



STATE & CONSUMER SERVICES AGENCY (Department of Consumer Affairs)

BOARD OF ACCOUNTANCY

*Executive Officer: Carol Sigmann
(916) 263-3680*

The Board of Accountancy (BOA) licenses, regulates, and disciplines certified public accountants (CPAs) and public accounting firms and corporations. The Board also regulates and disciplines existing members of an additional classification of licensees, public accountants (PAs); the PA license was granted only during a short period after World War II. BOA currently regulates over 54,000 individual licensees and 5,000 corporations and partnerships. The Board establishes and maintains standards of qualification and conduct within the accounting profession, primarily through its power to license. The Board's enabling act is found at section 5000 *et seq.* of the Business and Professions Code; the Board's regulations appear in Title 16, Division 1 of the California Code of Regulations (CCR).

The Board consists of twelve members: eight BOA licensees (seven CPAs and one PA), and four public members. Each Board member serves a four-year term and receives no compensation other than expenses incurred for Board activities.

The operations of the Board are conducted through various standing committees and, for specific projects, task forces which are sunsetted at project completion. The Board's major committees include the following:

-The Qualifications Committee, among other things, reviews all applications for licensure, reviews workpapers to determine qualifications if it is unable to do so based on a file review, and considers all policy and/or procedural issues related to licensure.

-The Legislative Committee reviews legislation and recommends a position to the Board; reviews and/or edits proposed statutory language and regulatory language developed by other committees before it is presented to the Board; and serves as an arena for the various trade associations to express their concerns on issues.

-The Committee on Professional Conduct considers all issues related to the professional and ethical conduct of CPAs and PAs.

-The Administrative Committee is responsible for handling disciplinary matters concerning licensees.

The Board's staff administers and processes the nationally standardized CPA examination, currently a four-part exam encompassing the categories of business law and professional responsibility, auditing, accounting and reporting, and financial accounting and reporting. Generally, in order to be licensed, applicants must successfully complete all parts of the exam and three or more years of qualifying accounting experience (including experience in applying a variety of auditing procedures); one year of the experience requirement may be waived with college credit. Under certain circumstances, an applicant may repeat only the failed sections of the exam rather than the entire exam.

The current members of BOA are CPAs Avedick Poladian, Victor Calderon, Eileen Duddy, Diane Rubin, Robert Shackleton, Harry Mikkelsen, and Michael Schneider; PA Walter Finch; and public members Robert Badham, Baxter Rice, and Joseph Tambe. Schneider, a partner in the CPA firm of Klein, Schneider & Company in Los Angeles, was appointed to the Board by Governor Wilson in February. Also appointed in February was public member Jeff Wallack, owner of a property tax consulting firm in Sacramento. However, Wallack resigned from BOA in April after he was hired as the new Executive Officer of the Acupuncture Committee. At this writing, Governor Wilson has yet to name a replacement for Wallack.

MAJOR PROJECTS

Long-Range Planning Committee Prepares for Board's Sunset Review. In anticipation of the Board's upcoming "sunset" review under SB 2036 (McCorquodale) (Chapter 908, Statutes of 1994), BOA's Long-Range Planning Committee (LRPC) held four meetings during the spring and

early summer to begin preparing the Board's formal response to the legislature. Under SB 2036, the Board will cease to exist on July 1, 1997, unless the legislature reviews the Board's structure and performance and passes a bill in 1996 extending the sunset date. The bill also creates a new Joint Legislative Sunset Review Committee, which is scheduled to begin holding hearings in October 1995 on BOA and all other Department of Consumer Affairs (DCA) boards which have been assigned a 1997 sunset date. [14:4 CRLR 35] Chaired by public member Baxter Rice and consisting of CPAs Diane Rubin, Robert Shackleton, PA Walter Finch, and former CPA Board member Ira Landis, the LRPC is charged with comprehensively analyzing the Board's current structure, functions, and effectiveness, and with making recommendations to the full Board on structural, procedural, and substantive reforms to its licensing, enforcement, and other regulatory programs. [15:1 CRLR 36-38]

The LRPC's January 25 meeting was attended by Mike Gomez, Senior Consultant to the Senate Business and Professions Committee, who explained the legislature's perspective on the sunset process and advised the Board to work closely with DCA, legislative staff, the profession, and public interest groups such as the Center for Public Interest Law (CPIL) in examining its structure and performance. Gomez also noted the growing tendencies of many legislators to favor the "downsizing" of government and view occupational licensing boards as "just another tax paid by consumers." Committee members generally agreed that the sunset process presents an opportunity to seriously and positively re-examine the Board's programs and activities.

The LRPC also noted that the Board of Accountancy is among the "first tier" of agencies to be examined under the new sunset process and, as such, is not able to benefit from the experience of other boards which have gone through the process. Inasmuch as the Joint Committee has yet to be appointed and has not issued a report format to guide BOA's self-examination, the LRPC reviewed a sunset review report from Texas' accountancy board and commented favorably about the format of the report. The Committee also examined the terms of SB 2036 for the general requirements of the sunset report it must present to the legislature by September, and decided to focus its review on five major areas: (1) the Board's mission, goals, objectives, and legal jurisdiction in protecting consumers; (2) its enforcement program; (3) its fund condition, including revenues and expenditures in all program



components; (4) its licensing program, with a special focus on all aspects of its examination; and (5) its initiation of legislative efforts, budget change proposals, and other initiatives it has taken to improve its consumer protection mandate.

