



STATE & CONSUMER SERVICES AGENCY (Department of Consumer Affairs)

BOARD OF ACCOUNTANCY

Executive Officer: Carol Sigmann
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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, Joseph Tambe, and Christina Chen. Governor Wilson recently appointed Chen to replace Jeff Wallack, who resigned in April after accepting a position as Executive Officer of the Acupuncture Committee. Chen, a real estate licensee since 1988, is the manager of a property management firm in the Los Angeles area.

MAJOR PROJECTS

Board Adopts Final Sunset Report and Testifies at Legislative Sunset Hearing. After nine months of work toward BOA's first-ever "sunset" review under SB 2036 (McCorquodale) (Chapter 908, Statutes of 1994), BOA's Long-Range Planning Committee (LRPC) completed its analysis of all Board committees and programs and submitted a comprehensive sunset report to the Board for approval on September 8. The Board approved the report, and forwarded it to the legislature on September 29. At a December 5 hearing of the Joint Legislative Sunset Review Committee, BOA President Dick Poladian, public member Bob Badham, and Executive

Officer Carol Sigmann testified before the committee and urged it to recommend an extension of the Board's existence. Under SB 2036 and AB 778 (Aguilar) (see LEGISLATION), 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.

• **LRPC Completes Analysis of Board Committees and Programs.** As part of its exhaustive analysis, the LRPC reviewed each of the Board's many committees and programs. Following reviews during the spring of 1995, the Committee recommended that the Board retain the Legislative Committee; sunset the Continuing Education Committee, Qualifications Committee, and Long-Range Planning Committee; retain but restructure either the membership or function of the Committee on Professional Conduct and the Enforcement Program Management Committee; and retain its existing examination program—whereby the Board administers the nationally standardized Uniform CPA Examination developed and graded by the American Institute of Certified Public Accountants (AICPA)—but urge AICPA (a national trade association) to divest itself of its role in controlling the examination. In conjunction with its recommendation to sunset the Qualifications Committee, the LRPC also suggested that the Board sponsor legislation abolishing the current audit experience requirement for licensure, and replacing it with the Uniform Accountancy Act (UAA) experience requirement. [15:2&3 CRLR 32-35]

On June 15, the LRPC commenced its inquiry into the structure and function of the Board's Administrative Committee (AC), a 17-member committee which consists entirely of non-Board-member CPAs. Under Business and Professions Code section 5020 et seq., the AC is authorized to receive and investigate complaints against CPAs, hold private hearings to "obtain information and evidence relating to any matter involving the conduct of public accountants and certified public accountants," and make recommendations to the Board for action on disciplinary matters.

At the June 15 meeting, AC Vice-Chair Martin Laffer presented a 19-page analysis of the Committee prepared by the Committee. The report recommended retention of the AC with several changes, including the following: (1) the AC should be reduced in size to twelve members, with diversity by firm size and areas of practice and expertise; (2) cases should be divided into distinct areas of practice deficiency, such as technical administrative violations, competency or performance issues, major



cases, and unlicensed activity; Enforcement Unit staff will "grade" or prioritize all cases; the AC will handle major cases and competency issues and staff will handle administrative violations and unlicensed practice; (3) staff should take over the monitoring of probationers; and (4) an "internal audit" subcommittee of the AC should randomly audit case files to ensure they are being consistently graded and handled.

Also on June 15, Center for Public Interest Law (CPIL) representative Julianne D'Angelo Fellmeth presented lengthy oral testimony on CPIL's objections to the existence and role of the AC. Repeating the commentary made by CPIL to the full Board in September 1994 [15:1 CRLR 36-38], D'Angelo Fellmeth noted that no other California occupational licensing board maintains an AC-like structure consisting of non-board-member practitioners who intimately participate in state enforcement decisions involving their colleagues and/or competitors. She argued that the statute creating the AC constitutes an unlawful delegation of state police power to private parties; as such, it is unconstitutional and may violate the due process rights of accused practitioners.

D'Angelo Fellmeth also questioned Laffer, other members of the AC and the Board, and Board staff about the extent to which the AC merely "makes recommendations" as required by the statute or whether it actually makes disciplinary decisions which are not reviewed or ratified by the Board or its staff. Enforcement Chief Greg Newington stated his understanding that the AC controls enforcement decisionmaking; he noted his impression that "the AC has the final call on whether a case goes forward," and expressed doubt about whether staff could reverse or veto a "recommendation" of the AC. If this is the case, D'Angelo Fellmeth contended, the AC's actions may also violate federal antitrust law and Business and Professions Code section 5022, which expressly restricts the AC to making recommendations.

