



D'Angelo Fellmeth conveyed CPIL's recommendation that the Board be abolished in light of its performance record. She further recommended that, if the legislature believes that statewide licensure of geologists should continue, it should be administered by (1) a geology bureau within DCA which is solely concerned with licensing and uses the ASBOG exam; (2) a merged geologist/engineer bureau within DCA which is solely concerned with licensing; or (3) SMBG, SSC, or some other agency where it can be combined with a related program to achieve economies of scale and efficiencies.

At this writing, the JLSRC is expected to release its findings and recommendations to DCA on January 16; thereafter, DCA has sixty days in which to return to the legislature with its recommendations on the fate of BRGG.

**Citation and Fine Regulations Finally Approved.** On June 23, the Office of Administrative Law (OAL) disapproved BRGG's adoption of new sections 3062-3063.4, Title 16 of the CCR, its citation and fine regulations. OAL found that the rulemaking file failed to comply with the clarity, consistency, and necessity standards of the Administrative Procedure Act, and that BRGG's final statement of reasons failed to respond to all public comments on the proposed regulations. BRGG subsequently modified the proposed rules, released them for a 15-day public comment period, and resubmitted them to OAL, which approved them on November 22. Over two years in the making, the regulations permit the Board to issue citations and/or fines to registrants for minor violations of the Geologist and Geophysicist Act and the Board's regulations, and to nonlicensees for engaging in activities for which registration or certification is required. [15:1 CRLR 57; 14:4 CRLR 58; 14:2&3 CRLR 59]

## LEGISLATION

**AB 778 (Aguiar)**, as amended July 14, reinstates BRGG's July 1, 1997 sunset date (which was inadvertently chaptered out due to the passage of other legislation in 1994), thus making BRGG subject to review by the Joint Legislative Sunset Review Committee (see above) and to repeal. This bill was signed by the Governor on October 4 (Chapter 599, Statutes of 1995).

**SB 914 (Alquist)**, as amended April 6, would require BRGG, the Board of Architectural Examiners, and the Board of Registration for Professional Engineers and Land Surveyors 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]

## RECENT MEETINGS

The Board recently announced that, effective January 10, 1996, its offices would move to 2535 Capitol Oaks Drive, Suite 300A, Sacramento, CA 95833.

## FUTURE MEETINGS

February 16 in South San Francisco.  
April 4 in Sacramento.  
April 19 in Los Angeles.  
June 14 in San Diego (tentative).

## BOARD OF LANDSCAPE ARCHITECTS

*Executive Officer: Jeanne Brode*  
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Authorized in Business and Professions Code section 5615 *et seq.*, the Board of Landscape Architects (BLA) licenses those who design landscapes and supervise implementation of design plans. Prior to 1993, applicants were required to pass the written examination of the national Council of Landscape Architectural Registration Boards (CLARB) in order to qualify for licensure. However, following years of dissatisfaction, BLA decided in May 1992 to discontinue its use of CLARB's

exam; commencing in 1993, applicants must instead pass the Board's own Professional Examination for Landscape Architects (PELA) in order to qualify for licensure. [12:4 CRLR 86] In addition, an applicant must have the equivalent of six years of landscape architectural experience. This requirement may be satisfied by a combination of education at a school with a Board-approved program in landscape architecture and field experience.

In addition to licensing landscape architects, the Board investigates verified complaints against landscape architects, prosecutes violations of the Practice Act, and establishes criteria for approving schools of landscape architecture. BLA's regulations are codified in Division 26, Title 16 of the California Code of Regulations (CCR).

BLA consists of seven members who serve four-year terms. One of the members must be a resident of and practice landscape architecture in southern California, and one member must be a resident of and practice landscape architecture in northern California. Three members of the Board must be licensed to practice landscape architecture in the state of California. The other four members are public members and must not be licentiates of the Board.

At its July 14 meeting in Irvine, BLA welcomed two new members—public member Dell Yelverton of Whittier and landscape architect member Tom Lockett of Marina del Rey—and announced that landscape contractor Greg Burgener, who serves as a public member, has been reappointed for a second term. Also on July 14, landscape architect member Marian Marum resigned from the Board, leaving BLA with one vacancy.

