

California Architects Board

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The California Architects Board (CAB), created by the legislature in 1901, establishes minimum professional qualifications and performance standards for admission to and practice of the profession of architecture through its administration of the Architects Practice Act, Business and Professions Code section 5500 *et seq.* The Board's regulations are found in Division 2, Title 16 of the California Code of Regulations (CCR). CAB is a consumer protection agency within the Department of Consumer Affairs (DCA).

CAB is a ten-member body evenly divided between architects and public members. Three public members and five architect members are appointed by the Governor; the Senate Rules Committee and the Assembly Speaker each appoint one public member. The Board administers the written Architect Registration Examination (ARE) of the National Council of Architectural Registration Boards (NCARB) and the oral California Supplemental Examination (CSE), sets standards for the practice of architecture in California, and enforces CAB's statutes and regulations. To become licensed as an architect, a candidate must successfully complete the ARE and the CSE, and provide evidence of at least eight years of relevant Board-approved education and/or experience.

CAB is also the home of California's regulatory program for landscape architects under Business and Professions Code section 5615 *et seq.* The former Board of Landscape Architects sunsetted on July 1, 1997, and its regulatory program devolved to DCA. However, AB 1546 (Chapter 475, Statutes of 1997) transferred the program to CAB as of January 1, 1998. The Landscape Architects Technical Committee (LATC), composed of five landscape architects and no public members, acts in an advisory capacity to CAB. Specifically, LATC may (1) assist CAB in the examination of candidates for licensure, (2) investigate complaints and make recommendations to CAB regarding disciplinary action against landscape architects, and (3) perform other duties and functions delegated to it by CAB concerning the regulation of landscape architects. The Board's landscape architect regulations are located in Division 26, Title 16 of the CCR.

In addition to LATC, CAB maintains five other standing committees. They are: the California Supplemental Examination Committee, the Communications Committee, the Executive Committee, the Professional Qualifications Committee, and the Regulatory and Enforcement Committee. CAB also forms subcommittees and task forces to address specific issues as they are identified.

On June 13, 2000, the Senate Rules Committee appointed Cynthia C. Ong of Sausalito to the Board as a public member. Ong is an attorney and is president and owner of Art Exchange. She is a former commissioner, vice president, and president of the San Francisco Redevelopment Agency.

On January 18, 2001, Assembly Speaker Robert Hertzberg appointed Los Angeles attorney Jerold Neuman to the Board. Neuman specializes in land use, environmental, real estate, and administrative law.

MAJOR PROJECTS

Board Appoints New Executive Officer

Effective January 1, 2001, the Contractors' State License Board appointed then-CAB Executive Officer Stephen P. Sands to be its new Registrar; Sands had been CAB's executive officer since 1986. During its January 2001 meeting, CAB interviewed two candidates and selected Douglas R. McCauley as its new executive officer. McCauley, who officially began his duties on February 26, 2001, has a background in design and construction, having worked for ten years with a variety of architectural, engineering, and construction organizations. Prior to his appointment with CAB, McCauley served as executive vice president for the California Coalition for Construction in the Classroom. McCauley holds a master's degree in public administration from Golden Gate University.

Board to Require Completion of NCARB's Intern Development Program for Licensure

At its March 2000 meeting, CAB reached consensus that it would begin to develop regulations requiring candidates for architect licensure to complete a structured internship program requirement as a condition for licensure in California after 2004.

The new internship requirement will be based directly on NCARB's existing Intern Development Program (IDP), but may be tailored to evaluate competency and to otherwise suit California's needs based on the outcome of a pending study.

The decision caps several years of work, study, and deliberation by CAB and its Professional Qualifications Committee (PQC), which have long desired to standardize the Board's experience requirement to better ensure the entry-level competence of all new licensees. However, they have hesitated to impose NCARB's IDP—which is used in 46 other states and will facilitate reciprocity licensure of California architects in

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other states—because of perceived flaws in that program, including an inappropriate quantitative approach (as opposed to a qualitative competency-based focus), several rigid and inflexible requirements, and an onerous and costly recordkeeping process. Specifically, CAB notified NCARB in June 1999 of two outstanding issues that CAB considered “deal-breakers” which must be adjusted before CAB would fully implement the IDP in California (the “duration” requirement and the “training setting” requirement, both of which CAB believes are excessively rigid) and four other issues that CAB would like NCARB to further study (a shift from the current quantitative “seat time” approach to a focus on competency assessment; expansion of qualifying experience alternatives; periodic content assessment for relevance and legal defensibility; and modification of the “entry point” requirement). Additionally, PQC voted in September 1999 to conduct a survey of licensure candidates regarding their internship experiences generally and their thoughts on NCARB’s IDP program specifically (as some California applicants are enrolled in the IDP). [17:1 CRLR 87–89]

Prior to its March 2000 vote, CAB mailed a survey to over 2,700 California candidates who had applied for eligibility to sit for the ARE and received responses from 614 candidates, which were reviewed by PQC at its February 2000 meeting. Of those responding, only 13% were participating in NCARB’s IDP; 54% had completed their non-IDP experience requirement for California licensure; and 26% were in the process of earning non-IDP experience required for licensure. Sixty-six percent (66%) of non-IDP participants thought the IDP is a significant barrier to licensure; 37% of IDP participants agreed. Seventy-six percent (76%) were concerned that the IDP creates unreasonable costs to the intern (59% of IDP participants and 80% of non-IDP participants).

