've been able to glean valuable information from our in-depth articles on the Department of Veterans Affairs, the Victim Compensation and Government Claims Board, and California State Parks.

This issue of *The Tolling Bell* focuses on our own organization, the Department of Consumer Affairs (DCA). We discussed DCA briefly in issue #3, but this time we are devoting an entire issue to discovering what the mission of DCA is and how its priorities have been sharpened to ensure consumer protection at every level with the appointment of DCA Director Brian Stiger in August of last year.

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DCA up close *continued from cover*

Under the direction of Mr. Stiger, DCA has instituted a variety of changes, from the simple addition of a DCA Calendar of Events on its Web site, to the comprehensive Consumer Protection Enforcement Initiative (CPEI). Monthly enforcement progress reports are posted on www.dca.ca.gov, as are webcasts for various DCA entities and video messages from the Director. You can even watch DCA on YouTube, follow DCA on Twitter, or join DCA on MySpace or Facebook — there are links for all of them on the DCA home page. Visit the *Take Charge! California* section of the Web site

to learn valuable consumer tips on how to “Be smart. Be safe. Be heard.”

If you are in the Sacramento area, be sure to click the link for “Take Charge at the Sacramento Public Library” for the schedule of monthly presentations by members of DCA in 2010. (The Cemetery and Funeral Bureau will be offering “Facts About Funerals” on April 7, 2010.) Technology is enabling DCA to make government more transparent, and we hope this issue of *The Tolling Bell* helps you, our readers, find the answers to any questions you may have on the inner workings of our Department.

Be prepared: DCA can help

In light of the recent earthquake in Humboldt County, and the mudslides as a result of the wildfires and wet winter weather, it's good to have a handle on what you would do in case disaster strikes close to home. On a yearly basis, we review our plans to continue service to our licensees and consumers in the event of an emergency. We want to ensure that Cemetery and Funeral Bureau functions can be carried out, and that includes relocation and repairs to our building and equipment.

If the worst has happened, and you or a loved one have experienced damage to your home or business due to a flood or fire, be sure to investigate all options and operators thoroughly before you begin repairs. Visit www.dca.ca.gov and click on “Inquire Before You Hire” to help you make informed decisions before you open your checkbook. On the Inquire Before You Hire Web site, you can look up any DCA licensee, plus

review horror stories and news stories. You can even report unlicensed activity should you be the unwitting victim of an unscrupulous individual or company.

If you prefer, you can go directly to the Contractors State License Board's Web site at www.cslb.ca.gov. The Web site has a handy “Frequently Asked Questions” section in the left-hand margin under “Quick Hits.” By asking the right questions and doing your research beforehand, you can make your repair experience a smooth one.

For more detailed disaster related information, visit www.ca.gov, then choose the “Home & Family” tab, then “Safety,” and “Emergencies.” You will also find a wealth of disaster assistance information, including links to other local, State, and Federal agencies and programs, and tips on how to recover after suffering a disaster at www.RebuildYourLife.ca.gov.

Join our e-mail list!

Want to know when the next newsletter is available? Or when new regulations are up for public comment? Visit the Cemetery and Funeral Bureau's Web site, www.cfb.ca.gov, go to the left-hand margin under "Quick Hits," and select "Join Our Email List." The CFB uses this subscriber list service to notify anyone who is interested in receiving e-mail alerts about major updates to the Bureau's Web site, for example, when:

- 🐦 Regulations are implemented or released for public comment.
- 🐦 Bureau newsletters are published.

- 🐦 Agendas about public meetings are released.
- 🐦 Questions and answers about new laws are added.
- 🐦 Bureau actions from bureau meetings are available.

There is no charge for this service. When you sign up, an e-mail message requesting confirmation will be sent to the e-mail address you provide. Please follow the instructions in that message. (Note: To continue to receive e-mail alerts, you should keep your e-mail address current on this list.)

DCA's publications inform and educate

If you haven't explored the "Publications" tab on www.dca.ca.gov, you are missing a wealth of resources. All of the Department's publications and pamphlets are available, from our very own *Consumer Guide to Funeral and Cemetery Purchases* (in both English and Spanish) to *What You Should Know Before You Buy a Rebuilt Mattress*.

