



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:
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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



approximately one year prior to its sunset date, and specifies the criteria under which BAE's performance will be evaluated.

At BAE's December 15 meeting, staff reported that the Board must submit a comprehensive sunset review report to the legislature on October 1, 1996; to that end, staff prepared a sunset review timeline, identifying the deadlines by which the Board must take specified actions. Pursuant to the timeline, staff will be drafting the report during January–March 1996; BAE's Executive Committee will review the first draft in April; staff will make necessary revisions and add fiscal year 1995–96 data to the report by the end of July; BAE will approve the report in August or September; and the Board will submit the report to the legislature on or by October 1.

The Board reviewed the numerous questions which the legislature has required it to answer within its sunset review report. Among other things, the Board must describe its powers and duties, its goals and objectives, and how it handles complaints, conducts investigations, and disciplines licensees. BAE will also have to address the justifications(s) for the licensure of architects, whether some other form of regulation would suffice, whether the unregulated practice of the profession would endanger the public health, safety, or welfare, whether alternatives to regulation would adequately protect the public, and how the current regulatory process could be improved.

At its December meeting, the Board discussed specific areas on which the legislature may focus its attention, such as the low pass rate on the Board's examination. The Board noted that it will have to explain that it has very minimal requirements for taking its examination; thus, it has a low pass rate. BAE agreed that it may also be questioned on its relatively infrequent use of its citation and fine authority; staff noted that in almost every case where a citation and fine have been issued, the licensee has appealed the matter, resulting in a very costly procedure requiring the use of the Attorney General's Office—a step that the cite and fine program was intended to avoid. The Board generally agreed that it must be prepared to answer questions about these and other specific issues.

Reciprocity With Canada. On July 7, the Office of Administrative Law (OAL) approved BAE's amendments to section 121, Title 16 of the CCR, which sets forth the circumstances under which a candidate may be granted licensure. The Board's changes 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. [15:2&3 CRLR 38; 15:1 CRLR 41]

Relicensure Requirements. On May 30, OAL approved BAE's changes to section 124.7, Title 16 of the CCR, which require that all five-year delinquent licensees applying for relicensure be required to take the oral examination. [15:2&3 CRLR 39; 15:1 CRLR 41]

Computer-Based Examination Transition Plan. As part of its licensing process, BAE administers the national written Architect Registration Examination (ARE), developed by NCARB in conjunction with the Committee of Canadian Architectural Councils. Beginning in February 1997, the ARE will be administered exclusively on computer; the last administration of the paper-and-pencil format is scheduled for June 1996. In preparation for the full implementation of the computer-based ARE, NCARB has scheduled a field test of the computer-based test for February 1996; California is one of seven states which has agreed to participate in the field test. [15:2&3 CRLR 41]

In order to participate in the computer-based testing, however, BAE must amend its regulations to reflect the change in testing format. Accordingly, on August 25, BAE published notice of its intent to adopt new section 119.6, Title 16 of the CCR, which would provide for transition from the paper-and-pencil version to the computer-based examination, and outline transition credit from the 1990–96 California architectural licensing examination toward the computer-based California architectural licensing examination effective July 1, 1996.

BAE held a public hearing on section 119.6 on October 11; at its December 15 meeting, BAE unanimously adopted the proposed new section, which awaits review and approval by OAL.

Seismic Safety Commission Northridge Earthquake Report. On July 12, the Seismic Safety Commission (SSC) presented the final version of its report entitled *The Northridge Earthquake: Turning Loss to Gain*, which included three recommendations impacting BAE. Among other things, the Commission recommended that licensing boards for geologists, engineers, and architects be required to hold hearings after each earthquake in the affected area to learn how their respective requirements could be improved; those boards should also hold hearings at the site of each damaging earthquake to determine their effectiveness in ensuring consumer protection and quality control over professional workmanship; and the Board of Registration for Professional Engineers and Land Surveyors (PELS) and BAE should raise the

level of their licensees' awareness of regulations that limit professional practice to areas of competency.