At its February 28 meeting, the LRPC focused on the Board's overall mission and goals. The Committee reviewed the Board's existing mission statement ("the mission of the California State Board of Accountancy is to protect the public by establishing minimum levels of competency, by providing means for redress of grievances, and by conducting periodic checks of licensees to ensure compliance with all relevant sections of the Business and Professions Code") and a proposed revision suggested by Committee Chair Baxter Rice ("the mission of the Board of Accountancy is to protect the public welfare by ensuring that only qualified persons are licensed and that appropriate standards of competency and practice are established and enforced"). At its March 24 meeting, the LRPC unanimously agreed to recommend that the full Board adopt the revised mission statement.

In conjunction with its discussion of the overall mission of the Board, Rice commented that a review of each of the Board's many committees would be appropriate. BOA is unusual in that it accomplishes much of its work through numerous large committees, subcommittees, and task forces—the most important of which are composed entirely of non-Board member licensees. Its use of these committees to make or intimately participate in licensing and enforcement decisions has recently been labeled "excessive delegation" by CPIL [15:1 CRLR 36-38; 13:4 CRLR 5], and Rice suggested a "sunset" review of each committee and its function, structure, and effectiveness. The LRPC agreed, and its review of these committees consumed the vast majority of the agendas of the Committee's March 24 and May 15 meetings.

• **Committee on Professional Conduct**—Chaired by Board member Diane Rubin, the CPC is an advisory committee composed of current and past Board members plus the Secretary-Treasurer of the Board. The CPC was originally formed to study the issue of commission-based payment to CPAs; however, it now looks at other emerging and complex professional issues such as legal liability, non-CPA ownership of CPA firms, and namestyles. One purpose of the CPC is to clarify Board policy on issues for the profession and the public before the need for disciplinary action arises.

At the LRPC's March meeting, Rubin stated that the CPC had met in February to

consider several options: (1) make no changes to the structure and functions of the CPC; (2) maintain the CPC to consist only of Board members and the Secretary-Treasurer and to focus only on emerging issues facing the profession that are of concern to the Board as a consumer protection agency (including some issues which are currently within the jurisdiction of other Board committees); and (3) eliminate the CPC and delegate its current responsibilities to the full Board, other Board committees, and/or specialized task forces created by the Board on an ad hoc basis. Rubin noted two advantages of retaining the CPC in its current structure: It is a small committee which offers an informal setting for discussion, and it makes recommendations to the Board which saves discussion time at Board meetings. However, she expressed interest in exploring Option 2 above, as it would concentrate the CPC's responsibilities in Board members. After discussion, the Committee agreed to keep both Options 1 and 2 open for future consideration.

• **Legislative Committee**—Chaired by BOA public member Bob Badham, the Legislative Committee reviews legislation relevant to the regulation of the practice of public accounting and makes recommendations to the Board; Legislative Committee members also assist the Board by meeting with legislators and testifying at legislative hearings. The Committee consists entirely of Board members and meets approximately twice per year. After considering options similar to those proffered for the CPC, the LRPC unanimously agreed to recommend to the full Board that the Legislative Committee be retained with its current structure.

• **Enforcement Program Management Committee**—Chaired by BOA public member Joe Tambe, the EPMC's function is to provide an overall review and evaluation of the Board's Major Case Program. [14:4 CRLR 32-34] The EPMC was originally created in 1993 as the Outside Counsel Advisory Committee, which developed procedures for the improved management of outside counsel. During the formulation of those procedures, other issues were identified and the EPMC was formed to address those issues and to make recommendations to the full Board for improved management of the Major Case Program. According to Tambe, the EPMC focuses on business- and resource-related issues and provides support to the Executive Officer and staff by "directing the Program and the work of outside counsel." Tambe concluded his presentation by recommending that the EPMC be retained.

During discussion of the EPMC, LRPC Chair Rice asked whether the activities of

the EPMC could be performed by other BOA committees, such as the Major Case Advisory Committee (MCAC) and/or the Administrative Committee (AC), which administers the Board's enforcement program under Business and Professions Code section 5020. Board President Dick Poladian noted that the MCAC advises the Executive Officer on specific major cases, and may be too closely involved to provide the kind of overall guidance and policy review offered by the EPMC. After discussion, the Committee decided to defer a decision on the EPMC until after the AC makes its presentation at the LRPC's June 15 meeting.

• **Long-Range Planning Committee**—LRPC Chair Baxter Rice began the discussion by advocating that, after sunset review, the LRPC be abolished as a standing committee of the Board. He noted that BOA could address special issues and track progress towards goals in other ways: The Board could appoint task forces on an ad hoc basis to address critical issues; staff could be tasked with developing and implementing plans once the Board has identified objectives and priorities; and/or other Board committees could monitor progress in their respective program areas. Following discussion, the LRPC unanimously agreed to recommend elimination of itself as a standing committee, and the use of the options described above to address special issues and monitor progress towards goals.