Under the "Publications" subheading "DCA Reports," you can access the annual reports for the Department from the 1994-95 fiscal year forward. Our award-winning *Consumer Connection* magazine covers a multitude of topics, everything from hybrid vehicles in the Summer 2008 edition, to staying safe in the med spa in the Winter 2009 edition.

As a note of caution, think before you print. It is kinder to the environment to read online, and it is also kinder to your printer and toner cartridge(s). Many publications are graphic and color intensive, such as the *Consumer Connection*, or may run over 100 pages, such as the *California Department of Consumer Affairs' 2007-08 Annual Report*. Before

you click "print", double-check the length of the document (and the amount of paper you have in the tray). We want you to read and enjoy our publications, not regret printing them!

To have printed copies of publications mailed to you at no charge, go online to www.dca.ca.gov/publications/publications_list.pdf for an order form and instructions.



DCA at a glance

The Department of Consumer Affairs (DCA) is here to protect and serve California consumers while ensuring a competent and fair marketplace. DCA helps consumers learn how to protect themselves from unscrupulous and unqualified individuals. The Department also protects professionals from unfair competition by unlicensed practitioners.

DCA today

To protect and serve consumers, the Department issues licenses in more than 100 business and 200 professional categories, including doctors, dentists, contractors, cosmetologists, and automotive repair dealers. DCA includes 40 regulatory entities (nine bureaus, one program, 25 boards, three committees, one commission, and one office). These entities establish minimum qualifications and levels of competency for licensure. They also license, register, or certify practitioners, investigate complaints, and discipline violators. The committees, commission, and boards are semiautonomous bodies whose members are appointed by the Governor and the Legislature. DCA provides administrative support. DCA's operations are funded exclusively by license fees.

DCA past

One of the California Legislature's earliest efforts to protect the public was through the passage of the Medical Practice Act in 1876. The Act was designed to regulate the State's medical industry, which up to that time had operated virtually unchecked. Over the next 30 years, the State regulated more professions. By the

late 1920s, 10 State boards were in existence under the Department of Vocational and Professional Standards. The Department licensed or certified accountants, architects, barbers, cosmetologists, dentists, embalmers, optometrists, pharmacists, physicians, and veterinarians. The Consumer Affairs Act of 1970 gave the Department its current name.

DCA tomorrow

The Department of Consumer Affairs is dedicated to enhancing individual consumer access to services and resources. The Department will expand its role as a primary resource on consumer issues. To help fulfill its mission of promoting and protecting the interests of consumers, DCA will continue to build and maintain effective relationships with:

- 👥 Consumer and public interest groups
- 👥 The business and professional community
- 👥 Law enforcement agencies
- 👥 Other government agencies

To keep pace with advances in technology and the marketplace, the Department will continue to develop responsive, effective, and innovative services. The California Legislature conducts an ongoing evaluation and review of the Department's regulatory entities to determine which of them should be retained, which ones should be "sunsetting" out of existence, and which ones should become part of the Department.

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DCA at a glance *continued*

Department of Consumer Affairs Mission, Vision, and Values

OUR MISSION

To serve the interests of California consumers by ensuring a standard of professionalism in key industries and promoting informed consumer practices.

OUR VISION

As a result of our efforts, California consumers are well-informed and are guaranteed that service providers are competent and ethical.

OUR VALUES

As a government agency dedicated to serving the interests of California consumers, the Department of Consumer Affairs (DCA) values:

Accountability – We are accountable to the people of California and each other as stakeholders. We operate transparently and encourage public participation in our decision-making whenever possible.

Efficiency – We diligently identify the best ways to deliver high-quality services with the most efficient use of our resources.

Effectiveness – We make informed decisions that make a difference and have a positive, measurable impact.

Integrity – We are honest, fair, and respectful in our treatment of everyone.

Customer service – We acknowledge all stakeholders as our customers, listen to them, and take their needs into account.