D'Angelo Fellmeth also noted that the hallmarks of a properly functioning agency discipline system include consistency of decisionmaking based on clearly articulated standards, efficiency (the system must be adequately staffed with people who are familiar with the standards and have the time to review and analyze materials promptly), and a neutral, unbiased decisionmaker with no actual or apparent conflict of interest. She argued that the AC's own 19-page document demonstrated that the AC fails to satisfy these prerequisites. In its report, the AC acknowledged a lack of consistency in decisionmaking among the many

subgroups of the AC which review files and hold Administrative Committee Investigative Hearings (ACIHs); a lack of efficiency ("the AC's review of investigative files can require approximately two months be added to the investigative cycle....ACIHs may add one to four months to the cycle"); the expense of the system (it costs BOA \$193,000 per year to maintain the AC); and the possibility that the benefits of the AC structure are unclear or outweighed by its costs. Additionally, the "decisionmakers" in these matters are not state officials but private colleagues and/or competitors of the respondent CPA.

D'Angelo Fellmeth urged the LRPC to recommend abolition of the AC. She stated that all investigative functions and enforcement decisionmaking should be performed by the Board's enforcement staff (with the exception of the final decision, which should be made by duly appointed Board members), not by non-Board-member CPAs. She suggested that the Board transform the AC into a panel of experts who can assist the enforcement program with expert file review and expert testimony at disciplinary hearings—but on a case-by-case basis rather than as an institutionalized mechanism permitting the profession to review and decide disciplinary matters.

After extensive testimony and discussion at its June meeting, the LRPC put off any decision on the AC until its July meeting. On July 14, Enforcement Chief Greg Newington presented a report indicating that the Board would need to add two staff members to replace the functioning of the Administrative Committee. Also by the July meeting, Julie D'Angelo Fellmeth had reduced her comments to writing and included an extensive legal analysis of the reasons CPIL believes the structure and functioning of the AC is unlawful. After discussion, however, LRPC members approved a motion preserving the AC but clarifying that (1) the Executive Officer has ultimate decisionmaking authority in all cases, and (2) in carrying out its enforcement responsibilities, the AC operates in an advisory capacity to the Executive Officer and to the Board itself. The LRPC also approved, with minor modifications, the AC's recommendations for internal reform described above.

The LRPC also reviewed BOA's Positive Enforcement Program and its Reporting Standards Committee, which were recently merged into the Report Quality Monitoring Committee (RQMC). The function of the merged committee is to review the audit workpapers of BOA licensees who, during the previous two-year license renewal period, (1) had primary responsibil-

ity and signature authority for the issuance of reports on financial statements, and (2) issued one or a combination of audit, review, or compilation reports. The RQMC meets monthly and reviews the self-selected workpapers of a random sample of 30 CPAs; in 1994, the RQMC reviewed 342 files, and rated 20% of those files as marginal or substandard. This figure is actually a slight improvement over results from 1993 (25% less than acceptable) and 1992 (34% less than acceptable). Following a review which is either marginal or substandard, the CPA is required to undergo follow-up reviews and/or remedial continuing education (CE); although the primary focus of the Program is intended to be educational, a CPA who receives two consecutive substandard evaluations is referred to enforcement.

Following his presentation, RQMC representative Chuck Chazen recommended that the Program be retained and expanded. Although LRPC members generally agreed that the Program is valuable, they noted that it would be impossible for the RQMC to review the workpapers of all CPAs who perform audits. Board President Dick Poladian explained the differing levels of peer review, and suggested that the RQMC focus on reviewing the work of CPAs who are not otherwise subject to a quality review (e.g., through private association membership or employment requirements). Following discussion, the LRPC passed a motion to continue the RQMC but require it to focus on those CPAs whose work is not reviewed in any other way, so as to reach a greater percentage of those likely to benefit from the review; and to recommend that the Board consider mandating a minimum level of CE in appropriate areas, such as financial statement disclosure and reporting for those who issue financial statements. AB 1260 (Machado), currently pending in the legislature (see LEGISLATION), is consistent with the latter recommendation.