• **Examination Program**—At its May 11 meeting, the LRPC scrutinized the Board's existing examination program, which involves the administration of the nationally standardized Uniform CPA exam in California. Currently, the Uniform CPA exam is drafted, graded, and the pass point is set by the American Institute of Certified Public Accountants (AICPA), a national trade association; because of the source of the exam and its extremely low pass rate, the Board's use of the exam has recently been criticized by CPIL. [15:1 CRLR 37; 13:4 CRLR 5] The Committee considered several options: (1) no changes to BOA's existing examination process; (2) the Board should contract with an exam service to administer the exam; (3) the Board should create and grade its own exam; (4) elimination of the exam as a requirement for licensure; (5) the Board should cease administering the exam in California but accept it if taken in another state (New York has done this); (6) the Board should advocate the administration of a national examination by a national non-trade association organization, such as the National Association of State Boards of Accountancy (NASBA); and (7) the Board's exam function should be transferred to DCA.



REGULATORY AGENCY ACTION

LRPC member Ira Landis urged rejection of Options 3, 4, 5, and 7 as "not practical in the real world"; the Committee agreed and rejected them. Of the remaining options, Landis noted that Option 1 is the least expensive, since the Board charges no more for the exam than what it costs the Board to administer, whereas an outside exam contractor would want to make a profit. LRPC member Bob Shackleton expressed his opinion that "it's ridiculous for 50 jurisdictions to have 50 different sets of standards as to who sits for the exam and who passes," and urged the Committee to consider Option 6—a national examination, with national standards as to who may sit for the exam, and a national standard as to who passes. CPIL Supervising Attorney Julie D'Angelo expressed her organization's view that it is inappropriate for a trade association to draft, grade, and set the pass point for an exam utilized by a state board to control entry into the CPA profession, and argued that the Board should urge AICPA to divest itself of the exam function and devolve it to NASBA or some other non-trade association. Shackleton and Board President Dick Poladian noted that a move is afoot within NASBA for NASBA to take over all functions related to the Uniform CPA exam.

After discussion, the LRPC agreed to recommend Option 1 to the full Board, with the proviso that it is the sentiment of the LRPC that BOA should work toward Option 6, and that the national association which drafts, grades, and otherwise controls the exam should be a non-trade association.

• **Qualifications Committee**—Chaired by non-Board member CPA Kristine L. Caratan, the QC is a 26-member committee composed entirely of non-Board member CPAs and PAs. Authorized by Business and Professions Code section 5023, the QC examines all applications for CPA licensure for compliance with the Board's education, examination, and experience requirements, and recommends to the Board applicants for the CPA license who fulfill those requirements. In particular, the QC reviews files and workpapers to ensure that applicants have met the Board's experience requirement in Business and Professions Code section 5083 and Rule 11.5, Title 16 of the CCR, which require experience of a specific character and length which enables them to "demonstrate an understanding of the requirements of planning and conducting an audit with minimum supervision which results in full disclosure financial statements" (also known as the "audit" or "attest" requirement). [14:2&3 CRLR 32-34; 14:1 CRLR 27; 13:4 CRLR 5]

After reviewing the current structure and functions of the QC, Caratan set forth seven options considered by the Committee: (1) make no changes to the structure or procedures currently used for licensing CPAs; (2) eliminate all licensure requirements except passage of the CPA exam; (3) eliminate BOA's existing requirement for specific audit experience and instead follow the Uniform Accountancy Act (UAA) model, which requires one year of relevant accounting experience under the supervision of a CPA, but does not require attest experience; (4) create an audit license only, deregulating all other functions typically performed by CPAs; (5) create a system with two types of licenses—the basic public accounting license which would not require demonstration of audit experience nor completion of specific continuing education, and which would authorize licensees to perform all services defined as public accounting except the attest function; and an enhanced license which must be obtained by any CPA wishing to perform the attest function (including audit, review, and full disclosure compilations), and for which attest experience, prescribed continuing education, and a quality (or higher) review would be required; (6) centralize all licensing functions in DCA; and (7) eliminate the QC and its Rule 69 Subcommittee, and hire staff CPAs to perform the work now done by QC members.

Before setting forth the QC's preferences, Caratan noted that "change is afoot in our profession. Not everyone audits. But only a CPA can audit. California is the most populous state, and has the most licensees. Most CPAs don't do any audit work—some don't like it, some know they can't do it, and some are afraid of legal liability." She stated that Option 5 received the most votes as the number one preference of the majority of the QC, but that Option 1 received the most votes overall. Under Option 5, the QC recommended that existing CPAs be initially "grandparented in" as "enhanced" licensees; however, they would be required to meet the "enhanced" standards upon license renewal if they wish to remain licensed at that level. Option 3, calling for replacement of the Board's existing experience requirement with the UAA model, came in third.