CAB also surveyed respondents on its two “deal-breaker” issues. As to the “training setting” requirement (under which interns are limited to the number of training units they may earn under the direct supervision of an architect in an office where practice does not include each of the categories in the IDP Training Requirements), nearly half (48%) thought it is a hindrance to licensure. Sixty-seven percent (67%) (76% of IDP participants and 65% of non-IDP participants) thought credit should be able to be earned for experience within any of the IDP Training Requirement areas if it is received under the direct supervision of a licensed architect regardless of the work setting. As to the “duration” requirement (under which interns must be employed at least 35 hours per week for a minimum of ten consecutive weeks (or at least 20 hours per week for a minimum period of six months) in order to gain credit), 25% of those surveyed thought the requirement is a hindrance to licensure; 38% thought the requirement is acceptable as is; and 21% thought the requirement should be eliminated.

On February 28, 2000, CAB communicated the results of its survey in a letter to NCARB’s IDP Committee in hopes that NCARB would consider California’s proposed changes

to the IDP. However, NCARB’s IDP Committee met in La Jolla in March 2000 and declined to adopt either of CAB’s two “deal-breaker” changes at that time. At CAB’s March 2000 meeting, PQC Chair Ed Oremen noted that the Committee did vote to recommend to NCARB’s Board of Directors that a study be initiated to determine the feasibility of converting the IDP to a qualitative program as opposed to the current “seat time” quantitative focus. Further, the Committee recommended that NCARB consider developing a pilot program of changes to the IDP and test them in California and two other states. Oremen warned Board members that California should agree to participate in a pilot project only if NCARB agrees to accept the pilot as equivalent to the IDP for reciprocity purposes.

At its May 19, 2000 meeting, PQC debated draft regulatory language implementing the IDP in California. The regulatory action would amend sections 109, 116, 117, 118.5, and 121, Title 16 of the CCR, to require completion of the IDP as a prerequisite to licensure in California. As approved by PQC, the major points of California’s prospective internship requirement are as follows:

- The new requirement will apply to candidates who apply to take the ARE after January 1, 2005. Candidates who have applied to the Board for eligibility evaluation and been deemed eligible before that date will be processed under the existing rules. However, candidates who apply after December 31, 2004 or who are not yet deemed eligible by December 31, 2004 will be subject to the new rules effective January 1, 2005.

- Reciprocity candidates with NCARB certification will be exempt from the IDP requirement upon receipt in the Board office of the candidate’s NCARB blue cover file transmitted by NCARB.

- Reciprocity candidates without NCARB certification will be required to complete the IDP or the Canadian Intern Architect Program (IAP), or submit verification of three years of licensed practice as an architect in another state.

- The eligibility point for the CSE will be changed from seven and one-half years of credit to eight years.

- In-state candidates who are licensed architects in qualifying foreign countries will be required to complete IDP/IAP or submit proof of licensure in a qualifying foreign country and verification of five years of licensed practice in that country as well as verification of one year of work experience under a U.S.-licensed architect.

At its May 24, 2000 meeting, CAB tentatively approved PQC’s draft regulations that would require candidates to complete NCARB’s IDP as it currently exists. At its August 17, 2000 meeting, PQC turned its attention to the notion of modifying the IDP to create a competency-based internship program. Committee member Edward Mojica expressed concern over the competency issue, and indicated that some interns currently have difficulty getting their employers to complete the paperwork required by the IDP for various reasons; requiring employers to evaluate competency would add to that

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problem for some candidates. PQC concluded that adopting an internship program that fails to meet NCARB's requirements would be counterproductive to the important goal of achieving reciprocity of licensure with other jurisdictions. Therefore, the Committee concluded that the best course of action is to require completion of NCARB's IDP (to ensure reciprocity licensure for California architects in other states) but also develop a competency-based component that will "overlay" the IDP. PQC directed Board staff to draft a request for proposals (RFP) to obtain a vendor to analyze options for including a competency-based assessment within the internship program. The analysis will also consider evaluation methods and options as well as alternative tracks to meet NCARB's IDP requirements.

At its September 15, 2000 meeting, the Board spent a considerable amount of effort on the language of the RFP. After receiving Board approval, the RFP was released on January 11, 2001, with proposals due by February 23, 2001. Professional Management and Evaluations Services, Inc. (PMES)—which has assisted CAB with several studies in the past and was chosen in March 2000 to evaluate post-licensure continuing competency issues and alternatives (see below)—submitted the sole proposal, which was accepted by the Board at its March 15, 2001 meeting. PMES committed to the following objectives: (1) to work closely with CAB, its staff, PQC, and members of the profession in conducting the study; (2) to investigate all aspects of the existing IDP program and related professional training programs; (3) to evaluate the content of IDP against the findings of a 1997 job analysis study commissioned by CAB that documents the work performed in current professional architecture practice in California; (4) to establish psychometrically sound and defensible methodology for conducting focus group meetings to identify the salient issues related to an internship program; (5) to produce written reports on the findings of the research feasibility study; and (6) to provide recommendations regarding a competency-based internship program and develop an implementation plan relative to those recommendations.

At this writing, PMES is continuing its work on this project, and CAB has not yet published its proposed regulations to implement the IDP in California.

Board Commissions Study of Post-Licensure Competency

For some time, CAB and its Task Force on Post-Licensure Competency have been considering various options for ensuring the professional competency of licensees throughout their careers. As CAB currently has no continuing education (CE) requirement, attention has naturally focused on the possibility of implementing a CE requirement to ensure continued competence. Drawing on the results of several focus groups convened in 1998, the Task Force in 1999 identified a

number of qualities and skill sets that are considered "perishable" and might benefit from a focused CE requirement; the Task Force also identified a number of other areas requiring further study before any continuing competency requirement is imposed. In October 1999, CAB agreed to seek legislation imposing mandatory CE "when it deems appropriate" and "when all of the considerations identified in the Task Force Report have been studied and resolved." CAB also determined to contract with an outside vendor to conduct the additional studies identified by the Task Force, including a validation of the areas of concern identified by the focus groups (and consideration of additional and/or alternative areas of concern that should be addressed), a study of the effectiveness of existing CE programs and how to mitigate the problems in existing mandatory CE programs, and an evaluation of the potential costs of a continuing competency requirement to licensees and the public. [17:1 CRLR 89; 16:2 CRLR 78-79]