## MAJOR PROJECTS

**BLA Undergoes Sunset Review.** Throughout the summer and early fall, BLA members and staff, two regional "blue-ribbon" task forces of landscape architects, and two paid consultants worked to complete the lengthy report required by the Joint Legislative Sunset Review Committee (JLSRC) in preparation for BLA's sunset review. On November 27, BLA became the first Department of Consumer Affairs (DCA) board to undergo a sunset review hearing by the JLSRC under the terms of SB 2036 (McCorquodale) (Chapter 908, Statutes of 1994), which requires a comprehensive evaluation of the necessity and performance of DCA boards every four years. If BLA does not convince the JLSRC and the Wilson administration that its licensing requirement is necessary and that its overall regulatory program is ef-



fective and protective of consumers, it will cease to exist on July 1, 1997. [15:2&3 CRLR 59; 15:1 CRLR 57-58; 14:4 CRLR 20, 59]

Although BLA's sunset report was due on October 1, it secured an extension of the deadline until October 23. At its October 20 meeting, the Board reviewed the fifth draft of the report and a new executive summary which had been written by landscape architect member Tom Lockett; both were approved.

Among other things, the report described the Board's responsibilities, provided background information on its budget, defined the functions and tasks of landscape architects, and distinguished landscape architects from other regulated and unregulated design professionals. The report also included statistical information on the Board's new PELA examination, its pass rate, and complaints, investigations, and disciplinary actions.

In response to questions concerning the need to license landscape architects, BLA stated that the policies or ordinances of most local governments—which frequently hire landscape architects—require them to contract with licensed landscape architects who have professional liability insurance. The report surmised that the lack of a state license for landscape architects would prevent local governments from hiring them, and that insurance companies would refuse to insure landscape architects because they could not rely on the state to screen competence through the licensing process. The report also argued that landscape architects design places of public accommodation, such as parks and school grounds, and that the “end users” of these places could be injured if they are designed incompetently. The report analyzed several alternatives to the current licensing scheme (including a merger of BLA with other agencies which regulate design professionals), but rejected them in favor of the existing licensing program, stating that BLA “vigorously supports the need to regulate the profession of landscape architecture.” BLA concluded that “[e]limination of this Board would devastate the profession” in California, and that the “potential for adverse consequences to the consumer from an incompetent landscape architect can affect both individual and collective health, safety, and welfare of California's citizens.”

At the November 27 hearing, BLA members Tom Lockett and Larry Chimbole and Executive Officer Jeanne Brode presented the report to the JLSRC. Brode stated that, because landscape architects design projects which cost thousands of dollars an-

nually, they must be competent. She described BLA's “extremely rigorous” licensure requirements which, she asserted, result in qualified landscape architects. She acknowledged BLA's low enforcement statistics, but stated that “enforcement should not necessarily be viewed in terms of number of complaints but how effectively they are handled.” She noted that she had received a letter from a consumer who had a satisfactory mediation experience with BLA. Brode also observed that BLA's regulatory program is funded through licensing fees paid by landscape architects, and that BLA historically has had a surplus which may be absorbed into the general fund.

Joint Committee members questioned the Board representatives, primarily on BLA's budget, its nine-month budget surplus, its need to increase application fees (*see below*) in light of the surplus, its new PELA and its passage rate, and its low enforcement statistics. Joint Committee member Jackie Speier noted that she had recently received hundreds of letters from landscape architects urging her to save the Board, when—in her nine years as Chair of the Assembly Consumer Protection Committee—she never received a letter from a landscape architect and never received one from a consumer about landscape architects. Speier questioned the need for the Board in light of the fact that it receives almost no complaints from consumers—about either licensed or unlicensed practice.

Following the Board's presentation, representatives of several trade associations also testified in support of the Board and its licensing requirement. Members of the California Chapter of the American Society of Landscape Architects recommended retention of full licensure for landscape architects, either through the Board as it currently exists or through a merged board encompassing architects, engineers, land surveyors, landscape architects, and other design professionals.

The JLSRC also heard testimony from Julianne D'Angelo Fellmeth of the Center for Public Interest Law, who explained that licensing is the most market-intrusive and restrictive form of regulation and should be reserved for trades and professions in which incompetence is likely to cause irreparable harm. D'Angelo Fellmeth noted that BLA's 50-page sunset report contained no evidence of irreparable harm flowing from the incompetent preparation of landscape planning and design documents; accordingly, she opined that a bond requirement, coupled with the normal functioning of the marketplace, appears to be a sufficient regulatory combination for landscape architects.

D'Angelo Fellmeth also noted that the Business and Professions Code establishes numerous exemptions to BLA's licensing requirement. Under Business and Professions Code section 5641, many people who are not licensed as landscape architects (homeowners, garden designers, nurserymen, landscape designers, irrigation consultants, engineers, architects, and landscape contractors doing designs as part of their overall jobs) may legally design landscapes; she argued that this statutory scheme belies the need for the licensure of landscape architects.