• Board Approves Sunset Report and Recommendations. At a special meeting on September 8, the full Board considered the LRPC's final sunset report and recommendations. During discussion about the proposed reforms to the Administrative Committee, public member Joe Tambe objected to the report's characterization of the AC as an advisory committee, commenting that in practice the AC makes enforcement decisions and that the "advisory committee" description appears "contrary to statute." Department of Consumer Affairs (DCA) legal counsel Bob Miller opined that the Board may choose to delegate enforcement decisionmaking to the AC; according to Miller, "the Board could



even delegate its authority to file accusations to the AC." CPIL's Julie D'Angelo Fellmeth disagreed with both Tambe and Miller, noting that Business and Professions Code section 5022 expressly limits the AC to making recommendations, and arguing that the Board may not choose to violate the Constitution, the federal anti-trust laws, or the Business and Professions Code—which, in her opinion, any Board action to delegate enforcement decisionmaking to the AC would accomplish. LRPC Chair Baxter Rice noted that the LRPC had carefully crafted its recommendation concerning the AC to "circumvent [CPIL's] attack on the functioning of this committee—it's compromise language, but in the long run it's better than drawing a line in the sand and saying 'come and challenge it.'" Following discussion, BOA agreed to retain the AC with the clarification that it is an advisory committee; the Board also approved the other recommendations contained in the sunset report—including the proposal to abolish the Board's existing audit experience requirement and replace it with the UAA experience requirement (which requires public accounting experience but no audit experience).

As required by the Joint Legislative Sunset Review Committee, the Board's sunset report also discussed the need to regulate certified public accountants. BOA argued that the increased complexity of financial transactions requires regulation of accountants who audit and attest to financial statements. Further, said BOA, the public expects the profession to be regulated, and the Board's various programs have been developed in response to public expectation and to preclude consumer injury. BOA stated that if the Board and its licensing program were discontinued, consumers, investors, financial institutions, and government agencies would suffer financial harm which could have long-term consequences; consumers could not benefit from the licensing information available from the Board; consumers would not be protected by the Board's enforcement activities which remove incompetent practitioners from the marketplace and/or provide for rehabilitation; and the courts—which would become the primary means of redress of disputes between CPAs and their clients—would become overburdened. Finally, the Board noted that the services provided by CPAs have a broad impact on the success and growth of California businesses; "the availability of the services of highly trained accounting professionals is essential if California's businesses are to compete effectively in this global marketplace."

• **BOA Makes Presentation to Sunset Review Committee.** On December 5, the

Board made its presentation to the Joint Legislative Sunset Review Committee; chaired by Senator Ruben Ayala, the JLSRC also consists of Senators Dan Boatwright and Maurice Johannessen, and Assemblymembers Jackie Speier, Jim Morrissey, and Bruce Thompson.

BOA President Dick Poladian summarized the theme of the Board's sunset report: "This profession does not find its boundaries within the State of California. Its standards are national. Our charge is to reconcile our system with 53 others." Poladian stated that the board format (as opposed to a bureau, department, or no regulatory program) is appropriate because it is cost-efficient and accessible to the public. On the cost-efficiency issue, he noted that "bigger is not better. We use a large group of volunteer committee members as opposed to the fixed costs of staff—it's more cost-efficient. A blend of staff resources and volunteers is good—their skills are needed to look at various types of reports and conduct."

Following the Board's testimony, several accountant trade associations presented comments. Gale Case, President of the California Society of Certified Public Accountants (CSCPA), supported a proposal for mandatory onsite peer reviews on a three-year cycle for all CPA firms that issue reports on financial statements; according to CSCPA's position statement, these peer reviews would be administered by CSCPA, and supervised by the Board through an annual site visit. Steve House and Art Kroeger of the Society of California Accountants presented testimony in favor of extending the Board's existence. Elaine Lytleton of the California Society of Accounting and Tax Professionals, an organization of non-CPA accountants, argued in favor of creating a new classification of licensee entitled "registered accountant"; these practitioners would perform non-audit/attest services, would be required to demonstrate competence and experience, and would be subject to a CE requirement. Currently, non-CPA accountants may perform non-audit/attest accounting services without a CPA license from the Board; however, they may not use the terms "accountant" or "accounting" in advertising without adding a disclaimer that the services they provide do not require a state license, under *Moore v. Board of Accountancy*, 2 Cal. 4th 999 (1992). [12:4 CRLR 52-53]

