

Board of Architectural Examiners

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The Board of Architectural Examiners (BAE), 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). BAE is a consumer protection agency within the Department of Consumer Affairs (DCA).

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

Effective January 1, 1998, BAE became the new 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, Assembly Bill 1546 (Chapter 475, Statutes of 1997) transferred the program to BAE as of January 1, 1998. A new Landscape Architects Technical Committee (LATC), composed of five landscape architects and no public members, acts in an advisory capacity to BAE. Specifically, the LATC may assist BAE in the examination of candidates for licensure; investigate complaints and make recommendations to BAE regarding disciplinary action against landscape architects; and perform other duties and functions which have been delegated to it by BAE relative to the regulation of landscape architects. The Board's landscape architect regulations are located in Division 26, Title 16 of the CCR.

Major Projects

BAE Proposes to Amend Rules of Professional Conduct

AB 2171 (Davis) (Chapter 321, Statutes of 1996) authorized BAE to adopt rules of professional conduct to govern architects; in early 1998, the Board adopted these rules in section 160, Title 16 of the CCR. On October 2, BAE published notice of its intent to amend section 160 to add three

rules of professional conduct regarding conflict of interest, full disclosure, and copyright infringement.

Specifically, BAE proposes to add section 160(c)(4), which would prohibit an architect from acting in a dual capacity as (1) a person involved in a governmental (regulatory) agency as either an official, employee, appointee, or agent, and (2) as a person in a business or activity where such business or activity may later be subject, directly or indirectly, to any regulatory or enforcement action by the architect in his/her government agency capacity. This proposal is intended to prevent an architect from being involved in a private business or activity which could improperly benefit from his/her overview. Additionally, the proposed rule is intended to address situations involving architects in a governmental regulatory or enforcement capacity consistently with state law governing incompatible activities by public officials and employees.

BAE also proposes to add new section 160(d)(3), regarding full disclosure. The new section would provide that if, in the course of his/her work on a project, an architect has specific knowledge of an action taken by his/her employer or client which violates applicable federal, state, or municipal building laws or regulations and which will, in the architect's judgment, pose an imminent risk of serious injury to any person or persons, the architect must (1) warn the identifiable person(s) at risk or report the action to the local building inspector or other public official charged with the enforcement of the applicable law, and (2) refuse to consent to the action.

Finally, BAE proposes to add new section 160(e), which would create, as a basis for discipline, an architect's having been found by a court to have infringed upon the copyrighted works of other architects or design professionals.

BAE held a hearing on these proposals on November 17, at which it considered a written comment submitted by the American Institute of Architects, California Council (AIACC) regarding proposed section 160(d)(3). AIACC stated that section 160(d)(3) would impede progress in situations where an architect disagrees with his/her employer about code interpretation; may be abused by disgruntled employees; and would potentially increase liabilities, affecting insurance rates. Further, AIACC argued that the language of the section is unclear in several respects. At its December 4 meeting, the Board discussed AIACC's comment and decided to more fully study the full disclosure amendments in section 160(d)(3). The Board agreed to sever section 160(d)(3) from the package and submit only the proposed amendments to subsections (c)(4) and (e)(1), which received no public comments

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at the November 17 hearing, to the Office of Administrative Law (OAL) for approval. At this writing, Board staff is preparing the rulemaking record on the changes to subsections 160(c)(4) and (e)(1) for submission to OAL.

Board Amends Disciplinary Guidelines Regulation

On October 2, BAE published notice of its intent to amend section 154, which requires the Board—in deciding disciplinary cases—to consider its disciplinary guidelines, which BAE has formulated to guide licensees, its attorneys who prosecute disciplinary cases, administrative law judges who preside over disciplinary hearings, and the Board itself in final disciplinary decisionmaking; the intent of the guidelines is to establish consistency in disciplinary penalties for similar offenses on a statewide basis.