Employees – We are an employer of choice and strategically recruit, train, and retain employees. We value and recognize employee contributions and talent.

Unity – We draw strength from our organizational diversity as well as California's ever-changing cultural and economic diversity.

A gentle reminder We're closed on furlough Fridays

Pursuant to the Governor's Executive Order S-13-09, all DCA offices will be closed the first, second, and third Friday of each month until July 1, 2010. While our Cemetery and Funeral Bureau staff strives to ensure that we continue to meet our pre-furlough deadlines, we are unable to take your calls or process your paperwork three Fridays of the month. Also, please be sure to take our furlough days into account when sending items via overnight mail.



Consumer Protection Enforcement Initiative

“A Systematic Solution to a Systemic Problem”

The Department of Consumer Affairs (DCA) is the umbrella agency that oversees 19 healing arts boards that protect and serve California consumers. The healing arts boards regulate a variety of professions from doctors and nurses to physical therapists and optometrists. These licensees are some of the best in the country and provide excellent care to Californians on a daily basis. However, when a licensee violates the laws that govern his or her profession, enforcement action must be taken to protect the public.

In recent years some of DCA’s healing arts boards have been unable to investigate and prosecute consumer complaints in a timely manner. In fact, some boards take an average of three years to investigate and prosecute these cases; this is an unacceptable timeframe that could put consumers’ safety at risk.

DCA reviewed the existing enforcement process and found systemic problems that limit the boards’ abilities to investigate and act on these cases in a timely manner. These problems range from legal and procedural challenges to inadequate resources. In response, DCA launched the Consumer Protection Enforcement Initiative (CPEI) to overhaul the enforcement process at the healing arts boards. The CPEI is a systematic approach designed to address three specific areas:

- 👉 Administrative Improvements
- 👉 Staffing and IT Resources
- 👉 Legislative Changes

Once fully implemented, DCA expects the healing arts boards to reduce the average enforcement completion timeline from 36 months to between 12 and 18 months.

I. Administrative Improvements

During the review of the enforcement process, DCA worked with the boards to identify areas that could be improved administratively to better coordinate broad enforcement objectives, improve the services provided to the healing arts boards, and establish streamlined enforcement processes and procedures that can be used by all boards. The following are some of the efforts that emerged from those discussions:

“365 Project”

DCA’s Division of Investigation (DOI) embarked on a project in 2009 to strategically focus on cases that were one year or older. DOI worked closely with boards to identify the cases upon which they should focus their resources. This project has produced impressive results, and in 2009 the DOI closed 50% more cases than the comparable period in 2008.

Delegation of Subpoena Authority

One of the initial administrative changes implemented by DCA was delegating subpoena authority to the head of each agency (board, bureau, committee, or commission) as a tool to gather evidence and interview witnesses. DCA’s Legal Office conducted subpoena training for board and bureau staff, and this authority has started being exercised by boards as well as bureaus. We expect to see increased use of subpoenas as a result of these and other changes, and agencies will be able to pursue cases that they otherwise would not have pursued.

Process Improvement

DCA and the boards are working to identify best practices for a number of enforcement processes and procedures, such as complaint intake, handling of anonymous complaints, vote by email protocols, and adjudication procedures. This effort will take advantage of the most effective practices utilized

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Enforcement Initiative *continued*

by the various boards, and entities in other states, and will ultimately shave time off all aspects of the enforcement process.

Enforcement Academy

DCA's Strategic Organization, Leadership, & Individual Development Division is developing enhanced training programs for enforcement staff. The enforcement academy will teach investigators and other enforcement staff key skills used in complaint intake, investigation procedures, case management, database use, and other areas. Never before has DCA offered such a comprehensive enforcement training program. An initial training was offered in November 2009, and the full enforcement academy will begin its regular cycle in April 2010.

Deputy Director for Enforcement and Compliance

DCA established an executive level position that reports to the Director and is responsible for regularly examining each board's or bureau's enforcement program to monitor enforcement performance and compliance with all applicable requirements. This position monitors performance measures so that boards' and bureaus' enforcement programs can be continuously assessed for improvement.