On January 6, 2000, the Board released an RFP to obtain a vendor to conduct research into certain aspects of this issue. The goal of the study is to provide CAB with information on the scope and depth of problems that exist in the profession and to offer recommendations for resolving those problems. The RFP divides the study into two separate undertakings: (1) determining the nature and extent of potential post-licensure competency issues for CAB licensees, and establishing the relationship of these issues both to CAB's purview and to public health, safety, and welfare; and (2) data gathering on the nature and status of licensee participation in current professional development programs, including an enumeration of the alternative professional development programs available and an identification of the professional characteristics of participants; experience with and opinion about

the effectiveness of those alternative programs; gathering information about the potential costs and their feasibility to licensees and the public of these alternative programs; and an enumeration of problems in existing mandatory

professional development programs and an identification of potential solutions to mitigate these problems. CAB received a bid from PMES, which has previously worked with the Board on several studies (see above). PMES' bid called for development and conduct of an extensive survey of five kinds of "stakeholders" (architects, plan checkers and code reviewers, contractors and developers, users and clients, and forensic, insurance, and legal professionals), with a final report due back to the Board by April 2001. On March 17, 2000, CAB awarded the contract to PMES.

At its September 15, 2000 meeting, CAB approved an amendment to PMES' contract to enable the vendor to conduct several additional services that were not a part of the original proposal (including writing and coordination services, a second pilot test of the survey instrument, and an increased sample size for the survey pilot), and to fund additional

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research to generate more detailed and expanded analyses of CE requirements of other DCA agencies and other states' architect licensing boards.

At the Board's January 22, 2001 meeting, departing Executive Officer Steve Sands emphasized the importance of the report being prepared by PMES for CAB's upcoming sunset review process. He noted that a detailed study of issues of competency in the practice of architecture could become a valuable resource during the review process. At this writing, PMES is completing the final stages of composing the report, which is scheduled to be provided to Board members for review prior to CAB's June 2001 meeting.

Firm Registration and Advertising Regulations

In 1999, CAB's Regulatory and Enforcement Committee examined two issues raised by the American Institute of Architects, California Council (AIACC): (1) a proposal that CAB register architectural firms, in addition to individual architects, and require firms to designate an architect in "responsible charge" of each firm; and (2) the need to revise section 134, Title 16 of the CCR, which concerns architectural business names, because of widespread noncompliance with the rule. Although the concepts are interrelated, CAB decided to treat them as separate issues. [17:1 CRLR 90-91]

In 2000, AIACC took the lead on the firm registration issue by sponsoring AB 1916 (Bates), which in its final form would have required all persons or business entities providing architectural services to have an architect in "responsible control" over the services to be provided; authorized CAB to require registration of persons or business entities providing architectural services; and required CAB, within one year of adopting regulations requiring the registration of persons or business entities, to create a database for enforcement actions and to provide a public list of registered persons or business entities on its Web site. In sponsoring AB 1916, AIACC stated that it intended to clarify that regulated architectural services must be provided by or under the control of a licensed architect, and to provide CAB and the public with the ability to determine which businesses are offering regulated architectural services and which licensees are responsible for the services they are providing to their clients. AIACC also intended the firm registration proposal to provide an alternative to Business and Professions Code section 5610.3 and section 134, Title 16 of the CCR, which currently require the business name of an architectural firm to include the name of a present or former licensee principal and a reference to architecture as a way of informing the public who is in responsible charge. AIACC argued that name-style restrictions are outdated and too restrictive, and that implementing a firm registration program could justify allowing greater freedom in the choice of architectural firm business names.

Despite AIACC and CAB support for the firm registration concept, Governor Davis vetoed AB 1916 in September 2000, finding that "dual regulation through licensure and registration is excessive, places unnecessary regulatory burdens on individual licenses and small businesses, and may result

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in increased fees" (see 2000 LEGISLATION). At this writing, AIACC is sponsoring AB 1144 (Bates), which would authorize CAB to adopt regulations requiring individuals or businesses that provide architectural services to supply the Board with the names of the architect or architects who

are in responsible control of those

services (see 2001 LEGISLATION). Although it is similar to AB 1916, AB 1144 does not contain the firm registration proposal which caused the Governor to veto AB 1916.

Thus, AIACC and CAB have not yet been successful in establishing a legislative alternative to the Board's current advertising regulation. Section 134, Title 16 of the CCR, requires architects and architectural partnerships and corporations that use a business title which includes the words "architect," "architecture," or "architectural" to also include in that title the name of an architect and the fact that he/she is a licensed architect. A November 1999 letter from AIACC acknowledged "minimal compliance with this outdated requirement" and asked CAB to suspend its enforcement of both regulatory section 134 and Business and Professions Code section 5610.3 (which applies the same rule to architectural corporations). DCA legal counsel Don Chang noted that the regulation may no longer be necessary in light of two recent developments: (1) the requirement in SB 2238 (Chapter 879, Statutes of 1998) that licensees notify the public that they are licensed by the state (see below); and (2) the requirement that all architects utilize written contracts (which presumably indicate that the architect is licensed). Thus, Chang recommended that the Board suspend or limit its enforcement of the regulation until regulatory changes are made. On a 7-0 vote, the Board approved a motion to exercise prosecutorial discretion in enforcing section 134, and investigate only those complaints alleging violation of section 134 that involve consumer harm or unlicensed activity. At its May 2000 meeting, CAB authorized staff to commence the rulemaking process to convert section 134 to a regulation banning any person from using the term "architect" (and similar terms) unless that person is licensed by the Board. However, that rulemaking was deferred pending the outcome of AB 1916. Because of the Governor's veto of AB 1916 and the pendency of AB 1144, CAB has not published notice of its intent to amend section 134 at this writing.