CPIL's Julie D'Angelo Fellmeth also testified at the sunset hearing. In her remarks, she focused on the Center's contentions with regard to the existence and functions of the Administrative Committee (see above); she disagreed with

Poladian's portrayal of the AC as "a cost-effective, judicious use of volunteer resources," instead characterizing the AC as "a systematic, institutionalized system for running consumer complaints past the profession—90% of which never see the light of day after hitting that screen." She also argued that the Board's Enforcement Program is overly complex, with an "extraordinary number of 'stages' and 'phases' where cases may be dropped or dismissed." She criticized BOA's routine use of expensive outside counsel (instead of the Attorney General's Office) to handle disciplinary matters, and its unusual and controversial use of Board members in the pre-decisionmaking stage of the enforcement process—thus requiring the recusal of those Board members if and when a proposed decision or stipulated settlement is presented to the Board.

D'Angelo Fellmeth also submitted written testimony describing other problems with the Board's regulatory program, including the following: (1) the examination used by BOA to bar entry into the CPA profession has an extremely low pass rate and is drafted and graded by a national trade association; (2) the Board's experience requirement is extremely vague and constantly evolving without the benefit of a statutory or regulatory change; (3) BOA has failed to repeal or amend the regulation which was ruled unconstitutional in *Moore v. Board of Accountancy*; and (4) it maintains an excessive CE requirement—BOA's 80-hour biennial requirement is approximately double that of most other occupational licensing boards. [13:4 CRLR 5]

Finally, D'Angelo Fellmeth expressed concern about the Board's proposal to eliminate the audit portion of its experience requirement. She noted, "The 'attest' or 'audit' function is the essence of the CPA license. It is the only accounting function reserved to the CPA profession. Consumers have no choice as to practitioner when an audit is needed; a CPA must be used." She cited the RQMC's findings that—even with the existing audit experience requirement—an unacceptable proportion of the audits reviewed (one-fourth to one-third) were marginal or substandard (see above). Doing away with that requirement, she stated, would further diminish CPAs' competence in the attest function. D'Angelo Fellmeth stated that "CPIL is increasingly of the belief that the Board is licensing the wrong group of people. It should license only auditors. Its examination, education, experience, and CE requirements should be focused directly on competence in the audit function."

Following D'Angelo Fellmeth's presentation, Board member Eileen Duddy offered testimony to the Joint Committee. She



noted her disagreement with the Board's decision to do away with the attest portion of its experience requirement, opining that the driving force behind this recommendation is the desire of "Big Six" accounting firms to qualify more and more of its employees as CPAs although they do not perform audits. According to Duddy, "[i]t is reasonable to assume that these large firms are having difficulty finding enough work to qualify computer specialists and financial advisers as CPAs under the current licensure requirements. For individuals specializing in these areas, the CPA license is nothing more than a highly desirable marketing tool to instill public confidence in their ability. To eliminate the Board's required audit experience to accommodate the self-serving interest of these specialists would defeat the whole purpose of the CPA license and subject California consumers to more of the audit failures receiving wide publicity in recent years."

At this writing, the Joint Legislative Sunset Review Committee is scheduled to release its report and recommendations on BOA by January 16.

Outside Consultant Evaluates BOA's Enforcement Program. At BOA's November meeting, Carlo Grifoni, Senior Manager of KPMG Peat Marwick, presented KPMG's *Report on the Business Process Reengineering Activities of the Board's Enforcement Program*. The "business process reengineering" (BPR) effort, commenced by BOA on August 1, 1995 through a contract with KPMG, was intended to allow Enforcement Program management and staff to analyze and redefine current business processes to achieve measurable improvements in critical performance areas. Specifically, the Enforcement Program sought to reduce processing times at all stages of the enforcement process, enhance customer service, improve work quality, and reduce Program costs.

As a result of its study (which included interviews with AC members and Enforcement Program staff), KPMG made twelve major findings in four areas: mission/objectives, investigative case management, organizational structure, and use of technology.