Performance Expectations with Other Agencies

DCA has been working with the Attorney General's Office and the Office of Administrative Hearings (OAH) to establish performance agreements that will expedite the prosecution of cases. DCA and the AG's Office are developing expectations for filing accusations, setting settlement conferences, and filing continuance requests. Further, DCA is working with OAH to establish timelines for setting cases for hearings, which, once implemented, could reduce a case timeline by months.

II. Enhancing Enforcement Resources

There are 36 licensing entities under the DCA (of which are 19 healing arts boards) and, with a few exceptions, all of these programs share the resources of the Department, from Division of Investigations (DOI), to Personnel to IT Support. While the healing arts boards fall under the umbrella of DCA they are separate semi-autonomous groups overseen by board members appointed by the Governor and the Legislature. Additionally, all of the licensing entities under DCA are special fund agencies funded exclusively through fees collected through licensees with no general fund support.

Enforcement Staff

DCA's review of the enforcement process identified a need for more focused staff resources in the areas of investigations and complaint intake. The majority of DCA's licensing entities share the resources of DCA's overburdened DOI. Annually, DOI's 48 investigative staff members receive over 1,300 cases, in topics ranging from nurses to repossessioners to smog check stations. Having so many investigations performed by DOI has resulted in a number of problems, including loss of control over the investigation by the boards, and excessive caseloads. These problems have led to excessive turn-around times and growing backlogs. Through the 365 Project, the DOI has worked with boards to reduce the case backlog, but the current structure has revealed a need for more significant changes.

In order to increase accountability in the investigative process, DCA is working to provide boards with the authority to hire non-sworn investigators to be housed within each board. This will enhance boards' control over investigations, allow for more appropriate workload distribution, and enable investigators to develop expertise. Additionally, to coincide with process

Enforcement Initiative *continued from page 7*

improvement efforts, some boards will increase complaint intake staff. DCA is seeking a total of approximately 140 new enforcement positions (full year equivalent) across all healing arts boards. The vast majority of these positions are investigators and investigative supervisors, and the remainder is mostly complaint intake staff. In addition to increasing staffing, DCA will ensure that staff are properly trained, monitored, and assessed so that cases are expedited as quickly as possible.

Because DCA's boards are special fund agencies, new positions will not place a drain on the General Fund and boards will pay for new staff with existing resources or with fee increases where necessary. The number of positions requested is a result of an individual assessment of each board, and assumes workload savings associated with DCA's current process improvement efforts. The Governor's Budget includes the initial phase-in of these positions beginning July 2010.

Create a New Licensing and Enforcement Database

DCA's current licensing and enforcement database systems are antiquated and impede the boards' and bureaus' ability to meet their program goals and objectives. Over the past 25 years, these systems have been updated and expanded, but system design and documentation have deteriorated to such an extent that it has left the systems unstable and difficult to maintain. These systems have inadequate performance measurement, data quality errors, an inability to quickly adapt to changing laws and regulations, and a lack of available public self-service options. The CPEI relies on advanced workflow capabilities and cross-entity external system communications that the aging system's technology cannot provide.

The implementation of a replacement system is needed to support enforcement monitoring, automate manual processes, streamline processes, and integrate information about licensees. DCA intends to procure a Modifiable Commercial Off-The-Shelf (or "MOTS") enterprise licensing and enforcement case management system. DCA's research has shown various MOTS licensing and enforcement systems exist that can provide intelligent case management to reduce enforcement and licensing turnaround times, detailed performance measurements, increased data quality, advanced configurability, and robust web presences for public self-service.

The Governor's Budget authorizes DCA to redirect existing funds to begin implementation of this system in FY 2010-11.

III. Statutory Changes: Putting Consumers First

Each board within DCA has a statutory mandate to hold consumer protection as its paramount objective. Over the years, boards' enforcement authorities have been slow to keep up with legal trends and changes in the professions regulated, and due process protections have grown to protect licensees above consumers. DCA believes that now is the time to re-align consumer protection laws so that they place public protection first. In 2010, the DCA will pursue legislation to help boards carry out their critical missions of protecting consumers.