Prior to 1997, BAE (like most other DCA occupational licensing agencies) simply approved a set of disciplinary guidelines and made them available to anyone who wanted them. However, effective July 1, 1997, SB 523 (Kopp) (Chapter 938, Statutes of 1995) provides that a penalty in a disciplinary action may not be based upon a guideline unless that guideline has been adopted as a regulation in accordance with the rulemaking procedures of the Administrative Procedure Act. In February 1997, BAE adopted section 154, which requires the Board to consider the 1995 version of its disciplinary guidelines in making disciplinary decisions. Existing section 154 does not contain the Board's disciplinary guidelines; it simply incorporates by reference the 1995 version of the guidelines. Whether this method satisfies the requirements of SB 523 is unclear. In any event, BAE revised its disciplinary guidelines on September 15, 1998, and now proposes to amend section 154 to require BAE to consider the 1998 version of the guidelines in making disciplinary decisions.

The 1998 changes include the following: cost reimbursement, restitution, and continuing education are included as recommended optional conditions of probation for specified violations of the Business and Professions Code; the minimum period of actual days' suspension has been increased to 90 days for violations of Business and Professions Code sections 5580, 5584, and 5585; and the guidelines now establish as grounds for disciplinary action any violation of the rules of professional conduct being adopted by the Board pursuant to AB 2171 (Davis) (see above).

BAE held a hearing on this proposal November 17. Receiving no public comments, the Board approved the proposed regulatory change; at this writing, staff is preparing the rulemaking record on the proposed change for submission to OAL.

Amendments to Table of Equivalents

In June 1998, BAE published notice of its intent to amend 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 eligibil-

ity. The existing language of section 117(a) grants a maximum of one year of credit for work experience obtained while a candidate is enrolled in 11 units or less at a college or university; however, candidates who are enrolled in 12 or more units are not granted credit for any work experience obtained while enrolled in school. While the 11/12-unit cutoff was originally intended to represent the division between part-time and full-time students, it is not consistently defined by all schools and is therefore somewhat arbitrary. The Board's Professional Qualifications Committee determined that this cutoff point results in inconsistent treatment between part-time and full-time students relative to their experience evaluations. Thus, the Board proposed to eliminate the existing 11/12-unit cutoff and instead grant a maximum of one year of credit for work experience obtained while a candidate is enrolled in school regardless of the number of units taken. In addition, the Board proposed several nonsubstantive changes to section 117 for consistency and clarifying purposes.

The Board held a public hearing on these proposed changes on July 21; no one submitted comments regarding the proposed action, and BAE approved the proposal as published. OAL approved the Board's amendments on December 7.

BAE Proposes Changes to Examination Eligibility Procedures

On October 9, BAE published notice of its intent to amend sections 109, 117, and 144, Title 16 of the CCR, pertaining to its administration of the ARE for licensure purposes. Currently, candidates submit an application and a \$35 review fee to apply for eligibility for the ARE. Candidates are granted eligibility for a one-year period, during which time they may take divisions of the ARE. This annual application and review process can result in undue lapses in a candidate's ability to schedule exams during the times between eligibility periods; in addition, the annual process causes an unnecessary paperwork burden for candidates. The Board retains inactive candidate files for a five-year period, after which the files are purged; candidates who wish to reapply to the Board must resubmit the required documents to

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allow the Board to determine the candidate's current eligibility. BAE's Professional Qualifications Committee recommended that the Board amend its regulations to eliminate the one-year eligibility period and allow continuous access to the ARE for eligible candidates with submission of a one-time application and payment of a single eligibility review fee.

Thus, the Board's proposed changes to section 109 would eliminate the limitation of the one-year eligibility period, allow the filing of a one-time-only application for ARE eligibility, and establish implementation procedures for the new eligibility review process and fee to become effective on July 1, 1999. The Board's changes to section 117 would define an inactive candidate and clarify the purge process for inactive candidate files. The Board's amendment to section 144 would change the eligibility review fee to \$100 effective July 1, 1999.

