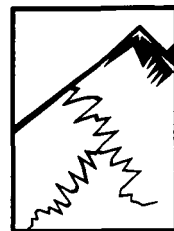


Board of Registration for Geologists and Geophysicists

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The Board of Registration for Geologists and Geophysicists (BRGG) is mandated by the Geologist and Geophysicist Act, Business and Professions Code section 7800 *et seq.* The Board was created by AB 600 (Ketchum) in 1969; its jurisdiction was extended to include geophysicists in 1972. The Board, whose regulations are found in Division 29, Title 16 of the California Code of Regulations (CCR), is a consumer protection agency within the Department of Consumer Affairs (DCA).

BRGG registers geologists and geophysicists, and certifies engineering geologists and hydrogeologists. In addition to successfully passing the Board's written examination, an applicant must fulfill specified undergraduate educational requirements and have the equivalent of seven years of relevant professional experience. The experience requirement may be satisfied by a combination of academic work at a school with a Board-approved program in geology and geophysics, and qualifying professional experience. However, credit for undergraduate study, graduate study, and teaching—whether taken individually or in combination—may not exceed a total of four years toward the requirement of seven years of professional geological or geophysical work.

BRGG is authorized to investigate and discipline registrants who act in violation of its statutes or regulations. The Board may issue a citation to registrants or unlicensed persons for violations of Board rules; an administrative fine of up to \$2,500 may accompany such a citation.

The eight-member Board is composed of five public members, two geologists, and one geophysicist. BRGG's staff consists of five full-time employees and two part-time employees. BRGG is funded by the fees it generates.

Major Projects

Implementation of SB 1984

At its October and December meetings, the Board discussed plans to adopt regulations to implement SB 1984 (Greene) (Chapter 992, Statutes of 1998) (see LEGISLATION). Among other things, SB 1984 requires BRGG to administer—on or before June 30, 2000—"a national examination created by a nationally recognized entity approved by the Board, supplemented by a California-specific examination which tests the applicant's knowledge of state laws, regulations, and of seismicity and geology unique to practice within California." BRGG intends to administer the examination of the National Association of State Boards of Geology (ASBOG) in California. To implement this requirement,

BRGG must enter into an acceptable agreement with ASBOG and must also develop the California-specific examination.

The provision requiring BRGG to use a national exam grew out of the Board's "sunset review" by the Joint Legislative Sunset Review Committee (JLSRC) in 1995-96. During that review, the JLSRC noted that the Board was developing and administering its own test, which contained both essay and multiple-choice questions but had a very low pass rate (25%-30%). At the time, the JLSRC found that eleven of the eighteen states which license geologists use ASBOG's exam, and stated that BRGG's reasons for rejecting the national exam were questionable. The JLSRC recommended that BRGG ask DCA's Office of Examination Resources to evaluate the necessity of continuing to use the California examination, and determine whether the national exam could be used instead (or whether changes could be made to the current exam to increase the pass rate).

The decision to pursue SB 1984 was not without controversy. Opponents to the measure argued that the ASBOG examination does not test for California-specific geologic issues and that the proposed supplemental California-specific examination would not adequately test for this knowledge either; as a result, individuals without equivalent qualifications would qualify for

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licensure. Opponents also suggested that the costs of a national examination and an additional California-specific supplemental examination would be excessive, because the current California examination costs about one-third of the \$300 national examination. During legislative debate on the bill, BRGG countered that its current examination is over 25 years old and, despite periodic modifications, is not a very good testing tool. Specifically, BRGG pointed to the very low pass rate of the existing examination and criticism that its open-ended essay questions are subject to subjective grading. The Board also noted that use of the ASBOG exam would make it easier for California registrants to achieve reciprocity and practice in other states, because most other states which require licensure use the ASBOG exam.

At its December 4 meeting, the Board reviewed draft regulations implementing SB 1984, but referred them back to staff for substantial revisions; at this writing, the Board's Examination Committee is expected to review the modified regulatory package at its January 1999 meeting, and the full Board will review the proposed rules at its February meeting, before they are submitted to the Office of Administrative Law (OAL) for official publication.

Disciplinary Guidelines

On August 28, BRGG announced its intent to amend section 3064, Title 16 of the CCR, which requires the Board—in deciding disciplinary cases—to consider its disciplinary guidelines, which BRGG has formulated to guide registrants, its attorneys who prosecute disciplinary cases, administrative law judges who preside over disciplinary hearing, 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, BRGG (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 June 1997, BRGG adopted section 3064, which requires the Board to consider the 1996 version of its disciplinary guidelines. Existing section 3064 does not contain the Board's disciplinary guidelines, but simply incorporates by reference the 1996 version of the guidelines. Whether this method satisfies the requirement of SB 523 is unclear. In any event, BRGG revised its disciplinary guidelines in June 1998, and now proposes to amend section 3064 to require BRGG to consider the 1998 version of the guidelines.

The June 1998 changes update the minimum and maximum penalties for violation of all of BRGG's statutes and regulations, and set forth both mandatory and optional terms of probation.