In the area of mission and objectives, KPMG found a general consensus among Board members, AC members, and Program management on the overall mission of the Board and objectives of the Enforcement program; however, "it is difficult for stakeholders to gauge Program performance because there is no formal evaluation and reporting structure." KPMG recommended that BOA establish Program objectives, and meet regularly to review progress toward and evaluate those objectives.

With regard to investigative case management, KPMG found that (1) an excessive number of control review points and other control-oriented tasks delays the intake and investigation process; (2) the Board has failed to establish a formal system for case planning and target setting ("which results in ad hoc and/or inconsistent execution of case management"); (3) the Board has failed to establish standard, accepted criteria for categorizing and prioritizing cases; (4) formal, documented investigative policies and procedures for use by the Board's investigative CPAs (BOA-employed investigators who are CPAs) are inadequate; (5) respondents are not asked to provide information about a complaint until the investigation reaches active status (a delay of as long as three months); (6) the practice of routinely seeking the complainant's desire for confidentiality creates significant delays in the assignment and investigation of cases; and (7) there is excessive follow-up (three letters) with respect to compliance with Program cease and desist orders in unlicensed activity cases. To resolve these problems, KPMG recommended that BOA reengineer the complaint intake and evaluation process by developing standard criteria for case evaluation, implementing a formal case planning model, and consolidating review activities; develop, distribute, and emphasize the use of standard policies and procedures by all investigative CPAs; implement a policy of immediate contact with the accused practitioner and communication of the need for immediate response to the complaint, including relevant documents; eliminate the practice of soliciting the complainant's desire to remain anonymous and modify the complaint form accordingly; and eliminate two of the three follow-up letters to practitioners accused of unlicensed practice.

In the area of organizational structure, KPMG found that the ratio of administrative staff to investigative CPAs (three to two) is high for a professional setting. According to studies conducted by KPMG, the generally accepted ratio of professionals to administrative staff is approximately five to one. KPMG also found that the functional duties of some of the Enforcement Program administrative staff did not relate to enforcement. KPMG recommended that BOA restructure its Enforcement Program along functional lines—clearly identifying both the nature and the location of professional and administrative activities within the Enforcement Program; applying performance measures to specific functional areas to determine appropriate staffing, workload, productivity, and effectiveness levels; and allocating resources more efficiently. Finally, KPMG

found that the Program uses support staff for excessive monitoring activities during the prosecutorial stage of cases, and recommended that these monitoring activities be redirected to investigative staff.

With regard to use of technology, KPMG found that case activity is not being monitored effectively because the Board's electronic tracking system has not been programmed to meet its needs, and the Board is not using available word processing technology adequately. KPMG recommended that the Board determine its current data requirements and develop system modifications for its reporting needs, and evaluate the use of word processing operations and general automation technology in the Enforcement Program's operations.

In his presentation, Grifoni stated that the Board's most serious problems are in the investigative case management area; he reviewed the plan for implementing KPMG's recommendations with the Board, and promised a quarterly status report and an annual report. Although listed on the Board's agenda as an action item, no vote was taken to adopt the BPR report. At this writing, staff is in the process of implementing KPMG's recommendations.

Board Adopts, Then Amends, "Incompatible Activities" Policy. At its September 22 meeting, the Board adopted the following language as its policy on incompatible activities: "Board or Committee members may not receive remuneration from an examinee, licensure applicant, or licensee, for any activity related to their Board responsibilities. Further, Board or Committee members may not represent in a matter involving this Board, an examinee, licensure applicant, or licensee of this Board, whether or not remuneration is received. Board or Committee members found to be engaged in an activity incompatible with their position as a Board or Committee member may be dismissed from their appointments as determined by their appointing authority. All other relevant conflict of interest prohibitions continue to be applicable."

At the Board's November meeting, however, AC Chair Bill Altman discussed several concerns raised by AC members about the absolute wording of the policy. The key issues involved incompatible activities by a committee member prior to committee membership; and incompatible activity at a committee member's firm, when the committee member has no actual involvement in the activity. In response to these concerns, the Board voted to grant exceptions to the policy on a case-by-case basis.

Update on Board Rulemaking Proceedings. The following is a status update



on BOA regulatory proposals discussed in detail in previous issues of the *Reporter*:

• **“Reportable Events” Regulation.** At its September 22 meeting, the Board again discussed 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. The language, drafted by Deputy Attorney General Michael Granen, would require BOA licensees to report to the Board 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. [15:2&3 CRLR 36]

Following discussion, the Board once again agreed to publish Granen’s language for a public hearing; at this writing, however, the notice has not yet been published in the *California Regulatory Notice Register*.