On August 23, BAE Executive Officer Steve Sands responded to a request from the DCA Director for an analysis of the impact on BAE of the SSC's recommendations. According to Sands, all three recommendations can be implemented by BAE with existing funds; in fact, the first two recommendations can be implemented in a variety of ways which would not be difficult or costly to accomplish. BAE also is pursuing ways in which it could implement the third recommendation.

LEGISLATION

AB 969 (Davis), as amended April 27, is a Board-sponsored bill which requires architects to use a written contract when contracting to provide professional services to a client, with specified exceptions. [15:1 CRLR 39–40; 14:2&3 CRLR 36–37; 14:1 CRLR 30] This bill was signed by the Governor on July 17 (Chapter 969, Statutes of 1995).

AB 717 (Ducheny). Existing law provides for the establishment and enforcement of state building standards; these provisions include oversight of matters relating to these standards by state and local entities, including cities, counties, and the State Building Standards Commission. As amended August 22, this bill establishes specific certification, training, and continuing education requirements for construction inspectors, plans examiners, and building officials, as defined, who are employed by a local agency in a temporary or permanent capacity. The bill exempts from its training and certification requirements any person currently and continuously employed by a local agency as a construction inspector, plans examiner, or building official for not less than two years prior to the effective date of the bill, until that person obtains new employment. The bill provides that it is not intended to prohibit any local agency from prescribing additional criteria for the certification of construction inspectors, plans examiners, or building officials, and sets forth other powers and duties of the local agency, including the power of the local agency to impose fees to cover the cost of compliance with the bill's provisions. It further provides that its provisions shall not be construed to alter licensure requirements, or the jurisdiction, authority, or scope of practice, of architects, professional engineers, or land surveyors.

The bill exempts registered professional engineers, licensed land surveyors, and licensed architects who contract with a local agency from the requirements of the



bill, but continues to make the requirements of the bill applicable to professional engineers, licensed land surveyors, and licensed architects employed by a local agency. The bill also exempts construction inspectors or plans examiners employed by any city or county fire department or district providing fire protection services from the requirements of the bill.

This bill also sets forth examples of actual costs that a local agency could incur in compliance with the bill, and provides that fees to cover the costs of compliance shall reflect these actual costs. This bill was signed by the Governor on October 4 (Chapter 623, Statutes of 1995).

SB 914 (Alquist), as amended April 6, would require BAE, PELS, and the Board of Registration for Geologists and Geophysicists to develop, adopt, and enforce regulations on or before July 1, 1996, applicable to state and local enforcement agencies that regulate building standards and that, pursuant to the bill, have, on staff or under contract, appropriately licensed architects, registered geologists, and registered professional engineers with demonstrated competence to review plans, specifications, reports, or documents for the design and construction of all architectural, engineering, and geological work regulated by building standards.

This bill would also provide that, notwithstanding existing law, every state and local enforcement agency shall have, on staff or under contract, appropriately licensed architects, registered professional geologists, and registered professional engineers with demonstrated competence to review the plans, specifications, reports, or documents for the design and construction of all architectural, geological, or engineering work related by building standards, prior to agency approval of this work. The bill would also provide that, notwithstanding existing law, all state and local enforcement agencies shall return any incomplete building plans, specifications, reports, or documents, accompanied by a statement to the applicant identifying the part or parts of the plans that are incomplete, and specifying the actions required to be taken by the architect, engineer, geologist, or building designer to complete the plans, specifications, reports, or documents prior to any resubmission. [S. H&LU]

AB 778 (Aguiar), as amended July 14, is no longer relevant to BAE.

RECENT MEETINGS

At its September 15 meeting, BAE reviewed and approved the contract amendment submitted by CTB/McGraw-Hill (CTB) for oral examination development

and administration services through December 1998. Board staff and CTB agreed that, beginning in 1996, the August administration will be changed to July to lessen the workload of administering the oral examination in two consecutive months.