The Board held a public hearing on these proposed changes on November 24. The only public comment came from NCARB's Director of Professional Development, who asked for clarification on the intent of section 117(e)(3) regarding the retention of exam scores for inactive candidates; he suggested that the Board specifically spell out the policy in the regulations. At its December 4 meeting, the Board rejected the suggestion, noting that no statute or regulation restricts the length of time an examination score remains valid and thus finding that clarification of the length of time during which test scores are retained is not required or desired. On December 4, the Board voted to submit the proposed amendments to OAL without modification; at this writing, Board staff is preparing the rulemaking file for submission to OAL.

BAE Amends Citation and Fine Regulations

On August 12, several changes to BAE's citation and fine regulations became effective. Specifically, BAE amended section 152, Title 16 of the CCR, to clarify that the Board's executive officer, pursuant to Business and Professions Code section 125.9, is authorized to issue citations containing orders of abatement or administrative fines against an architect who has committed acts or omissions which are in violation of the Architects Practice Act or any of the Board's regulations; additionally, Business and Professions Code section 148 authorizes the Board's executive officer to issue citations, fines, and orders of abatement against unlicensed persons, partnerships, corporations, or associations who are performing or have performed services for which a license is required by the Architects Practice Act. BAE also adopted new section 152.5, Title 16 of the CCR, which sets forth procedures under which a cited person may request an informal conference with BAE's executive officer to review the acts charged in a citation.

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Internship Development Program Update

For several years, BAE members have been considering a proposal to require licensure candidates to complete a structured internship program prior to being licensed in California. Although the Board examined the parameters of NCARB's Intern Development Program (IDP) as a model for the proposed internship requirement, several aspects of NCARB's IDP concerned some Board members, and discussion of the use of the IDP as a model for any California-required internship program was tabled in September 1995. [15:4 CRLR 53; 15:2&3 CRLR 38; 15:1 CRLR 40]

Since then, the Board's Professional Qualifications Committee (PQC) has been discussing a structured internship requirement in general. At the Committee's April 1998 meeting, BAE Executive Officer Steve Sands summarized the Board's goals in pursuing the idea: (1) to improve the competency of entry-level architects, and (2) to facilitate interstate reciprocity licensure (that is, to enable California architects to be licensed more easily in other states, and vice versa).

Sands also clarified five objectives of such a program: It must be effective (in that it improves minimum competency), fair (it does not create an unreasonable barrier to licensure), cost-effective (it is not too costly to candidates), cost-efficient (it is not too costly for the Board), and simple (it does not create a regulatory burden for licensees). The PQC noted that five national architecture organizations, including NCARB, are convening a task force meeting in April 1999 to discuss internship programs in general, and voted to recommend to the Board that any decision by BAE on an internship requirement and/or its precise parameters should be postponed until after the task force has met and the PQC has had a chance to review its activities and the outcome of the internship study.

At the Board's May 1998 meeting, Rob Rosenfeld, Director of Intern Services for NCARB, explained that extensive resources would be utilized for the April 1999 internship summit. He further explained that, as part of the internship study, NCARB plans to conduct a major national survey of architectural firms, architectural interns, and registration boards. BAE

voted to approve PQC's recommendation to delay a decision on an internship requirement until after the summit. In the meantime, the PQC will identify the issues within NCARB's IDP that are a problem for the Board and communicate those concerns to the task force for consideration. BAE fore-

sees an opportunity to provide input and influence change in the national program through the task force and participation in national internship committees.

BAE Inherits Landscape Architects' Licensing Program

Under the "sunset review" process in Business and Professions Code sections 101.1 and 473 *et seq.*, the legislative and executive branches are charged with reviewing the necessity and performance of all occupational licensing boards within DCA every four years. Under the somewhat peculiar mechanics of Business and Professions Code section 101.1, if any board is sunsetted under the sunset review process, only the board ceases to exist; the licensing program previously administered by that board still exists, and is delegated to DCA to administer.