The Board held a public hearing on this proposal on October 23; although no one submitted comments on the proposed change to section 3064, BRGG took no vote on whether to adopt the change. At this writing, a vote on the proposed change is scheduled for the Board's April 1999 meeting.

Criteria for Sentencing or Rehabilitation

On August 28, BRGG published notice of its intent to amend section 3061, Title 16 of the CCR, which currently sets forth criteria the Board must consider when evaluating an individual's rehabilitation for purposes of a license denial, revocation, or suspension. Among other things, BRGG's proposed amendments to section 3061 would require it to consider the same criteria when determining an appropriate sanction in disciplinary proceedings. The amendments would also add actual or potential harm to the public, client, or employee, prior disciplinary record, and number and/or variety of current violations to the list of criteria which must be considered by an administrative law judge and the Board when deciding whether to revoke or suspend a license.

BRGG held a public hearing on its proposed amendments on October 23; although no one submitted comments on the proposed changes to section 3061, BRGG took no vote on whether to adopt the changes. At this writing, a vote on the proposed change is scheduled for the Board's April 1999 meeting.

Professional Standards

SB 1346 (Committee on Business and Professions) (Chapter 758, Statutes of 1997) authorizes BRGG to take specified disciplinary actions against a registrant for violating the Board's practice act or regulations, aiding or abetting any person in a violation of the Board's practice act or regulations, or for "conduct in the course of practice as a geologist or geophysicist that violates professional standards adopted by the board." On August 28, BRGG published notice of its intent to adopt section 3065, Title 16 of the CCR, which would establish such professional standards in the areas of competence, misrepresentation, conflict of interest, and confidential information.

With regard to competence, the proposed rule would require

a BRGG registrant to perform professional services only when he/she, together with those whom the registrant may engage as consultants, are qualified by education, training, and experience in the specific technical and scientific areas involved. The regulation further requires registrants to act with competence and reasonable care and apply the technical knowledge and skill which is ordinarily applied by registrants of good standing, practicing in this state under similar circumstances and conditions.

Proposed section 3065 would prohibit a registrant from misrepresenting, or permitting the misrepresentation, of his/her professional qualifications. The rule would permit a registrant to advertise or solicit for any services for which he/she is authorized, provided such services are within his/her field of competence. The rule further prohibits registrants from inaccurately representing to a prospective or existing client or employer his/her qualifications and the scope of his/her responsibility in connection with projects or services for which he/she is receiving compensation; expressing professional opinions that do not have a basis in fact or experience; plagiarizing the work of others; knowingly permitting the publication or use of his/her data, reports, or maps for unlawful purposes; falsely or maliciously injuring (or attempting to injure) the reputation or business of other registrants; and misrepresenting data and its relative significance in any geologic or geophysical report.

In the area of conflict of interest, proposed section 3065 would prohibit a registrant from concurrently engaging in any other business or occupation which impairs the registrant's independence or objectivity, or creates a conflict of interest in rendering professional services; accepting compensation for services from more than one party on a project unless the circumstances are fully disclosed and agreed to by all such

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parties in writing; and soliciting or accepting payments, rebates, refunds, or commissions (whether in the form of money or otherwise) from material or equipment suppliers in return for specifying their products or services to a client or employer of the registrant. The proposal also states that if a registrant has any business association or professional interest which is substantial enough to influence his/her professional judgment in connection with the performance of professional services, the registrant must fully disclose in writing to his/her client or employer the nature of the business association or financial interest; if the client or employer objects, the registrant must either terminate the association or interest or offer to give up the project or employment.

Finally, the proposal would require a BRGG registrant to keep confidential all information obtained in confidence from his/her employer, prospective client, client, or former client by reason of or in the course of his/her employment or other capacity, except for the following: disclosures made in response to a subpoena or summons enforceable by a court order; disclosures made in response to an official inquiry from a government regulatory agency; disclosures made by a registrant to another registrant to the extent necessary for purposes of professional consultation; and disclosures made when specifically required by law. The proposed rule further requires a registrant to affirmatively notify his/her client or employer of the consequences his/her work may have on public health, safety, property, or welfare; and when another professional's expertise is required for successful pursuit of a project. Also under the proposed regulation, a BRGG registrant must "notify appropriate authorities upon discovering an imminent geologic hazard which may threaten the health, safe and welfare of the public" (this provision does not apply "if the registrant has knowledge that adequate notice has previously been provided to the appropriate authorities").

BRGG held a public hearing on proposed section 3065 on October 23. In oral testimony, Jacqueline Lambrichts stated that the misrepresentation section of the regulation is too narrow; in particular, she called on the Board to revise the language to prohibit a BRGG registrant from falsely or maliciously injuring, or attempting to injure, the reputation or business of "others" (as opposed to "any other registrant"); BRGG agreed to make the suggested change. BRGG also received several written comments on section 3065 during the comment period. The Board subsequently issued a slightly revised version of section 3065 for a 15-day comment period that ended on November 23. At its December 4 meeting, BRGG tentatively approved the language for submission to OAL, pending completion of the rulemaking record by DCA legal counsel Gary Duke.