Increased Suspension Authority

One of the most important roles that professional licensing boards do to protect consumers is preventing potentially dangerous individuals from practicing. The CPEI would strengthen the boards' ability to do this in a number of ways, including

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Enforcement Initiative *continued*

authorizing the DCA Director to issue an order for a licensee to cease practice or restrict practice, upon the request of a board executive officer. This authority is necessary in the most egregious cases because the standard enforcement process can take a year to complete, at best, and even the expedited process in existing law (interim suspension order) can take months to complete. This proposal would also seek the statutory authority to revoke or deny a license to an individual for acts of sexual misconduct with a patient or conviction as a felony sex offender. Additionally, the CPEI would provide for the automatic suspension of convicted felons for the duration of their sentence.

Increased Access to Critical Information

The CPEI would make improvements to the information that boards receive, so they can investigate possible violations of law. Specifically, it would prohibit the use of a gag clause in a civil settlement that would prohibit consumers or their legal counsel from filing a complaint with the appropriate board. Regulatory gag clauses are explicitly prohibited in legal malpractice settlements and there have been numerous court decisions that describe a compelling public interest in voiding regulatory gag clauses in other professions. The Center for Public Interest Law notes that the inclusion of gag clauses is an alarmingly pervasive practice that thwarts the ability of boards to carry out their consumer protection mission. The CPEI would also require court officials to report to the healing arts boards convictions and felony charges filed against the boards' licensees, and expand reporting by employers and supervisors regarding individuals who were suspended or terminated for cause.

Adequate access to medical records can shave months off the process to investigate a licensee. Medical records are used by healing arts boards'

to determine whether a licensee caused harmed to a patient. Any delay in an investigation of a licensee may result in a potentially dangerous licensee continuing to practice. Thus, it is essential that healing arts boards have quick access to medical records. The CPEI gives all of the healing arts boards the authority to inspect and copy, as applicable, any documents and records relevant to an investigation. In cases where a licensee fails to cooperate with an investigation, the CPEI provides boards with additional authorities to ensure compliance.

Enforcement Process Efficiencies

DCA proposes to remove unnecessary workload and costs from the enforcement process. This can be done by streamlining the appeal process for citations, permitting boards to contract with collection agencies to retrieve unpaid fines and fees, authorizing executive officers to sign default decisions and certain stipulated settlements, and allowing licensees to agree to stipulated settlements before a formal accusation is filed. These are relatively small changes that could result in significant workload savings.

Efficiency and accountability will also be improved by establishing a deadline for the Department of Justice (DOJ) to notify healing arts boards of arrests and convictions of licensees, which would greatly improve the board's ability to pursue cases in a timely manner. Additionally, it requires DOJ to serve accusations, default decisions and set hearing dates within a specified period of time.

Licensing Fees

Lastly, DCA is seeking to tie the maximum licensing fee amounts to the Consumer Price Index to keep up with inflation and ensure the boards have the resources to adequately run their enforcement programs.

CEMETERY AND FUNERAL BUREAU

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It's tax time!

Who doesn't dread April 15? With the Department of Consumer Affairs in your corner, tax time doesn't have to be a nightmare. The California Board of Accountancy offers you tax tips, links you to other Web sites for more information, and helps you verify that the CPA you are thinking about hiring is licensed to do business in the State of California.

Want to know how to calculate your DMV registration fees? How about finding out what the Franchise Tax Board is doing about questionable tax preparers? There are links to answer those very questions, and a whole lot more, on the Board of Accountancy's Web site, www.cba.ca.gov, under "Tax Tips." There is also a "FAQs" section under "Quick Hits" in the left-hand margin.

Save the date

The Department of Consumer Affairs recently launched a new feature on its Web site to inform consumers about when and where Board/Bureau/Program meetings, Advisory Committee Meetings, and Community Outreach Events will be held. Go online to www.dca.ca.gov and look for the "Information About" box, then click on "The DCA Calendar of Events." The calendar also includes dates that State offices are closed.