LRPC Chair Rice questioned how many CPAs actually perform audit work. BOA Assistant Executive Officer Mary Crocker responded that, of 22,000 licensees who recently renewed their licenses, 13% checked a box indicating they perform audit work, and 31% indicated they perform audit work or compilation. California Society of Certified Public Accountants (CSCPA) representative Bob Ford

opined that the Board should adopt Option 3 and the UAA model; he argued that BOA's current experience requirement is a barrier to entry which is contrary to the public interest because it is too hard to obtain audit experience. He stated that many other states have adopted the UAA model, and that it represents "what the profession is doing today—which is largely other than attest."

After considerable discussion, Diane Rubin moved that the LRPC recommend Option 3 to the full Board, without specifying the number of years of experience to be required. CPIL representative Julie D'Angelo commented that an overhaul of the Board's experience requirement to this degree would eliminate the need for the QC; she recommended that overall licensing policymaking and review of "problem" licensure applications be undertaken by a committee consisting of Board members, and suggested that the Board also vote to eliminate the QC. After more discussion, Rubin amended her motion to recommend Option 3 and eliminate the QC's Rule 69 Subcommittee; the amended motion passed unanimously. Subsequently, LRPC member Bob Shackleton moved that the QC, as it currently exists, be eliminated in favor of a QC which consists solely of Board members; the Committee later tabled Shackleton's motion by a vote of 3-2. The future of the QC will be considered at a future LRPC meeting.

• **Continuing Education Committee**—The CEC, chaired by non-Board member CPA Barry Nagoshiner, administers the continuing education (CE) requirements established by the legislature and the Board. The CEC evaluates CE programs to determine whether they qualify; considers applications for exemptions to the CE requirements; and considers other matters relating to CE as assigned by the Board. The CEC is currently working on establishment of an active/inactive license status, the parameters of a mandatory course in the Rules of Professional Conduct, clarification of guidelines for interactive and other self-study, and studying the issues involved in restructuring the Board's CE program.

As to its future, the CEC considered ten alternatives; although not unanimous and recognizing that improvements are needed, the first choice of the CEC was to continue its current functions within its existing structure. During discussion, Board staff noted that the Board's CE requirement (80 hours during each two-year period) is excessive as compared with other boards, and that administration of the CE program is generally handled entirely by staff at other boards. Nagoshiner acknowl-



edged that "the CEC is not essential. What is essential is a clear statement by the Board as to what is and is not acceptable as a CE course. The Board should reduce the burden of 80 hours and allow licensees to take a reduced number of hours in his/her specialty." Following discussion, the LRPC unanimously voted to recommend to the full Board that the CEC be eliminated and that administration of the Board's CE program be delegated to staff.

• **Administrative Committee**—At its June 15 meeting, the LRPC is scheduled to review the Board's Administrative Committee, a 17-member committee consisting entirely of non-Board member CPAs and PA, and which is statutorily authorized to investigate disciplinary complaints, obtain information and hold hearings, and make recommendations to the Executive Officer and the Board on enforcement actions and policies. The AC's participation in the Board's enforcement process has been the target of criticism by CPIL, which has suggested that the Board fully professionalize its investigative process and seek legislation abolishing the AC. [15:1 CRLR 36-38] The LRPC intends to take a close look at the AC's structure and functions on June 15.

• **Analysis of Enforcement Program Components Continues.** At its January, March, and May meetings, the Board received various reports and presentations about specific components of its enforcement program, which it has been reviewing in detail since September 1994. [15:1 CRLR 35-36; 14:4 CRLR 32-34]

• **Process Used to Monitor Disciplined Licensees.** At BOA's January 20 meeting, Enforcement Chief Greg Newington presented the Board with information on standard procedures used to monitor disciplined licensees.

Within two weeks of the Board's action in a disciplinary matter, BOA sends the results to the licensee and his/her counsel via certified mail. If suspension or revocation of the license is involved, the Board also sends the licensee a copy of its guidelines which inform him/her of the steps he/she must take, including removal of "CPA," "PA," or other titles or indicia which would tend to indicate that he/she is licensed by the Board, and ceasing participation as a principal in a partnership or as an officer or shareholder of a professional accountancy corporation during the unlicensed period. The guidelines for cancelled or revoked licenses also instruct disciplined licensees to inform their clients that they are no longer certified to practice public accountancy in California; no such disclosure is required of licensees whose licenses are suspended. [15:1 CRLR 39]

Licensees placed on probation are usually required to submit quarterly written reports on their activities. The Board provides probationers with "Quarterly Written Report of Compliance" forms, which inquire whether they have been convicted for violations of any federal, state, or local laws and asks them to list all CE courses in which they have participated. During a typical three-year probation, a probationer will be required to appear before the AC three times. The first appearance is scheduled as soon as possible after the disciplinary action, usually within two to three months. At that first appearance, AC members review the terms of probation with the probationer and assure a mutual understanding of the probationary requirements, which may include CE classes or community service (*see below*). Subsequent appearances are scheduled approximately one year apart for the purpose of reviewing and confirming the probationer's compliance with the terms of probation.