CAB Revises Consumer Guide

In September 2000, CAB released a revised version of its *Consumer's Guide to Hiring an Architect*. The Guide describes the qualifications necessary for licensure as an archi-

tect and the kinds of building projects which require the services of an architect (and several that do not); lists a number of factors to consider in finding and selecting an architect; describes the required contents of the written contract that architects must use (and lists several optional provisions that CAB recommends be addressed in the contract); and advises consumers concerning problem-solving, dispute resolution, and CAB's complaint handling process. The Guide also describes several California laws that apply in the event of a natural disaster (such as an earthquake or flood)—events that often prompt unlicensed individuals to offer services to vulnerable consumers in rebuilding and repairing damaged property.

Board Seeks New "Identity System"

As a result of the Board's name change enacted by AB 1678 (Consumer Protection Committee) (Chapter 982, Statutes of 1999) [17:1 CRLR 91], the Board recognized a need for a new official logo to serve as the symbol for CAB on its letterhead, envelopes, facsimile cover sheets, business cards, etc. (referred to by CAB as its "identity system"). The Board originally considered conducting a contest to allow student designers to submit their ideas. For various reasons, the Board soon abandoned that idea and instead opted to contract with CSU Sacramento's Business Services Group to design the logo. On April 17, May 3, and May 24, 2000, the Communications Committee and Board staff met with the designer to establish criteria for the design.

On May 24, 2000, the Communications Committee shared with the full Board a group of designs from which to choose. CAB rejected all of the options presented, but reaffirmed its desire for a new identity system. Thereafter, staff initiated an interagency agreement with the Office of State Publishing (OSP) to design the new logo. DCA approved that paperwork on August 23, 2000, and CAB formed a "Graphic Task Force" composed of four of its architect members to work with the new designer. The Graphic Task Force met with the designer on September 18, 2000 to discuss the objectives, requirements, and design criteria for the logo; and met again on October 19 and November 17, 2000 to review OSP's proposals.

Based on input and comments from the rest of the Task Force concerning OSP's designs, Task Force member Gordon Carrier developed a new set of designs that he presented to the Board at its December 8, 2000 meeting. Again CAB rejected the designs it was offered, and instead recommended that the Task Force continue to work with the OSP designer to reach a consensus on a design.

The interagency agreement with OSP expired on December 31, 2000. Staff prepared the necessary renewal paperwork and submitted it to DCA's contract analyst for approval on February 15, 2001. At this writing, the Board is still waiting for approval from DCA to continue working with OSP to develop its identity system.

CAB Rulemaking Affecting Architects

The following is an update on recent CAB rulemaking proceedings affecting architects, which are described in more

detail in Volume 17, No. 1 (Winter 2000) of the *California Regulatory Law Reporter*.

◆ **Disciplinary Guidelines.** Following a December 1999 public hearing, CAB amended section 154, Title 16 of the CCR, to require the Board—in reaching a decision in a disciplinary matter—to consider the revised 2000 version of its disciplinary guidelines. [17:1 CRLR 90] The Office of Administrative Law (OAL) approved the Board's amendment on March 13, 2000.

◆ **Table of Equivalents.** Following a December 1999 public hearing, CAB amended section 117, Title 16 of the CCR, which contains the "table of equivalents" used by the Board in evaluating a candidate's education and experience for purposes of licensure eligibility. The amendments implement a PQC recommendation suggesting that CAB amend the table of equivalents to (1) accept degree certification by the Canadian Architectural Certification Board, (2) clarify acceptance of NCARB IDP files for experience evaluation, and (3) require candidates with foreign degrees to submit a certified transcript to the foreign education evaluation service. [17:1 CRLR 90] OAL approved CAB's amendments on March 13, 2000.

◆ **Notice to Clients of State Licensure.** SB 2238 (Committee on Business and Professions) (Chapter 879, Statutes of 1998) requires CAB and other DCA occupational licensing boards to adopt regulations requiring their licensees to provide notice to clients that they are licensed by the State of California. [16:1 CRLR 102] In June 1999, CAB published notice of its intent to adopt new section 140, Title 16 of the CCR, to implement SB 2238; following a public hearing in August 1999 [17:1 CRLR 90] and further discussion at its December 1999 meeting, CAB approved the final language of new section 140. Under the new section, a CAB licensee must provide notice to clients of Board licensure by utilizing one of the following methods: (1) displaying his or her license in a public area of the principal place of practice where the licensee provides the licensed service, (2) providing a statement to each client, that is signed and dated by the client and retained in the architect's records, that states that the client understands that the architect is a CAB licensee, (3) including a statement that the licensee is licensed by CAB either on letterhead or on contracts for services; or (4) posting a notice in a public area of the principal place of practice where the licensee provides the licensed service stating that the licensee is licensed by CAB. OAL approved new section 140 on March 21, 2000.

CAB Rulemaking Affecting Landscape Architects

The following is an update on recent rulemaking proceedings initiated by the LATC and considered by CAB affecting landscape architects:

◆ **Timeframes for License Application and Renewal of Expired Licenses.** On June 16, 2000, CAB published notice of its intent to add sections 2616 and 2624 to Title 16 of the

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CCR. New section 2616 would specify that, upon passing all sections of the written examination for licensure as a landscape architect, a candidate must apply to the Board for a license within five years after the date of mailing of the candidate's notification of test results. Any candidate who fails to apply within that five-year period will not be issued a license unless all of the following requirements are met: (1) the candidate reapplies for licensure; (2) no fact, circumstance, or condition exists which would justify denial of a license under Business and Professions Code section 480 (which lists acts that are grounds for disqualifying applicants for professional licensure); (3) the candidate pays all applicable fees; and (4) the candidate either passes the currently-administered written exam or is subject to a waiver of that exam pursuant to Business and Professions Code section 5651(b). Under section 5651(b), the examination requirement may be waived if the candidate has passed a written test that is equivalent to California's or is certified by the Council of Landscape Architects Registration Boards and has submitted proof of the required work experience. A candidate seeking waiver must also have passed the California Supplemental Examination if, at the time of application, such an examination is required.