• **Fee Regulation; Forfeiture of Examination Fee and Abandonment of Applications.** At its July meeting, BOA held a public hearing on its proposal to amend section 70 and adopt new section 71, Title 16 of the CCR.

Currently, Business and Professions Code section 5134 requires the Board to set all fees on an annual basis; each fee must be based on the actual cost to the Board of providing the service for which the fee is charged. Section 5134 also requires BOA to set the biennial renewal fee for currently-licensed CPAs so that, together with the estimated amounts from application, examination, and certificate issuance fees, the reserve balance in BOA’s fund is equal to approximately three months’ worth of annual operating expenses. At the time of the July meeting, the Board’s fund contained reserves equalling approximately ten months’ worth of operating expenses; this regulatory proposal would allow the Board to comply with section 5134 by increasing the fee for administering the CPA examination and issuing the CPA certificate, and reducing the biennial renewal fee for currently-licensed CPAs.

The amendments to section 70 would establish the following fees in regulation:

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 application 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 the July hearing, a CSCPA representative testified in opposition to any fee increases at this time, in light of the Board’s excessive reserve fund. Following discussion, BOA agreed to table any adoption of these proposed amendments.

At its November meeting, BOA considered staff’s revised version of these regulatory changes. Under the revised proposal, the fee for the initial permit to practice and biennial renewal of the permit to practice would be reduced to \$100, effective July 1, 1996; effective July 1, 1998, those fees would increase to \$200. This action would reduce and stabilize the reserve at the required level of approximately three months’ worth of authorized expenditures in conformance with section 5134. At this writing, staff plans to publish notice of the revised version of these proposed regulatory changes in the *California Regulatory Notice Register* in February for a public hearing on March 23 in Los Angeles.

• **Inactive Category of Licensure.** Also in July, the Board held a public hearing on its proposal to adopt new section 80 and amend sections 87, 87.1, 89, and 90, Title 16 of the CCR. Collectively, these regulatory changes would establish an inactive category of licensure for BOA licensees; the objectives of this proposal are to (1) allow the Board’s licensees the option of maintaining an inactive license without completing CE requirements, and

(2) clarify the distinction between an inactive license and an active license, and specify how an inactive license may be converted into an active license. Following the hearing, the Board adopted the proposed regulatory changes; at this writing, the rulemaking file is being reviewed by DCA; after DCA approval, it will be forwarded to the Office of Administrative Law (OAL).

• **SB 2079 Rule Changes; Definition of “Working Papers.”** At its May 1995 meeting, the Board adopted several proposed changes to its regulations in Division 1, Title 16 of the CCR. BOA’s 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 clear definition of the term “working papers” and establish requirements for the retention of working papers. [15:2&3 CRLR 36] At this writing, the rulemaking file is being reviewed by DCA; after DCA approval, it will be forwarded to OAL.

• **Government Auditing Continuing Education Requirements.** On August 4, OAL approved BOA’s amendments to 87, Title 16 of the CCR, which generally requires all BOA licensees to complete 80 hours of qualifying CE during each two-year renewal period. The Board’s amendment to section 87(b) specifies 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. The term “related subjects” means “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.” [15:2&3 CRLR 36-37; 15:1 CRLR 38; 14:4 CRLR 34]

• **Amendments to Rules of Professional Conduct.** Also on August 4, OAL approved BOA’s amendments to numerous sections within Article 9, Division 1, Title 16 of the CCR, which prescribes rules of professional conduct for BOA licensees. These changes include amendments to section 54 which define an exception to the term



"confidential information" and require 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. The Board defined "reasonable notice" as follows: "(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 term "promptly" means within 30 days. [15:2&3 CRLR 37; 14:4 CRLR 34]

■ LEGISLATION

SB 513 (Calderon), as amended September 6, authorizes the establishment of registered limited liability partnerships, provided that such an entity is a partnership and each of the partners is licensed to practice law or professional accountancy. The bill provides for registration with the Secretary of State, provides for the registration of foreign limited liability partnerships, and specifies that limited liability partnerships are subject to the minimum franchise tax. This bill was signed by the Governor on October 8 (Chapter 679, Statutes of 1995).