Discipline involving suspension or revocation of the license is monitored through unannounced field visits by investigators from DCA's Division of Investigations. These investigators confirm whether the disciplined licensee is complying with the terms of the disciplinary order—for example, not holding him/herself out as a CPA or otherwise practicing public accounting. Probationers are also visited during their terms of probation. These visits are conducted either by a BOA staff investigator or a member of the AC's Technical Review Panel (TRP). The AC decides, on a case-by-case basis, when and how often these visits are conducted. The visits are used to monitor compliance with the terms of probation and to evaluate the quality of accounting services provided by the probationer. The probationer's work product (tax returns, audit, review, and compilation reports and supporting files) are sampled and evaluated to confirm that work is in substantial conformity with professional standards. Probationers' files are reviewed by the AC every year in order to evaluate and confirm overall progress of probationers' success in meeting their responsibilities under the disciplinary order.

• **Community Service Standards.** At BOA's January, March, and May meetings, the AC requested guidance from the Board on the circumstances under which required community service should be imposed as a component of a disciplinary order. On thirteen occasions in the past four years, BOA has included in its disciplinary order a requirement that the respondent provide free professional services on a regular basis to a community or charitable facility or agency, amounting to

a set number of hours (averaging around 300 hours). However, neither AC nor the Board has ever set standards for the imposition of community service. Sometimes community service is imposed because the respondent is financially unable to make restitution to injured victims or reimburse the Board for its costs of investigation. On other occasions, it is imposed where the disciplinary order would normally include suspension but such a sanction would be meaningless because the respondent CPA can continue practice as usual (because he/she does not do audits); on those occasions, required community service has impact because it forces the respondent to "get out of his chair," according to Enforcement Chief Newington. In the recent case of Arthur Andersen, the Board imposed 10,000 hours of required community service on the firm "as an alternative to imposing a consumer education program considered to be an inappropriate form of discipline." [14:4 CRLR 35]

The AC discussed this matter at its January and April meetings, but shelved the matter by determining that it will continue to consider and impose community service on a case-by-case basis until receiving guidance from the Board. Specifically, AC sought guidance on whether the Board views community service as "disciplinary," "punitive," or "educational," and how the AC should arrange for appropriate monitoring of the quantity and quality of community service performed.

At BOA's May meeting, CPA member Victor Calderon questioned whether, when a disciplined firm provides required community service to a nonprofit (especially in small communities), the nonprofit knows that the firm must provide the service as a condition of discipline, or whether the firm is simply reaping unintended public relations benefits. Calderon asserted that, without some form of public disclosure, a smart CPA firm might be able to turn a disciplinary order into unfair competition. Public member Bob Badham concurred with Calderon's concerns, and also noted that the Board must draw a distinction between "punitive community service" and "the type of community service we want to encourage—voluntary community service may be discouraged if the Board imposes mandatory community service such that the public thinks that everyone who is doing community service is being punished."

Following discussion, Board President Dick Poladian created a task force consisting of BOA members Eileen Duddy, Diane Rubin, and Bob Badham to reevaluate the issue of community service.



REGULATORY AGENCY ACTION

• **Use of CPA Staff Investigators.** At the Board's March meeting, Enforcement Chief Greg Newington presented statistics documenting enhanced output by the Board's enforcement program since BOA began to hire and utilize CPA investigators to investigate cases in addition to volunteer AC or TRP members. BOA's review of the details of its enforcement program has been prompted by the sunset bill (*see above*) and by CPIL's charge that the use of private practice CPAs (such as AC and TRP members) to conduct investigations and make enforcement decisions is "unlawful delegation." [15:1 CRLR 36-38; 13:4 CRLR 5]

The Board hired one CPA investigator in 1989, and has gradually increased the total to six. Newington's statistics revealed that since CPA investigators have been utilized, BOA's overall disciplinary output has approximately doubled; the average cost per investigation has been reduced from \$4,905 in 1988-89 to \$3,342 in 1994-95; and the number of old cases has dropped sharply.

The Board and its Long-Range Planning Committee are expected to discuss this issue in conjunction with BOA's sunset review and CPIL's proposal to do away with the AC.

• **"Reportable Events" Regulation.** At its May meeting, the Board approved draft language of a proposed regulation requiring licensees to self-report to the Board certain events which may bear on the quality of their practice. Specifically, the Board considered language drafted by Deputy Attorney General Michael Granen which would require BOA licensees to report to the Board criminal convictions of any felony; any crime involving theft, embezzlement, misappropriation of funds or property, breach of a fiduciary responsibility, or the preparation, publication, or dissemination of false, fraudulent or materially misleading financial statements, reports or information; and any other crime which is in any way related to the qualifications, functions, or duties of a CPA or PA. The proposed regulation would also require self-reporting of the cancellation, revocation, or suspension of a certificate, other authority to practice, or refusal to renew a certificate or other authority to practice as a CPA or PA by any other state or foreign country; and suspension or revocation of the right to practice before any governmental body or agency.