Proposed section 2624 would specify the circumstances under which an expired landscape architect license could be renewed. An applicant whose license has been expired for more than three years but less than five years would be required to: (1) pass the California Supplemental Examination; (2) pass sections of the national licensing examination as designated by the LATC after undertaking a review of the applicant's current knowledge; and (3) comply with Business and Professions Code section 5680.2 (which lists the general statutory requirements for landscape architect license renewal, including payment of fees and the absence of any justification for license revocation or suspension).

An applicant whose landscape architect license has been expired for more than five years shall be eligible for a new license upon: (1) passing the California Supplemental Examination; (2) passing the national licensing examination or securing a waiver of that requirement under Business and Professions Code section 5651(b); and (3) complying with Business and Professions Code section 5680.2.

On July 31, 2000, CAB held a public hearing on these proposed regulatory changes, and thereafter approved them. At this writing, the rulemaking file on these changes is pending at OAL, where it awaits final approval.

◆ **Fee Increase for Written Exam.** Business and Professions Code section 5681 authorizes CAB to charge an exam fee that does not exceed the Board's actual cost to purchase and administer the landscape architect licensure examination. On June 16, 2000, the Board published notice of its intent to amend section 2649, Title 16 of the CCR, to increase the fees for the various sections of that test. CAB held a hearing on the proposal on July 31, 2000. As proposed, the amendments would increase the fees on July 1, 2001 and then again on

July 1, 2002. At this writing, Board staff is preparing the rulemaking file for submission to OAL.

◆ **Disciplinary Guidelines.** In March 2000, CAB published notice of its intent to amend section 2680, Title 16 of the CCR, to incorporate by reference and require CAB to utilize the 2000 version of its disciplinary guidelines in enforcement actions against landscape architects. Following a public hearing on the proposed change in May 2000, CAB approved the amendment. OAL approved the change on March 14, 2001, and it became operative on April 13, 2001.

◆ **Citation and Fine Process.** In November 1999, CAB published notice of its intent to amend section 2630 and add new sections 2630.1, 2630.2, and 2630.3, Title 16 of the CCR, to update CAB's system of imposing citations and fines on landscape architects who violate the Landscape Architects Practice Act (LAPA) or the regulations promulgated pursuant to that Act, and on unlicensed persons who perform or hold themselves out as authorized to perform acts requiring a landscape architect's license. LATC recommended that CAB amend these regulations because they referenced Business and Professions Code sections 5676 and 5677, which previously authorized CAB to issue citations and fines to landscape architects but were repealed by SB 2238 (Committee on Business and Professions) (Chapter 879, Statutes of 1998).

The new regulations reference Business and Professions Code sections 125.9 and 148. Section 2630(a) authorizes CAB's EO to issue citations containing orders of abatement and/or administrative fines to landscape architects who have violated the LAPA or CAB's regulations governing landscape architects; section 2630(b) authorizes CAB's EO to issue citations containing orders of abatement, orders of correction, and/or administrative fines against unlicensed persons who have committed any act in violation of the LAPA or CAB's regulations. Each citation must be in writing and must describe with particularity the nature of the violation. Citations must also inform the cited person that he/she may request a hearing in writing within 30 days.

Section 2630.1 authorizes fines between \$50 and \$2,000 for each violation. In determining the amount of a fine, the EO must consider the nature and severity of the violation; the good or bad faith exhibited by the cited person; any history of previous violations; the extent to which the cited person has cooperated with the Board and its investigation; the extent to which the cited person has mitigated or attempted to mitigate any damage or injury caused by his/her violation; and any factors in extenuation or aggravation related to the violation. New section 2630.1 also requires citations that are accompanied by a fine to be classified as a "Class A," "Class B," or "Class C" violation, depending on the nature of the offense and the number of prior violations; different levels of fines must accompany a violation depending upon its class. New section 2630.2 sets forth the process for appealing a citation (which involves either or both an informal conference with the EO and a hearing before an administrative law judge);

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section 2630.3 permits a cited person to request an extension of time to comply with an order of abatement.

CAB held a public hearing on these regulatory changes on January 4, 2000, and thereafter adopted the proposed changes. OAL approved them on July 14, 2000, and they became effective on August 13, 2000.

◆ **Candidate Review of Failed Graphic Portion of Landscape Architect Exam.** In November 1999, CAB published notice of its intent to amend sections 2623 and 2649, Title 16 of the CCR. Section 2623 specifies CAB's system for notifying landscape architects of their score in each section of the written examination. CAB proposed to amend section 2623 to allow candidates who have failed any graphic performance section(s) of the exam two options for reviewing the failed sections. Within 30 days of the issuance of grades, a candidate who desires to review any failed graphic performance portion(s) must submit a written request to the Board, along with the appropriate fee. Only one review of each failed graphic performance portion is permitted. CAB's executive officer must designate the specific time and place for the review sessions. Section 2623 provides for two types of review: (1) a standard review allows candidates to compare their failing solutions with the evaluation criteria used to grade the test; and (2) a red line review provides candidates with general comments on the weaknesses exhibited in their tests. The amendments prohibit candidates from taking notes during the review session. CAB's amendments to section 2649 establish a \$25 fee for a standard review and a \$100 fee for a red line review.

Following a December 27, 1999 public hearing on the proposed amendments, CAB approved them. OAL approved the amendments on May 4, 2000 and they became effective immediately.