Complaint Disclosure Policy

At its August 14 meeting, BRGG reviewed and approved a new complaint disclosure policy. The goal of the policy is

to provide the public with information about complaints and disciplinary actions against geologists, geophysicists, and unlicensed individuals.

Upon request, the Board provides information regarding closed actionable complaints, complaints closed for no violation or insufficient evidence, and disciplinary action against registrants and unlicensed individuals that were closed within the preceding three years. In addition, the Board will provide, upon request, information pertaining to all accusations and statements of issues once the accusation or statement of issues is filed and served.

A "closed actionable complaint" is defined as a complaint the Board has investigated, determined there was a violation of the laws regulating the practice of geology or geophysics, and taken a nondisciplinary action (such as a warning letter or cease and desist letter) or a disciplinary action (such as a citation, fine, or more severe disciplinary action after the filing of an accusation or statement of issues). As to closed actionable complaints, BRGG will disclose the name of the registrant and registration number, the number of complaints, the nature of the complaint(s), the type of action taken, the result(s) of the action, and the date of closure. A "complaint closed for no violation or insufficient evidence" is defined as

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a complaint which the Board has investigated and determined either that there was no violation of the laws regulating the practice of geology or geophysics, or that there was insufficient evidence to determine whether a violation occurred. For this type of closed

complaint, the Board will disclose the name of the registrant and registration number, the number of complaints, the nature of the complaint(s), the reason for closure, and the date of closure. As to open, pending complaints, the Board provides no information until an accusation or statement of issues has been filed and served.

Geologist and Civil Engineer "Fields of Expertise" Document

In 1989, BRGG and the Board for Professional Engineers and Land Surveyors (PELS) developed a document entitled *Fields of Expertise for Geologists and Civil Engineers*. The document was intended to differentiate between the responsibilities and duties of registered civil engineers and geologists; it identifies activities within the scope of practice of engineering and geology, reviews the "gray areas" where civil engineering and geology overlap, and lists activities that are normally performed by both professions.

In 1995, BRGG and PELS agreed that the document should be updated to reflect changes in both industries. After several meetings between committees of both boards, the committees developed a new document that both sides agreed was ready for adoption by both boards. The document contains a chart describing tasks and functions that may be performed by civil engineers, geologists, or both, in the areas of

classification and physical properties, rock mechanics, soil and rock mapping, slope stability, project planning, surface waters, groundwater, earthquakes and ground vibrations, sub-surface exploration, construction observation, expansive materials, regulatory requirements, embankment fill, interpretation and installation of instrumentation, geosynthetics, ground and water contamination, and solid waste facilities.

In October 1996, PELS officially adopted the document and published it in its licensee newsletter. At BRGG's request, the document was revised; PELS approved the revised document in February 1997 and put it on its website. However, in May 1998, BRGG decided not to adopt the revised document, and has asked PELS to rescind its approval as well. PELS has refused to rescind its approval, but is currently considering modifications proposed by BRGG. The modifications significantly change the structure of the document from the chart of functions to a shorter and less detailed narrative discussion of tasks and functions. At this writing, a task force of BRGG and PELS members and consultants is working to redraft the document.

Legislation

SB 1984 (Greene), as amended July 8, changes BRGG's written examination requirement; specifically, this bill requires the Board, by June 30, 2000, to utilize a national examination created by a nationally recognized entity approved by the Board, supplemented by a California-specific examination which tests the applicant's knowledge of state laws, regulations, and of seismicity and geology unique to practice within California.

This bill also increases the maximum fee for the filing of an application for registration as a geologist or geophysicist or certification as a specialty geologist or geophysicist and for administration of the examination from \$100 to a maximum of \$250, and establishes two new BRGG exam fees—a \$300 maximum examination fee for applicants for geologist registration (to cover the cost of the national exam), and a \$100 maximum fee for applicants for geophysicist registra-

tion or certification as an engineering geologist or hydrogeologist (to cover the cost of development and maintenance of these exams).

BRGG supported SB 1984, which was signed by the Governor on September 29 (Chapter 992, Statutes of 1998).

SB 2238 (Committee on Business and Professions), as amended August 26, requires BRGG to commence the rulemaking process by June 30, 1999, to adopt regulations requiring its registrants to identify themselves to their clients as being licensed by the state of California. This bill also requires BRGG to submit to the DCA Director, on or before December 31, 1999, its method for ensuring the periodic evaluation of every licensing examination that it administers. SB 2238 was signed by the Governor on September 26 (Chapter 879, 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 BRGG registrant 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).

Recent Meetings

At its August meeting, BRGG reelected geologist Seena N. Hoose as Board President, and selected public member Karen Melikian as Vice-President.

Future Meetings

- February 5–6, 1999 in Sacramento.
- April 23, 1999 in San Diego.
- June 4–5, 1999 in Berkeley.
- August 13, 1999 in Los Angeles.
- October 22, 1999 in Fresno.
- December 3, 1999 in San Francisco.