CPIL Supervising Attorney Julie D'Angelo commented that other occupational licensing agencies, including the State Bar and the Medical Board, have adopted self-reporting requirements and that they are generally ineffective without a sanction for noncompliance—which

BOA's draft language lacks. She also noted that if the Board's goal is an enhanced flow of information about licensee misconduct, a "cross-reporting" requirement by other entities is helpful, such as a requirement that court clerks also report criminal convictions against CPAs to the Board. Finally, she suggested that the Board also require self-reporting of professional negligence judgments and settlements. Granen responded that no specific sanction is needed, because noncompliance with a Board rule is already grounds for disciplinary action. He also stated that he considered including malpractice judgments and settlements in the self-reporting requirement, but rejected them because of the lower standard of evidence and burden of proof required in a civil action as opposed to a Board disciplinary proceeding.

Public member Joe Tambe stated that the Board should sponsor legislation requiring cross-reporting. DCA legal counsel Bob Miller suggested that BOA consider participating in the Attorney General's fingerprinting program under which fingerprints of all licensees are collected and stored, and arrests of Board licensees are reported to the Board automatically at point of arrest. Board President Dick Poladian agreed that "anything that gets information onto our screens without significant cost should be seriously considered." Following discussion, the Board agreed to publish Granen's language for a public hearing; at this writing, the notice has not yet been published in the *California Regulatory Notice Register*.

• **Fee Regulations; Abandonment of Applications.** At its March meeting, the Board approved draft language of amendments to section 70 and new section 71, Title 16 of the CCR.

Amended section 70 would establish the following fees: an \$80 application fee for the CPA exam, plus a \$25 fee for each part of the exam requested to be taken by the applicant; a \$250 fee for the issuance of a CPA certificate; a \$150 fee charged to each applicant for registration, including each applicant for registration under a new name, as a partnership or corporation; a \$175 fee for biennial renewal of a license to practice as a CPA, PA, partnership, or corporation (the statutory maximum is \$250 biennially); and a \$25 fee for the processing and issuance of a duplicate copy of any certificate, registration, permit, or other form evidencing licensure or renewal of licensure.

New section 71 would state that an applicant for examination who fails to appear for the examination shall be deemed to have abandoned the application and shall forfeit the examination fee. An appli-

cation for a certificate, permit, registration, or license, including any application for renewal, shall be deemed abandoned and any application fee shall be forfeited if the applicant fails to complete the application within two years of its original submission or within one year of notification by the Board of any deficiency in the application.

At this writing, BOA is scheduled to hold a public hearing on these proposed regulatory changes at its July 21 meeting in Los Angeles.

• **Board Adopts Rulemaking Package.** At its May 12 meeting, the Board adopted several proposed changes to its regulations in Division 1, Title 16 of the CCR.

According to the Board's notice of proposed rulemaking, its amendments to sections 6, 7, 10, 11.5, and 21, and its repeal of sections 11 and 21.5, conform its regulations to SB 2079 (Campbell) (Chapter 1278, Statutes of 1994), which made technical revisions to various license requirements, reciprocity provisions, examination provisions, and procedures. [14:4 CRLR 35]

The Board also adopted new section 68.1, to provide licensees with a definition of the term "working papers" and establish requirements for the retention of working papers. Specifically, "working papers" is defined as "the licensee's records of the procedures applied, the tests performed, the information obtained, and the pertinent conclusions reached in an audit, review, compilation, tax, special report or other engagement." Under the new regulation, licensees are required to retain working papers during the pendency of any Board investigation, disciplinary action, or other legal action involving the licensee. Licensees shall not dispose of such working papers until notified in writing by the Board of the closure of the investigation, or until final disposition of the legal action or proceeding if no Board investigation is pending.

At this writing, Board staff is preparing the rulemaking file on these proposed regulatory changes for submission to the Office of Administrative Law (OAL).

• **Update on Other Board Rulemaking.** The following is a status update on other BOA regulatory proposals discussed in detail in previous issues of the *Reporter*:

• **Government Auditing Continuing Education Requirements.** At its March 25 meeting, the Board revisited proposed amendments to section 87, Title 16 of the CCR, which sets forth continuing education (CE) requirements for its licensees. Section 87 generally requires all BOA licensees to complete 80 hours of qualifying CE during each two-year renewal period. In July 1994, the Board adopted sev-



eral revisions to section 87, including an amendment to section 87(b) to specify that licensees who are engaged in planning, directing, conducting substantial portions of field work, or reporting on financial or compliance audits of a governmental agency at any time during the preceding license period are required to have completed 24 of the 80 hours in the areas of governmental accounting, auditing, or related subjects. Under the proposed language, "related subjects" include those which maintain or enhance the licensee's knowledge of governmental operations, laws, regulations, or reports; any special requirements of governmental agencies; and any other topics related to the environment in which governmental agencies operate. [15:1 CRLR 38; 14:4 CRLR 34]

At the request of CSCPA, the CEC met in late December 1994 and on February 1, 1995 to further work on the language of section 87(b). On February 1, the CEC revised the language defining the term "related subjects" as follows: "Related subjects are those which maintain or enhance the licensees' knowledge of governmental operations, laws, regulations or reports; any special requirements of governmental agencies; subjects related to the specific or unique environment in which the audited entity operates; and other auditing subjects which may be appropriate to government auditing engagements."

At its March meeting, the Board approved the CEC's recommendation on section 87(b). At this writing, staff is preparing the rulemaking file on all of the revisions to section 87 for submission to OAL.