AB 778 (Aguiar), as amended July 14, reinstates BOA's July 1, 1997 sunset date (which was inadvertently chaptered out in 1994 due to the simultaneous passage of SB 2036 and SB 2038 [14:4 CRLR 35]), thus making BOA subject to review by the Joint Legislative Sunset Review Committee and to repeal. This bill was signed by the Governor on October 4 (Chapter 599, Statutes of 1995).

AB 1087 (Boland), as amended June 26, and **SB 866 (Craven)**, as amended August 31, establish new qualifications required of a person appointed or elected county auditor. These bills require such a person to possess a baccalaureate degree from an accredited university, college, or other four-year institution, with a major in accounting or its equivalent. They also provide that a person may be appointed or elected if he/she has served as county auditor, chief deputy county auditor, or chief assistant county auditor for a continuous period of not less than three years. AB 1087 was signed by the Governor on July 17 (Chapter 107, Statutes of 1995); SB 866 was

signed on October 12 (Chapter 784, Statutes of 1995).

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 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 BOA, in its discretion, determines is for the public welfare. As amended July 6, 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 BOA was established.

Existing law provides that BOA must prescribe basic requirements for continuing education. This bill would specify the CE requirements for several categories of licensees. Specifically, it would require licensees who provide audit, review, or other attestation services to complete, during the two-year license renewal period, a minimum of 16 hours of CE in the area of accounting and auditing related to reporting on financial statements. All licensees must, within a six-year period, complete a CE course on the provisions of the Accountancy Act and BOA's rules of professional conduct; and licensees on inactive status must complete such a course prior to reentering public practice.

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 partnership composed of CPAs or PAs holding a permit to practice, if the employee or assistant works under the control and supervision of a CPA, 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]

SB 1077 (Greene), as amended August 29, would eliminate DCA's Tax Preparer Program. This bill would instead require tax preparers to file a bond with DCA and to complete specified CE requirements. [S. Inactive File]

■ LITIGATION

In *Ross A. Johnson v. Board of Accountancy*, 62 F.3d 1424 (decided July 27, 1995; published December 29, 1995), the U.S. Ninth Circuit Court of Appeals upheld the district court's denial of a preliminary injunction stopping the Board's disciplinary action against CPA Ross Johnson.

Plaintiff Johnson is a CPA; he is also licensed as a real estate broker, an insurance broker, and a securities dealer. He performs no audit or attest functions in his business; instead, he focuses on tax consultation, bookkeeping, and financial planning. He regularly identifies himself as a CPA on his letterhead and business cards, and he regularly accepts commissions for the sale of real estate and the referral of investment to his clients.

In July 1991, BOA began to investigate Johnson for an alleged violation of Business and Professions Code section 5061, which prohibits those engaged in the practice of public accountancy from accepting commissions. In September 1991, Johnson filed a federal court action and moved for a preliminary injunction pending trial to prevent the Board from taking further investigatory or disciplinary action against him. Johnson argued that the confluence of the Board's statutes and regulations prevent him from truthfully advertising that he is a CPA, thus infringing upon his first amendment rights. The district court denied his motion in July 1992 [12:4 CRLR 53]; Johnson appealed to the Ninth Circuit, and both the district court and the Ninth Circuit denied his motions for a stay pending appeal. In November 1992, the Board filed an accusation against his CPA license, and an administrative law judge (ALJ) held an evidentiary hearing on the accusation throughout the latter part of 1993. The Ninth Circuit heard oral argument on Johnson's appeal in December 1993, and then stayed its decision pending the U.S. Supreme Court's April 1994 decision in *Ibanez v. Florida Department of Business and Professional Regulation*, a similar case involving the Florida Accountancy Board's attempt to prevent an attorney/CPA from indicating she is a CPA on her law practice letterhead. In June 1994, BOA adopted the findings of the ALJ and suspended Johnson's CPA license.