2000 LEGISLATION

SB 1863 (Committee on Business and Professions), as amended August 21, 2000, makes several changes to the laws governing CAB and LATC, including the following:

- The bill repeals Business and Professions Code section 5643, which authorized CAB to issue a temporary certificate for practice at a stipulated site to an out-of-state landscape architect who provides proof to the Board of competency to practice. According to the Board, the temporary certificate is no longer necessary because CAB and LATC have expedited the process for issuing licenses to qualified out-of-state landscape architects.

- Business and Professions Code section 5651 requires candidates for a landscape architect's license to pass a written licensing examination and a supplemental statutes and regulations test; pursuant to section 5651, LATC generally requires licensure applicants to pass the Landscape Architect Registration Examination (LARE) of the Council of Landscape Architectural Registration Boards (CLARB) and the California Supplemental Examination (CSE), which tests for distinct areas of practice unique to California. SB 1863 amends

section 5651 to authorize CAB to waive passage of the LARE if the applicant is licensed in another state and has passed an equivalent written licensing exam or is certified by CLARB and has passed the CSE.

- Under Business and Professions Code section 5642, a licensed landscape architect must be physically present at any branch office where landscape architecture is practiced. SB 1863 amends section 5642 to delete the physical presence requirement. According to CAB, the requirement is unnecessary and the new law conforms the provision concerning landscape architects to a corresponding provision in the Architects Practice Act.

- SB 1863 also amends Business and Professions Code sections 5536 and 5640 to increase the fine for misdemeanor unlicensed practice of architecture or landscape architecture to a \$100 minimum fine and a \$5,000 maximum fine.

This bill was signed by the Governor on September 30, 2000 (Chapter 1054, Statutes of 2000).

AB 1916 (Bates), as amended July 5, 2000, would have authorized CAB to register architectural firms in addition to individual architects, and required all such registered firms to designate an architect in "responsible control" over the architectural services to be provided. The bill would also have required the Board, within one year of adopting a regulatory scheme for the registration program, to create a database for enforcement actions and to provide a public list of registrants on its Web site. Governor Davis vetoed AB 1916 on September 26, 2000. In his veto message, Governor Davis stated: "Existing regulatory authority over licensed architects and cite and fine authority over unlicensed individuals should be sufficient to enable the board to take action against violations by business entities. Dual regulation through licensure and registration is excessive, places unnecessary regulatory burdens on individual licenses and small businesses and may result in increased fees."

AB 701 (Lempert), as amended August 18, 2000, revises Education Code section 17316, which specifies that contracts between a school governing board and any licensed architect or structural engineer are required to provide that plans, specifications, and estimates are property of the school district. AB 701 clarifies that a school district's rights to architectural plans, including but not limited to record drawings, specifications, and estimates, are the property of the school district for the purposes of repair, maintenance, renovation, modernization, or other purposes, only as they relate to the project for which a licensed architect or structural engineer was retained by contract; and specifies that such a contract shall not be construed to transfer or waive the architect's or structural engineer's copyrights over the documents, including but not limited to all common law, statutory, and other reserved rights. Governor Davis signed AB 701 on September 7, 2000 (Chapter 348, Statutes of 2000).

AB 1096 (Romero), as amended August 14, 2000, would have provided for the registration and regulation of interior designers through the creation of a Board of Interior Design

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within DCA. [17:1 CRLR 91] CAB opposed AB 1096 because it did not expressly prohibit interior designers from providing engineering or architectural services. On September 10, 2000, Governor Davis vetoed the bill, stating: "This bill creates a new regulatory program for an industry where there is no demonstrated consumer harm. The creation of a new regulatory program and new state agency at a time when the Legislature is eliminating licensing boards and streamlining regulatory programs is inappropriate."

AB 229 (Baldwin), which would have authorized certain providers of professional services to operate as limited liability companies but would have expressly prohibited architects and landscape architects from doing so, died in committee. [17:1 CRLR 91]

AB 1626 (Migden), as amended January 20, 2000, no longer relates to the regulation of architects.

2001 LEGISLATION

AB 1144 (Bates), as introduced on February 23, 2001, is similar to 2000's AB 1916 (Bates) (see above), and would authorize CAB to adopt regulations requiring individuals or businesses that provide architectural services to supply the Board with the names of the architect or architects who are in responsible control of those services. The language of the bill includes legislative findings that "in response to California's diverse business climate and consumer demands, the business structures for providing architectural services have evolved from the traditional sole proprietor to include corporations, professional corporations, partnerships, and limited liability partnerships. These business structures limit the ability of consumers to obtain information about the architect in responsible control of providing architectural services" and that "current information available from the board does not reflect the diverse business structures for providing architectural services in today's marketplace. Therefore, the ability of consumers to obtain information about the architect in responsible control of providing architectural services is unnecessarily impeded." [A. Appr]

AB 1596 (Shelley), as introduced February 23, 2001, would repeal a sunset date in Corporations Code section 16101, which currently permits architectural firms to form limited liability partnerships (LLPs) until January 1, 2002; section 16101 was enacted in AB 469 (Cardoza) (Chapter 504, Statutes of 1998). [16:1 CRLR 102] AB 1596 would thus extend indefinitely the authorization to form limited liability partnerships and foreign limited liability partnerships to engage in the practice of architecture. [A. B&F]

AB 269 (Correa), as amended April 5, 2001, would create the Division of Enforcement Oversight within DCA. Under the direction of the DCA Director, the Division would monitor and evaluate the consumer complaint and discipline system of each DCA board (including CAB). Further, the bill would require the executive officer of each DCA board to be appointed by a three-member panel comprised of a representative of the board, the DCA Director, and the Governor's appointments secretary. [A. B&P]