• **Amendments to Rules of Professional Conduct.** Also at the Board's March meeting, staff reported that OAL had rejected the Board's regulatory changes to several sections in Article 9, Division 1, Title 16 of the CCR, which prescribes rules of professional conduct for BOA licensees. Specifically, the Board amended sections 54 (confidential information), 54.1 (prohibition on disclosure of confidential information), 52 (response to Board inquiry), 54.2 (recipients of confidential information), 55 (permission to use name), 56 (commissions), 58 (compliance with standards), 58.1 (accountant's report on the examination of financial statements), 58.2 (accountant's report on unaudited financial information of a public entity), 58.3 (compilation and review of financial statements), 60 (discreditable acts), 63 (advertising), 64 (use of name with estimate of earnings), 65 (independence), 68 (retention of client's records), and 52.1 (failure to appear before BOA or one of its committees). Most of these proposed changes

are technical and involve renumbering existing sections for greater clarity and consistency. [14:4 CRLR 34]

OAL's objections centered on the changes to section 54, which defines an exception to the term "confidential information," requires licensees to provide "reasonable notice" to a prospective client that information being provided to the licensee for purposes of retention will not be treated as confidential in the event the provider does not become a client of the licensee, and "promptly" return the original and all copies of documents provided by the prospective client; OAL found that the terms "reasonable notice" and "promptly" were undefined in the Board's amendments to section 54.

At its May meeting, the Board approved a modified version of section 54. The modification defines the term "reasonable notice" to mean the following: "(1) With respect to oral communications, including telephonic communications, reasonable notice consists of oral notice to the speaker given immediately by the licensee upon hearing that client information is being presented or will be presented. (2) With respect to written communications, including electronic and facsimile communications, reasonable notice consists of an oral or written notice to the sender within one business day." The modified version also defines the term "promptly" as meaning within 30 days.

At this writing, Board staff is preparing the rulemaking package on the Article 9 changes for resubmission to OAL.

■ LEGISLATION

AB 1260 (Machado). Under existing law, BOA is authorized to prepare a printed register that contains specified information, including an alphabetical list of the names, certificate numbers, business connections and addresses of all CPAs and PAs whose permits are in full force and effect, and an alphabetical list of the names of the CPA and PA partnerships whose permits are in full force and effect. This register is required to be mailed to those persons listed, and to other persons or concerns as the Board, in its discretion, determines is for the public welfare. As introduced February 23, this bill would repeal this provision and instead require BOA to compile and maintain, or have compiled and maintained on its behalf, a register of licensees that contains information that the Board determines is necessary for the purposes for which the Board was established.

Under existing law, a person who is not a CPA or PA may serve as an employee of, or an assistant to, a CPA or PA or partner-

ship composed of CPAs or PAs holding a permit to practice, if the employee or assistant works under the control and supervision of a CPA, a PA authorized to practice public accountancy, or a corporation permitted to continue its practice under its corporate form and arrangement, and if the employee or assistant does not issue any statement over his or her name. This bill would recast the above provision to authorize those persons to serve as employees of, or assistants to, a corporation composed of CPAs or PAs under the above conditions, if under the control and supervision of a CPA or a PA authorized to practice accountancy. [S. B&P]

AB 1087 (Boland). Existing law sets forth the qualifications required of a person appointed or elected county auditor; among other things, a person may be appointed or elected pursuant to these provisions if that person possesses a valid certificate or diploma of graduation from a school of accountancy. As introduced February 23, this bill would instead provide that a person may be appointed or elected pursuant to these provisions if he or she possesses a baccalaureate degree from an accredited university, college, or other four-year institution, with a major in accounting or its equivalent. [S. LGov]

SB 1077 (Greene). Existing law creates the Tax Preparer Program (TPP) in DCA, and requires tax preparers to register with the administrator of the TPP, pay specified fees, and file a surety bond with the DCA Director as a requirement of doing business. As amended March 29, this bill would abolish the Tax Preparer Program and instead require tax preparers to file a bond with the Secretary of State. [A. CPGE & ED]

SB 513 (Calderon), as amended May 8, would authorize the establishment of limited liability partnerships, in which each of the partners must generally be licensed to practice law or public accountancy. [S. Floor]

■ LITIGATION

In International Engine Parts, Inc. v. Feddersen and Co., 9 Cal. 4th 606 (Mar. 2, 1995), the California Supreme Court settled "a narrow but recurring issue" by holding that—for statute of limitations purposes—the actual harm from an accountant's negligent filing of a tax return occurs on the date the final deficiency is assessed by the Internal Revenue Service (IRS).

International Engine Parts, Inc. (IEP) hired Feddersen and Company to perform accounting services. Feddersen prepared tax returns for IEP's subsidiary IEPO for tax years 1983 and 1984. For those tax years, Feddersen failed to provide the IRS



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with certain documentation which would allow IEPO to maintain its status as a domestic international stock corporation (DISC) and thereby be eligible for certain tax benefits and deferred income. In 1984, the IRS audited IEP's income tax returns. In 1986, the IRS notified IEP that because of Feddersen's failure to file the proper documentation, IEPO would be disqualified as a DISC. The IRS issued its final assessment on May 16, 1988. IEP and IEPO filed an action against Feddersen on May 15, 1990. Feddersen moved for summary judgment, contending that IEP filed its action beyond the two-year statute of limitations period in Code of Civil Procedure section 339(1). The trial court granted Feddersen's motion; the appellate court affirmed.