The Board of Landscape Architects (BLA), then an independent seven-member DCA board with a public member majority, underwent sunset review in 1995. At BLA's sunset hearing, Board critics charged that there is no need for licensure of landscape architects, because they pose no risk of irreparable harm if they are incompetent. Further, BLA spent literally all of its resources on maintaining and enhancing its significant barrier to entry into the profession—six years of education and experience, and passage of a written exam whose pass rate fluctuated between 10% and 50%. The Board had adopted no standards of practice for the profession, had only taken one disciplinary action during the prior four years, and received almost no complaints from consumers about the

practice of licensees—most complaints received by BLA were from licensed landscape architects complaining about unlicensed competition. [15:4 CRLR 82-84]

In 1996, the Joint Legislative Sunset Review Committee (JLSRC) and the Department of Consumer Affairs agreed to sunset BLA. In its sunset report, the JLSRC favored devolution of the program to DCA, noting that BLA did “not provide any evidence that significant harm could result if landscape architecture practice was deregulated,” and stating that “there does not appear to be any significant public demand for the regulation and licensing of landscape architects.” In its report, DCA called for repeal of the statutory licensure requirement, stating that “the demand for licensure of landscape architecture comes from the profession, primarily based on economic, rather than consumer protection, concerns or health and safety issues. The continuance of the Board and its regulatory authority only benefits the profession through status of maintaining a ‘state’ license and limiting competition....The lack of need to regulate the marketplace does not justify the incorporation of the Board of Landscape Architects into the Department of Consumer Affairs.”

Later in 1996, the full legislature concurred with the JLSRC and DCA, and failed to pass a bill extending BLA's existence beyond July 1, 1997. Thus, DCA was required to take over the landscape architect licensing program under Business and Professions Code section 5615; instead of directly administering the program, DCA entered into an inter-agency agreement with BAE effective July 1, 1997, under which BAE undertook administration of the program.

In 1997, the landscape architect trade association prevailed upon the legislature and convinced it to pass AB 1546 (Consumer Protection Committee) (Chapter 475, Statutes of 1997), which delegated responsibility for administering the Landscape Architects Practice Act to BAE, to be assisted by a five-member Landscape Architect Technical Committee (LATC). The LATC consists of five landscape architects and no public members. Under AB 1546, BAE may delegate to LATC certain functions regarding the licensure and discipline of landscape architects; however, BAE itself must take final action to adopt regulations or discipline a licensee.

Thus, despite the 1996 findings of the JLSRC and DCA, AB 1546 has had the practical effect of reconstituting the previously abolished BLA; even its leadership remains intact in the person of Sandra Gonzalez (who was the incumbent president of BLA upon its sunset and was elected chair of the LATC at its first meeting on April 16, 1998). The distinction between the old BLA and the new LATC is one of form as opposed to substance; BAE's oversight has not prevented the LATC from regulating landscape architects in the same way as did BLA, with one exception. The LATC has returned to the use of the Landscape Architects Registration Examination (LARE) of the national Council of Landscape Architectural Registration Boards (CLARB), and has also instituted a second written exam specific to California plants and environmental conditions, irrigation design, and California laws and regulations related to the practice of landscape architecture.

Under pressure from then-DCA Director Jim Conran, BLA abandoned its use of CLARB's exam in 1992 partly because its national pass rate was 6%. [12:4 CRLR 86] In 1993, BLA created its own licensing exam, the Professional Examination for Landscape Architects (PELA), the passage of which was required for licensure in California. Although the PELA's pass rate was much higher, its use by BLA was consistently criticized because most other states with landscape architect licensure programs require CLARB's exam—thus thwarting reciprocity by requiring California landscape architects who wish to practice in another state to take an additional exam. While in transition, BLA returned to the use of CLARB's LARE in 1996, and—pursuant to Business and Professions Code section 5651(b), which requires California licensure applicants to take a written test specific to California law and principles of landscape architecture—LATC has now commissioned the creation of a second required examination, which was administered for the first time in June 1998.