SB 325 (O'Connell), as amended April 16, 2001, would enact the Special Occupancy Parks Act. Among other things, the bill would authorize the state Department of Housing and Community Development (DHCD), by regulation, to provide for the qualification of plan checking agencies to perform reviews of plans and specifications for the construction or alteration of mobile home parks and special occupancy parks. The bill would require such DHCD regulations to specify that all approved plan checking agencies must employ at least one California-licensed architect or engineer who is responsible for all plan review activity as specified in the act. [S. Appr]

LITIGATION

In *Butts v. Sands*, 76 Cal. App. 4th 739 (Dec. 1, 1999), the Second District Court of Appeal interpreted Business and Professions Code section 5586, which provides: "The fact that the holder of a license has had disciplinary action taken by any public agency for any act substantially related to the qualifications, functions, or duties as an architect constitutes a ground for disciplinary action." Enacted by AB 2702 (Frazee) (Chapter 258, Statutes of 1994), section 5586 became effective on January 1, 1995. [14:4 CRLR 38]

As of 1993, Kenneth L. Butts was licensed as an architect in all 50 states and the District of Columbia; his practice was centered in California. In August 1993, the Kentucky State Board of Examiners and Registration of Architects filed a complaint accusing Butts of violating Kentucky law by signing motel project plans that had actually been prepared by a structural engineer. Butts had personally reviewed and approved the plans and had not been aware at the time that his conduct was prohibited. The Kentucky Board made no allegations that the plans or the resulting structure were in any way defective. Pursuant to a November 1993 settlement agreement with the Kentucky board, Butts neither admitted nor denied the allegations against him but consented to the suspension of his Kentucky architect's license until its upcoming expiration date, and agreed not to seek renewal.

Thereafter, other state boards began to institute disciplinary action against Butts based on the Kentucky matter. In 1994, Butts entered into a settlement agreement with the Nevada State Board of Architecture whereby his license was revoked. The Nevada Board's disciplinary action was based on "information received alleging violation of Kentucky law and revocation of an NCARB license." In August 1995, Montana's Board of Architects entered an order against Butts by default based on the Kentucky and Nevada disciplinary actions. In November 1995, the Kansas State Board of Technical Professions ordered Butts to surrender his architect's license, again as a result of the original Kentucky discipline. In September 1996, the Ohio State Board of Examiners of Architects revoked Butts' license, basing its order on the Montana disciplinary action.

In February 1997, CAB filed an accusation against Butts' California license, based on the prior discipline imposed by Kentucky, Nevada, Montana, Kansas, and Ohio and arguing

that the discipline imposed was substantially related to the qualifications, functions, and duties of an architect under section 5586. Following a contested hearing, an administrative law judge concluded that the presumption against retroactive application of statutes precluded CAB from imposing discipline against Butts based on the orders entered in Kentucky in 1993 and in Nevada in 1994; however, the ALJ found that the post-1995 orders entered by Montana, Kansas, and Ohio could be the basis of disciplinary action by CAB. The Board adopted the ALJ's findings and revoked Butts' license for three years, stayed the revocation pending successful completion of three years' probation, and suspended Butts' license for 90 days effective January 1, 1998. Arguing that CAB's action was based on disciplinary action for conduct occurring before the enactment of section 5586, Butts filed a petition for writ of mandate to contest the Board's ruling; the trial court agreed with CAB, and Butts timely appealed.

The Second District first determined that section 5586 appears to permit disciplinary action based on prior discipline that was, in turn, based on conduct occurring before the statute took effect; as such, the statute is ambiguous and judicial interpretation is appropriate. The court observed that "the enactment of section 5586 was motivated by a need for efficient use, when appropriate, of the disciplinary determination of another agency similarly authorized in another jurisdiction....However, we are not aware of any law or policy that would permit this need for efficiency to trump the presumption against retroactivity." The court reasoned that "in 1993, when Butts entered into the settlement by which he agreed to accept discipline in Kentucky, Butts was no doubt legally responsible for knowing that he was subjecting himself to a domino effect of further discipline in those jurisdictions where discipline-based-on-prior-discipline statutes were then in effect. Significantly, the state in which Butts' practice is based (*i.e.*, California) was not one of these jurisdictions. The facile reading of section 5586 suggested by the California Board would change the rules midstream. It may well be that Butts, who toward the end of his career appears to have had little interest in practicing in states other than California, made the decision to accept Kentucky discipline without fighting the charges because he knew that the mere fact that discipline was being imposed in Kentucky was irrelevant in California. We do not believe that in passing section 5586 the Legislature could have intended for someone in Butts' position to have such eminently reasonable reliance on the then-current state of the law thwarted by a later change."

The appellate court reversed the trial court, holding that "section 5586 must be read to require that the foreign discipline which provides a basis for California discipline be predicated on conduct that occurred...after the effective date of the statute."

"Section 5586 must be read to require that the foreign discipline which provides a basis for California discipline be predicated on conduct that occurred...after the effective date of the statute."

On March 15, 2000, the California Supreme Court denied CAB's petition for review but granted the Board's petition for depublication of the Second District's opinion. Consistent with the Second District's opinion, CAB dismissed its accusation against Butts on April 26, 2000.

RECENT MEETINGS

At CAB's December 1999 meeting, Executive Officer Steve Sands updated Board members on the issue concerning the publication of licensees' "addresses of record" on CAB's Web site. Earlier that year, the Board's posting of licensee addresses on its Web site had prompted concerns by several licensees who use their home address as their address of record. [17:1 CRLR 92] All addresses were temporarily removed from the Web site in late 1999 while Board staff composed and sent a letter to all licensees discussing the issue and allowing licensees an opportunity to change their addresses of record if they so desired. Due to continuing concern on the part of licensees, CAB voted to indefinitely suppress the street address field on all licensee addresses of record; thus, CAB's Web site lists only the architect's name and city or town listed in the address of record.

Also in December 1999, CAB reelected public member Marc Sandstrom as Board president and elected architect Gordon Carrier as vice president and architect Kirk Miller as secretary for 2000.