The California Supreme Court reversed. After an exhaustive review of the IRS' audit procedures, the court concluded that Feddersen and the court of appeal confused the determination of tax liability with finalization of the audit process, at which point the tax deficiency is actually assessed. The deficiency assessment serves as a finalization of the audit process and the commencement of actual injury, because it is the trigger that allows the IRS to collect amounts due and the point at which the accountant's alleged negligence has caused harm to the taxpayer. The court further stated that, although Feddersen's alleged negligence might have been discovered by IEPO during the IRS audit, "such potential liability could not amount to actual harm until the date of the deficiency tax assessment or finality of the audit process."

■ FUTURE MEETINGS

July 21-22 in Los Angeles.
September 8 (special Board meeting to adopt sunset report; location undecided).
September 22-23 in Sacramento.
November 17-18 in San Diego.

BOARD OF ARCHITECTURAL EXAMINERS

Executive Officer:
Stephen P. Sands
(916) 445-3393

The Board of Architectural Examiners (BAE) was established by the legislature in 1901. BAE establishes minimum professional qualifications and performance standards for admission to and practice of the profession of architecture through its administration of the Archi-

tecs 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). Duties of the Board include administration of the Architect Registration Examination (ARE) of the National Council of Architectural Registration Boards (NCARB), and enforcement of 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. BAE is a ten-member body evenly divided between architects and public members. Three public members and the five architects are appointed by the Governor. The Senate Rules Committee and the Speaker of the Assembly each appoint a public member.

While there are no vacancies on the Board at this writing, the terms of three members—Dick Wong, Betty Landess, and Peter Chan—have ended, and they can be replaced by the Governor at any time.

■ MAJOR PROJECTS

Intern Development Program Update. For the past year, BAE has been considering a proposal to require completion of a structured internship program as a requirement for licensure as an architect in California. At BAE's May 1994 meeting, the Internship and Oral Examination Committee presented to the full Board its recommendation that BAE approve the concept of requiring candidates for licensure in California to complete supervised training which meets the standards of NCARB's Intern Development Program (IDP). The Board adopted this recommendation, and directed the Internship and Oral Examination Committee to develop regulations and an implementation plan in consultation with the American Institute of Architects, California Council (AIACC). [14:2&3 CRLR 36; 14:1 CRLR 30] Since that time, the BAE/AIACC task force—now called the IDP Implementation Task Force—has identified several concerns with NCARB's current IDP standards, and agreed that they should be made more flexible and easier for candidates to satisfy in several respects. Among other things, the Task Force would like NCARB to expand the definition of acceptable training activities, and expressed concerns about existing IDP rules which specify when IDP value units may be earned and the overall cost of the recordkeeping involved to the candidates, the firms for which they are working, and the Board. [14:4 CRLR 37-38] In November 1994, the Task Force

agreed that until June 1995, it should focus on communicating with various constituent groups for the purpose of providing accurate information about IDP and the role and activities of BAE and AIACC, and listen to the concerns of students, candidates, licensees, and firms on the proposal for implementing IDP in California. The Task Force also agreed to identify those IDP training requirements and conditions that it recommends be changed and communicate those concerns to NCARB. In December 1994, BAE approved the Task Force's plan; the Board also agreed that it would take whatever action is necessary to effectuate the Task Force's final recommendations. [15:1 CRLR 40]

At BAE's February 10 meeting, the Task Force reported its satisfaction with the feedback it had received from students and candidates, but noted that there had not been enough feedback from licensees and firms. Accordingly, the Task Force held a roundtable specifically for licensees and firms in San Diego on March 17, and invited the principals of approximately twenty firms to share their thoughts and concerns regarding the proposed IDP program. At this writing, the Task Force has not formally reported the results of the roundtable to the full Board.

Reciprocity With Canada. An Inter-recognition Agreement between the Committee of Canadian Architectural Councils (CCAC) and NCARB became effective on July 1, 1994; this agreement provides for reciprocal architectural registration and permission to practice by qualified architects within participating jurisdictions in both countries. The Agreement also requires that each NCARB member board execute a Letter of Undertaking stating its intent to register Canadian architects who apply for licensure, based on meeting NCARB's certification requirements; California must also execute this letter in order to enable California licensees to practice in Canadian provinces. At its December 1994 meeting, BAE adopted the recommendation of its Written Examination Committee to allow Canadian licensees to be eligible for reciprocity licensure by obtaining a NCARB certificate. [15:1 CRLR 41]

On February 3, BAE published notice of its intent to amend section 121, Title 16 of the CCR, which sets forth the circumstances under which a candidate may be granted licensure. The Board's proposed change would allow an architect registered in a Canadian province who has been issued a NCARB certificate to be eligible for California licensure upon passing the Board's oral examination. On March 22, BAE held a public hearing on the proposed change; at its April 19 meeting, the