Thus, consumer advocates who thought they had succeeded in abolishing an unnecessary licensing program in 1996 are doubly frustrated. Despite apparent unanimous agreement by the legislative and executive branches to abolish BLA and its licensing requirement in 1996, the licensure requirement for landscape architects still exists, the “board” has been recreated in the form of the LATC (and it consists solely of landscape architects rather than enjoying a public member majority, as did BLA), and LATC has further strengthened its barrier to entry by requiring passage of two examinations instead of one.

At its May 1998 meeting, BAE unanimously approved an LATC-developed delegation of responsibilities from BAE to LATC. Under the delegation, BAE authorized LATC, “to the fullest extent authorized by law,” to exercise all duties and jurisdiction relative to the administration of the landscape architects program with the following exceptions: (1) the LATC shall make recommendations concerning proposed regulatory or statutory changes and submit them to BAE for review and approval; (2) the LATC shall make recommendations concerning budget augmentations to the landscape architects program to the Board for review and final approval; (3) the LATC shall develop a strategic plan for the landscape architects program and submit it to the Board for review and final approval; (4) the LATC shall make recommendations involving the discipline of a landscape architect to the Board for review and final approval; and (5) the LATC shall make recommendations regarding any matter which may impact, directly or indirectly, the regulation of landscape architects to the Board for review and final approval.

Recent LATC Rulemaking

The following is a summary of recent rulemaking activities initiated by LATC and approved by BAE.

♦ **Examination Procedures.** On August 4, LATC's amendments to sections 2610, 2621, and 2623, Title 16 of the CCR, became effective. The change to section 2610 requires applicants seeking to take the landscape architect written examination to file an application with LATC at least 70

days prior to the scheduled date of the exam. Revised section 2621 permits a candidate to request transfer of his/her examination fee to the next scheduled exam where reasons of health, certified by a medical doctor, or other good cause exists which prevent the candidate from taking the scheduled examination are provided to LATC within 14 days after the assigned examination. The change to section 2623 repeals prior language which permitted an examinee who has failed the graphic performance section of the written examination to review that section of his/her examination.

♦ **Transition Plan to Accommodate Modified LARE.** CLARB recently announced that the content and structure of the LARE would be modified as of the June 1999 exam administration. Thus, on October 2, LATC published notice of its intent to amend section 2614, Title 16 of the CCR, to provide a transition plan from the old version of the LARE to the modified version of the LARE; the changes will enable candidates who have passed some parts of the LARE to achieve credit for those sections when they retake the new LARE in 1999. LATC held a public hearing on this proposal on November 17; no comments were submitted. BAE approved LATC's changes to section 2614 at its December 4 meeting; at this writing, LATC staff are preparing the rulemaking record on this change for submission to OAL.

♦ **Landscape Architect Examination Fees.** On October 9, LATC published notice of its intent to amend section 2649, Title 16 of the CCR, which contains the structure LATC uses to assess fees for the landscape architect examinations. Under the current regulation, LATC charges each candidate \$425 for the exam regardless of whether the candidate is taking all six sections, is only retaking remaining section(s) left unpassed, or is taking the California-specific test for reciprocity licensure. SB 2238 (Committee on Business and Professions) (Chapter 879, Statutes of 1998) authorizes the BAE and LATC to charge an exam fee and a "per section" fee (see LEGISLATION). Thus, LATC's proposal will amend section 2649 to establish a fee for each examination section for which a candidate is registered. The fee is based on the cost to LATC to purchase and administer the examination. LATC held a public hearing on this proposal on November 24; no comments were received. BAE approved LATC's changes to section 2614 at its December 4 meeting; at this writing, LATC staff are preparing the rulemaking record on this change for submission to OAL.

♦ **Rules of Professional Conduct.** SB 2238 also authorized BAE to adopt rules of professional conduct to govern landscape architects (see LEGISLATION). Existing section 2670, Title 16 of the CCR, already sets forth rules in the areas of competence, full disclosure, and professional conduct. On October 9, LATC published notice of its intent to amend section 2670, Title 16 of the CCR, to revise the existing rules and add rules of professional conduct applicable to landscape architects in the areas of conflict of interest and copyright infringement.