The Ninth Circuit did not issue its decision on Johnson's appeal until July 27, 1995. In its ruling, it upheld the decision and reasoning of the district court, and affirmed its denial of Johnson's motion for preliminary injunction. The Ninth Circuit held that BOA's discipline of Johnson's CPA license for violating section 5061 does not infringe upon Johnson's commercial



speech rights, as the statute does not ban the dissemination of commercial information; instead, it prohibits one who is "engaged in" the practice of public accountancy from accepting commissions. Under section 5051(a), a person who "[h]olds himself or herself out to the public in any manner as one skilled in the knowledge, science and practice of accounting..." is deemed to be "engaged in" the practice of public accountancy. Thus, in evaluating the propriety of a preliminary injunction, the Ninth Circuit found that Johnson's chances of succeeding on the merits were minimal and upheld the denial of his motion.

While the Ninth Circuit delayed its decision in the *Johnson* case to await the Supreme Court's ruling in *Ibanez*, it did not discuss *Ibanez* in its decision. In that matter, the majority invalidated the Florida Accountancy Board's disciplinary action against an attorney who appended the acronym "CPA" to her name in advertising describing her tax law firm. The Supreme Court held that *Ibanez*' truthful use of the CPA acronym is commercial speech protected by the first amendment. Commercial speech may not be banned by government unless it is false, deceptive, or misleading; nor may it be restricted unless the state shows that the restriction "directly and materially advances a substantial state interest in a manner no more extensive than necessary to serve that interest." Writing for the majority, Justice Ruth Bader Ginsburg stated that "[a]s long as *Ibanez* holds an active CPA license from the Board we cannot imagine how consumers can be misled by her truthful representation to that effect." [14:4 CRLR 36]

RECENT MEETINGS

At its July 21 meeting, as part of its review of the recommendations of the Long-Range Planning Committee, the Board approved a new mission statement: "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 November meeting, BOA elected its officers for 1996. The Board selected CPA Robert Shackleton as its new president and CPA Diane Rubin as vice-president. The Board reappointed CPA Jeffery Martin as secretary-treasurer.

FUTURE MEETINGS

March 23 in Los Angeles.
May 10-11 in Sacramento.
July 19-20 in San Diego.
September 27-28 in San Francisco.

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 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). 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.

The terms of three longtime Board members—Dick Wong, Betty Landess, and Peter Chan—recently ended. At BAE's May 30 meeting, Department of Consumer Affairs (DCA) Director Marjorie Berte and the Board recognized these former members for their involvement and accomplishments while serving on the Board. On July 6, Governor Wilson appointed Gordon Carrier of San Diego to replace Betty Landess as an architect member of the Board; Carrier's term expires on June 1, 1998. There are currently two vacancies on the Board; although the term of one other member, Sheldon Grossfeld, has expired, he continues to serve on the Board pending the appointment of his replacement.

MAJOR PROJECTS

Intern Development Program Update. For more than a 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 then, the IDP Implementation Task Force has identified several concerns with NCARB's current IDP standards. [14:4 CRLR 37-38] In November 1994, the Task Force agreed to focus on communicating with various constituent groups and in December 1994, BAE approved the Task Force's plan. [15:1 CRLR 40] Accordingly, the Task Force communicated with students and candidates and held a roundtable specifically for licensees and firms in San Diego in March 1995. [15:2&3 CRLR 38]

After discussion at its September 15 meeting, however, BAE decided to dissolve the IDP Implementation Task Force and table the issue of implementing IDP as a mandatory requirement. In reaching this decision, BAE noted that AIACC has withdrawn its support for the imposition of a structured internship at this time, due to the state of the California economy; the Board chose not to pursue the new requirement without the support of the profession. BAE will continue to study this issue and revisit the program at a future point in time when the economic climate in California is more conducive to a structured internship program. The Board also agreed that remaining issues regarding NCARB's governance of IDP and current IDP training requirements would have to be resolved before it revisits this matter.

At its December 15 meeting, BAE met with the AIACC Executive Committee and representatives of AIA National to discuss the AIA Licensing Task Force's recommendations on IDP. The meeting participants noted that NCARB's IDP Committee is scheduled to meet on February 9-10 and seeks testimony regarding its review of NCARB's IDP training standards; such testimony is due on or by February 1.

Sunset Review Preparation. SB 2036 (McCorquodale) (Chapter 908, Statutes of 1994) creates a "sunset" review process for occupational licensing boards within the Department of Consumer Affairs, requiring each to be comprehensively reviewed every four years. [14:4 CRLR 20, 38] SB 2036 imposes an initial "sunset" date of July 1, 1998 for BAE, creates a Joint Legislative Sunset Review Committee which will review BAE's performance