On January 14-15, 2000, CAB conducted its fifth strategic planning session (the first was conducted in October 1994). The Board reviewed its progress toward accomplishing goals established in its 1999 Strategic Plan, reviewed and updated the "environmental scan" (which was later retitled as "External Factors Influencing CAB"), and developed an action plan for 2000. The session facilitator, Daniel

Iacofano of Moore Iacofano Goltsman Inc., presented a draft updated Strategic Plan to the Board's Executive Committee on February 23, 2000. The Committee presented its modified draft to the full Board at the March 17, 2000 meeting. The Board approved that draft as presented.

CAB's 2000 Strategic Plan identifies eight external factors that the Board views as significantly impacting the field of architecture in general and CAB's mission in particular: changes in practice, construction industry, economy, governmental approach, interstate and international practice, project delivery, demographics, and technology. The Plan describes six key issues faced by CAB and outlines the methods through which the Board can address each. The key issues are: education, internship, continuing competency, enforcement, technology, and NCARB relations. CAB established six goals that provide the framework enabling it to achieve its consumer protection mission: (1) ensure the professional qualifications of licensees by setting requirements for education, experience, and examination; (2) establish regulatory standards of

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practice for California architects; (3) protect consumers by preventing violations and effectively enforcing laws, codes, and standards; (4) increase public and professional awareness of CAB's mission, activities, and services; (5) improve the effectiveness of relationships with related organizations; and (6) enhance organizational effectiveness and improve the quality of customer service in all programs.

LATC held a similar strategic planning session at a two-day retreat on February 11–12, 2000. LATC reviewed its 1998–99 activities and accomplishments, discussed the environmental scan and LATC operations, began to develop a communications plan, and identified focus groups to conduct market condition assessments.

At its December 2000 meeting, CAB elected architect Gordon Carrier as president, architect Kirk Miller as vice president, and public member John Canestro as secretary for 2001.

At CAB's January 22, 2001 meeting, Executive Officer Steve Sands announced that Board staff had developed an RFP for development and administration services for the CSE. At the March 15, 2001 meeting, the Board awarded the contract to PMES to engage in exam development activities during 2001, and exam administration services between January 2003 and December 2006.

At CAB's March 15, 2001 Board meeting, Executive Officer Doug McCauley reported that the Department of Finance's Office of State Audits and Evaluations had performed a review of CAB in November 2000 under an inter-agency agreement with DCA. The purpose of the review was

to assist DCA's Office of Internal Audits to comply with the requirements of the Financial Integrity and State Managers' Accountability Act of 1983. On February 1, 2001, CAB staff conducted an exit interview with the auditors to discuss their findings and review their draft report. The auditors recommended that CAB strengthen its controls over the Board's Visa CalCard, fixed assets, and payroll warrants. CAB provided a written response to the report on February 8, 2001 and will hold a follow-up meeting with the auditors in approximately six months.

CAB held its 2001 strategic planning session on March 15–16, 2001. The Board again contracted with Daniel Iacofano to facilitate the session. Iacofano presented a draft of the updated plan to CAB's Executive Committee on April 30, 2001. The Committee, in turn, will present the draft along with its own modifications and recommendations to the full Board at the June 14, 2001 meeting. Mr. Iacofano also facilitated LATC's 2001 strategic planning session held on January 26–27, 2001.

FUTURE MEETINGS

CAB—2001: June 14 in Sacramento; September 6 in San Diego; December 7 in San Francisco. **2002:** January 11–12 in San Diego; March 12 in Sacramento; May 31 in Pasadena; August 14 in Sacramento; December 5–6 in Berkeley.

LATC—2001: July 20 in San Diego; October 19 in Pomona; December 14 in Sacramento. **2002:** February 7 in Sacramento; May 8 in Sacramento; August 15 in Sacramento; December 12 in Sacramento.

Contractors' State License Board

Registrar: Stephen P. Sands ♦ (916) 255-4000 ♦ Toll-Free Complaint Line (Northern California): 1-800-321-2752 ♦ Toll-Free Complaint Line (Southern California): 1-800-235-6393 ♦ Internet: www.cslb.ca.gov

Created in 1929, the Contractors' State License Board (CSLB) licenses and regulates construction contractors, handles consumer complaints, and enforces existing laws pertaining to contractors. A consumer protection agency within the Department of Consumer Affairs (DCA), CSLB is authorized pursuant to the Contractors' State License Law (CSLL), Business and Professions Code section 7000 *et seq.*; the Board's regulations are codified in Division 8, Title 16 of the California Code of Regulations (CCR). CSLB currently licenses over 278,000 contractors in California.

CSLB licenses general engineering contractors, general building contractors, and approximately 40 specialty contractor categories; in addition, the Board registers home improvement salespersons who market contractor services to consumers. As of January 1, 2001, the fifteen-member Board consists of eight public members, one general engineering contractor, two general building contractors, two specialty contractors, one member from a labor organization representing

building trades, and one building official.

The Board currently maintains five committees: executive, contractor and consumer education, enforcement, licensing, and legislation.

A number of new Board members have joined CSLB in recent months. In May 2000, Governor Gray Davis appointed Paul Baldacci, Larry Booth, Anthony Elmo, and John ("Bert") Sandman to the Board. Baldacci, a licensed contractor, is president of Castle Construction Company in Danville. Booth, also a contractor, is senior vice-president of Frank M. Booth, Inc., a mechanical contracting firm in Sacramento. Elmo is chief building official for the City of Temecula. Sandman, a licensed contractor, is president and chief operating officer for A. Teichert and Son, Inc., of Sacramento.

In November 2000, Assembly Speaker Robert M. Hertzberg appointed John Hall of Alhambra as a new public member of CSLB. Hall is business manager for Plumbers Local No. 78 in Los Angeles.