Specifically, LATC proposes to add section 2670(d), relating to conflict of interest, to specify that a landscape architect shall not accept compensation for services from more

than one party on a project unless the circumstances are fully disclosed to and agreed to in writing by all such parties. If a landscape architect has any business association or financial interest which is substantial enough to influence his/her judgment in connection with the performance of professional services, he/she must fully disclose in writing to his/her client(s) or employer(s) the nature of the business association or financial interest; if the client/employer objects, the landscape architect must either terminate such association or interest or offer to give up the project or employment. Further, a landscape architect may not solicit or accept payments, rebates, refunds, or commissions, whether in the form of money or otherwise, from material or equipment suppliers in return for specifying their products to a client of the landscape architect. A landscape architect may not engage in a business or activity other than in his/her capacity as an officer, employee, appointee, or agent of a government agency knowing that the business or activity may later be subject, directly or indirectly, to the control, inspection, review, audit, or enforcement by the landscape architect. Finally, when acting as the interpreter of building contract documents and the judge of contract performance, a landscape architect must render decisions impartially, favoring neither party to the contract.

LATC also proposes to add section 2670(e), to state that a landscape architect who has been found by a court to have infringed upon the copyrighted works of other landscape architects or design professionals is subject to discipline.

LATC held a public hearing on these proposed amendments on November 24, and agreed to slightly modify the proposal in response to comments. BAE approved the modified version at its December 4 meeting. On December 14, BAE released the modified language for a 15-day comment period ending on December 29; at this writing, staff is preparing the rulemaking record on the proposed changes for submission to OAL.

OAL Rejects BAE/LATC's Welfare Reform Act Regulations

In 1996, Congress enacted the federal Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA); one provision of this complex legislation reserves "public benefits" for people who are legally in the United States, and defines a professional license as a "public benefit." Governor Wilson interpreted the mandate as a requirement that all licensees and candidates for licensure provide proof of their legal status in the United States. Accordingly, in August 1996, he signed Executive Order W-135-96, calling upon California's state agencies, departments, boards, and commissions to implement a program of compliance as expeditiously and reasonably as practicable; compliance with the federal mandate was required by December 31, 1998.

On December 17, BAE and LATC submitted emergency regulations implementing the federal statute to OAL. Sections 113-113.3, Title 16 of the CCR (applicable to architects), and sections 2610.1-4, Title 16 of the CCR (applicable to landscape architects), would have set forth procedures for verify-

ing compliance with the federal law, and would have essentially permitted an applicant for initial licensure to "self-certify" whether he/she qualifies for a public benefit. On December 23, OAL rejected both packages, on grounds they failed to comply with the clarity and necessity standards of the Administrative Procedure Act. Although the Board has 120 days within which to correct the deficiencies cited by OAL, it is not expected to resubmit these regulations until further guidance is forthcoming from the federal government on the sufficiency of the self-certification method and other issues.

Legislation

SB 2238 (Committee on Business and Professions), as amended August 26, requires BAE to initiate the rulemaking process on or before June 30, 1999, to require its licentiates to provide notice to clients and customers that they are licensed by the state of California. It also requires BAE to submit to the DCA Director, on or before December 31, 1999, its method for ensuring periodic evaluation of every licensing examination that it administers.

SB 2238 also imposes a \$100 application fee for reviewing an applicant's eligibility to take any section of the landscape architect examination; authorizes BAE to establish a fee for each section of the landscape architects' written examination (which fee shall not exceed the Board's actual cost of purchasing and administering the exam); and makes numerous technical changes to the Business and Professions Code provisions creating the new Landscape Architects Technical Committee. This bill was approved by the Governor on September 26 (Chapter 879, Statutes of 1998).

AB 469 (Cardoza). Under existing law, registered limited liability partnerships may only be formed for the practice of accountancy and the practice of law. As amended July 29, this bill authorizes, until January 1, 2002, registered limited liability partnerships and foreign limited liability partnerships to be formed for the practice of architecture. This bill was approved by the Governor on September 15 (Chapter 504, Statutes of 1998).