Also in September, BAE also discussed circumstances concerning Paradise Cemetery in Santa Fe Springs; the cemetery was apparently victimized by its owners who misappropriated endowment funds, dumped bodies in mass graves, and let the cemetery fall apart (*see* agency report on CEMETERY BOARD for related discussion). DCA is coordinating efforts to renovate the cemetery with donated services and materials, and asked BAE to help coordinate efforts to design a memorial park on a one-acre site for the approximately 2,000 people in the mass grave. Steve Sands and BAE Enforcement Consultant Larry Segre have been working with Paul Welch, AIACC Executive Vice President, on developing a process to provide design services for this project.

At its December 15 meeting, BAE approved its Board Member Administrative Procedure Manual, which was created to provide BAE members with a ready reference of important laws, regulations, DCA policies, and Board policies; the Board hopes that this manual will help guide the actions of its members to ensure BAE's overall effectiveness and efficiency.

Also in December, BAE agreed to seek legislative changes which would authorize the Board to adopt standards of professional conduct.

Finally, the Board elected the following new officers at its December meeting: Betsy Weisman, President; Raymond Cheng, Vice President; and Christine Lampert, Secretary.

FUTURE MEETINGS

January 26-27 in Costa Mesa (strategic planning session).

February 21 in Sacramento.

June 7 in southern California (tentative).

ATHLETIC COMMISSION

Executive Officer:

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The Athletic Commission is empowered to regulate amateur and professional boxing and contact karate under the Boxing Act, Business and Professions Code section 18600 *et seq.* The Commission's regulations are found in Division 2, Title 4 of the California Code of Regulations (CCR). The Commission consists of eight members each serving four-year terms.

All eight members are "public" as opposed to industry representatives.

The Commission has sweeping powers to license and discipline those within its jurisdiction. The Commission licenses promoters, booking agents, matchmakers, referees, judges, managers, boxers, and martial arts competitors. The Commission places primary emphasis on boxing, where regulation extends beyond licensing and includes the establishment of equipment, weight, and medical requirements. Further, the Commission's power to regulate boxing extends to the separate approval of each contest to preclude mismatches. Commission inspectors attend all professional boxing contests.

The Commission's goals are to ensure the health, safety, and welfare of boxers, and the integrity of the sport of boxing in the interest of the general public and the participating athletes.

At the Commission's August 24 meeting, gubernatorial appointee Ernest Weiner was sworn in as a new member of the Athletic Commission. Weiner, who replaces former state legislator and current lobbyist Robert Wilson, was formerly an amateur boxer and is currently a journalist and the Executive Director of the American Jewish Committee in San Francisco.

At its October 6 meeting, the Commission welcomed another new member, Elmer Costa of San Leandro; Costa worked for Pacific Telephone & Telegraph for 38 years as a technician, and formerly worked as a licensed referee.

MAJOR PROJECTS

Pension Plan Update. The Commission's efforts to revise its Professional Boxers' Pension Plan are continuing. On May 26, the Commission published notice of its intent to amend section 400, repeal sections 401, 402, 403, 404, 406, 407, 409, 410, 412, 413, 415, and 416, and adopt new sections 401-409, Title 4 of the CCR. [15:2&3 CRLR 42; 15:1 CRLR 42-43; 14:4 CRLR 39]

Under the Commission's current regulations, the pension plan is a "defined benefit" plan in that boxers who have made contributions to the plan and whose benefits have "vested" are entitled to a defined benefit (\$2 per round fought per month for life) starting at age 65. Thus, a boxer who fights 100 rounds in his career would receive \$200 per month for life starting at age 65. The plan is currently financed by a 3% assessment of the share of gross receipts allocated to promoter, manager, and boxer. However, the pension plan regulations—which were drafted in the early 1980s—permit no cost of living or inflation adjustment, and require the Commission to keep track of the whereabouts of