AB 2721 (Miller), as amended August 10, clarifies that the term of office for Board members is four years expiring on June 1. The bill also provides that any licensee of BAE who engages in, or aids and abets, prostitution in the workplace is guilty of unprofessional conduct and is subject to disciplinary action against his/her license; the bill also provides for the imposition of a civil penalty in such cases. This bill was approved by the Governor on September 29 (Chapter 971, Statutes of 1998).

Litigation

In *Hughes v. Board of Architectural Examiners*, 17 Cal. 4th 763 (1998), the California Supreme Court held that an architect may be disciplined for wrongful conduct that occurred prior to the time the architect's license was issued,

even when the license itself was not obtained by fraud or misrepresentation and despite the fact that the Board's statutes do not expressly authorize it to discipline a licensee for precensure misconduct.

Charles Scott Hughes studied architecture for five years on the east coast, but did not receive a degree. He passed the architectural examination given by the Board of Architectural Examiners of Washington, D.C., but, having failed to submit his college transcript, he did not obtain a license. Nevertheless, he apprenticed in several architectural firms and, in 1982, established his own architectural firm. Initially, Hughes employed licensed architects to perform that part of the work that required licensure as an architect; eventually, however, he personally performed work that required a license. In addition, he took measures to conceal his lack of a license, and to hold himself out as a licensed architect—representing at times that he was licensed in the District of Columbia, Maryland, and Virginia.

In 1989, while Hughes was engaged in the design of an addition to the residence of Dan Quayle, then Vice-President of the United States, it was discovered that he did not have a valid license. The District of Columbia board initiated disciplinary proceedings against him; at the same time, the Commonwealth of Virginia charged him with one misdemeanor count of misrepresentation to a government agency in connection with representations he made in the course of performing architectural services for Arlington County. Hughes entered into an agreement with Virginia, under which he pled guilty in exchange for his agreement to perform 200

hours of community service, undergo counseling, and pay costs. Hughes complied with all the terms of the agreement, and the case was disposed of in 1990 in a manner which enabled him to represent that he had not suffered any prior convictions.

Meanwhile, also in 1990, Hughes applied for licensure in California. On his application form, he indicated that he had passed the licensure exam in the District of Columbia but "did not complete" his licensure at that time. He provided information about his employment at architectural firms as well as his self-employment at his own firm. He left blank that part of the form designated "licensed as," and indicated that he had never been licensed in any other state or country. He denied being convicted of any offense. A month later, Hughes wrote a supplemental letter to BAE, disclosing Virginia's charge against him, his guilty plea, his completion of all terms of his plea, and that fact that all charges were subsequently dropped. BAE permitted Hughes to take its oral examination, which he passed. BAE licensed Hughes on September 10, 1990.

In 1991, NCARB sent a letter to BAE informing it that Hughes had sought NCARB certification based on his California licensure. NCARB indicated its understanding that Hughes had previously been denied licensure in Virginia and the District of Columbia "on the basis of character," and sug-

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gested that BAE look further into Hughes' background. The Board then commenced an investigation, and filed an accusation against Hughes in 1992. The Board charged Hughes with violations of Business and Professions Code sections 490 (making a false statement of fact in his application), 5579 (obtaining his license by fraud or misrepresentation), 5577 (conviction of a crime substantially related to the qualifications, duties, and functions of an architect); 5583 (fraud and deceit in the practice of architecture in the District of Columbia and Virginia, prior to his California licensure), and 5584 (willful misconduct in the practice of architecture in Virginia, prior to his California licensure).

Following a hearing, an administrative law judge found that Hughes had violated sections 5583 and 5584 because he personally had undertaken work requiring licensure, falsely stated that he was licensed in the District of Columbia (and submitted therewith a falsified certificate of another architect), falsely held himself out to be licensed in three states, and had used the stamps of other architects on his own work during the period he operated his own firm—all conduct which occurred prior to his licensure in California. The ALJ recommended that Hughes' California license be revoked; the Board agreed on July 24, 1993.

Hughes filed a petition for writ of mandate in superior court. The court denied the petition, finding that sections 5583 and 5584 authorized disciplinary action based upon prelicensure wrongful conduct, that the Board was not estopped to revoke the license, and that the Board's sanction (revocation) was not excessive. Hughes appealed; the Third District Court of Appeal reversed the judgment solely on grounds that the relevant statutes did not apply to prelicensure wrongful conduct. The California Supreme Court granted review on that limited issue.

Preliminarily, the Supreme Court examined the language of the two statutes at issue. Section 5583 states that "the fact that, in the practice of architecture, the holder of a license has been guilty of fraud or deceit constitutes a ground for disciplinary action." Section 5584 states that "the fact that, in the practice of architecture, the holder of a license has been guilty of negligence or willful misconduct constitutes a ground for disciplinary action." Rejecting Hughes' argument that these statutes do not apply to him because he was not the "holder of a license" at the time of his misconduct on the east coast, the court instead analyzed the tense of the verbs in the statutes. The fact that the legislature used the past tense ("has been guilty") "renders it likely that the Legislature intended these statutes to apply to conduct occurring prior to licensure, but it does not, standing alone, appear to negate the plausibility of the opposite interpretation." Thus, the court moved on to a lengthy examination of the statutory scheme of which sections 5583 and 5584 are a part, and its legislative history. Finding that the purpose of noncriminal administrative disciplinary proceedings is to protect the public health, safety, and welfare, "we construe the statutes broadly to preclude archi-

"We construe the statutes broadly to preclude architects (and those holding themselves out as such) from evading the protective purposes of the Act."

itects (and those holding themselves out as such) from evading the protective purposes of the Act." Although Hughes was granted a license—characterized as a "vested right," that status "entitles him to certain procedural protections....[H]e does not possess a substantive vested right to continue to pursue his occupation. Nor does his status as a licensee ensure that his license may not be revoked based on his prelicensure wrongful conduct."

The court also rejected Hughes' argument that the doctrine of equitable estoppel bars the Board from revoking his license, partly because the court found that "it is evident that, at the time it issued the license, the Board did not have full knowledge of the circumstances giving rise to the allegations of out of state wrongful conduct, nor had it represented that it would not act to discipline the license based upon conduct arising prior to licensure. Under these circumstances, the doctrine may not be applied." The Supreme Court reversed the Third District's ruling, and remanded the matter back to that court to resolve the one remaining issue: whether revocation of Hughes' license was excessive.

On remand, in *Hughes v. Board of Architectural Examiners*, 68 Cal. App. 4th 685 (Nov. 30, 1998), the Third District found that "the Board's decision to revoke plaintiff's license was well within its discretion." The court rejected Hughes' argument that revocation should be limited to cases in which an architect has committed theft or poor workmanship, noting that sections 5583 and 5584 authorize disciplinary action in cases of fraud, deceit, negligence, and willful misconduct. "The public is entitled to be protected from fraud, deceit, and willful misconduct just as much as it is entitled to be protected from shoddy architectural plans or an architect's embezzlement of client funds."

Recent Meetings

At its December 4 meeting, BAE discussed whether it should pursue a legislative amendment changing the name of the Board to the "California Architects Board." Board members noted that inclusion of the word "Examiners" in the Board's name is somewhat limiting, as it implies that the Board simply examines candidates for licensure. Following discussion, a motion to change BAE's name was defeated on a vote of 5-5; the Board decided to defer the issue to its February 1999 meeting.

Also on December 4, BAE elected Marc Sandstrom as Board President, Ed Oremen as Vice-President, and John Canestro as Secretary for 1999.

Future Meetings

- February 5-6, 1999 in La Jolla.
- April 15, 1999 in Pacific Grove.
- June 11, 1999 in Sacramento.
- October 14, 1999 in La Jolla.
- December 3, 1999 in San Francisco.