D'Angelo Fellmeth further contended that BLA's licensing scheme is overly restrictive, the Board has failed to adopt standards for the performance of landscape architect functions, and its enforcement program is non-existent. [13:4 CRLR 5, 8] The Board received only 43 complaints in 1991-92, 59 complaints in 1992-93, 15 complaints in 1993-94, and 109 complaints in 1994-95. Using the statistics provided in the Board's sunset report and in DCA Annual Reports, D'Angelo Fellmeth concluded that in 1991-92, 33 of the 43 complaints were filed by licensed landscape architects complaining about unlicensed competition; in 1992-93, 44 of the 59 complaints were filed by licensees, not by consumers. Of this minimal number of complaints received, the Board opened 13 investigations in 1991-92, 18 in 1992-93, 5 in 1993-94, and 2 in 1994-95. According to D'Angelo Fellmeth, “to our knowledge, BLA has not taken any formal disciplinary action in the past four years, with the exception of one stipulated settlement resulting in straight probation in 1993-94.”

Thus, D'Angelo Fellmeth urged the JLSRC to sunset the Board, noting that her recommendation is consistent with the 1994 recommendation of the Senate Subcommittee on Efficiency and Effectiveness in State Boards and Commissions [14:2&3 CRLR 61], a February 1993 recommendation by the Legislative Analyst [13:2&3 CRLR 77], and a 1978 recommendation of DCA's Regulatory Review Task Force.

The JLSRC took these comments under consideration; at this writing, the Joint Committee is expected to release its report and recommendation to DCA on January 16. At that time, DCA will have 60 days to return to the legislature with its recommendations on the fate of BLA.

At its December 8 meeting, BLA directed Executive Officer Brode to respond in writing to the Joint Committee to clarify the Board's position on some of the subjects addressed at the hearing, and appointed Tom Lockett and Larry Chimbole to review Brode's letter. Because Lockett



failed to approve Brode's draft, no letter from the Board has been sent to the JLSRC at this writing. However, Larry Chimbole sent his own letter to the JLSRC on December 15, in which he attempted to clarify the Board's position on issues regarding its licensing examination, proposed fee increase, reserve fund status, and recent changes to its formal education requirements. Chimbole also acknowledged that the Board's practice act is weak, in that it "exempts and excludes nearly everyone and creates an impossible feat for our staff to eliminate unlicensed activity unless the person is using the title, or if we can prove that he/she actually impacted health, welfare and safety."

**CLARB Negotiations.** After years of dissatisfaction, BLA ceased using CLARB's licensing examination in 1993, and now requires applicants to successfully complete the PELA. Several issues drove BLA to make this decision, including a consistently low pass rate on the CLARB exam and problems with the way in which the exam is structured and graded. [13:1 CRLR 42; 12:4 CRLR 86] However, licensees and landscape architect trade organizations have recently been pressuring BLA to switch back to the CLARB examination; among other things, these parties are unhappy with the fact that other states will not grant reciprocity to California licensees who take the PELA instead of CLARB's examination. [14:4 CRLR 60-61]

Accordingly, BLA recently initiated discussions with CLARB in an attempt to resolve the longstanding issues between the two organizations. However, at BLA's July 14 meeting, Executive Officer Brode stated that BLA's negotiations with CLARB were at a standstill, due to the parties' failure to reach agreement on several issues. For example, BLA wants a copy of CLARB's factor analysis, so that DCA's Office of Examination Resources can determine if CLARB's exam is legally defensible. Among other things, BLA is also concerned with the high cost of CLARB's examination fees. BLA directed staff to continue to try to resolve the outstanding issues with CLARB.

At BLA's October 20 meeting, public member Larry Chimbole reported that no progress had been made with CLARB officials in the continuing negotiations, and that CLARB had not yet responded to some of BLA's inquiries. Thus, the Board agreed to use the PELA during 1996. Further, at the Board's December 8 meeting, its Examination Committee recommended that BLA maintain membership in CLARB and attend CLARB's annual meeting as a non-speaking member, but focus its ef-

forts on strengthening the PELA and set aside any further attempts to negotiate with CLARB to resolve the remaining issues. By a 4-1 vote, BLA adopted the Committee's recommendation.

**BLA Rulemaking Update.** At its February 1995 meeting, BLA adopted proposed amendments to sections 2620, 2621, and 2649, Title 16 of the CCR, regarding licensing requirements and fees. [15:2&3 CRLR 60; 15:1 CRLR 58]

BLA's proposed changes to section 2620 concern the amount and type of training, experience, and educational credits that qualify a person to sit for its landscape architect examination. On May 18, DCA Director Marjorie Berte disapproved BLA's proposed changes to section 2620, citing "the public health and safety ramifications involved in the proposed changes." According to Berte, during a transition period provided by the amendment ending on December 31, 1996, a landscape contractor with no formal education in landscape architecture and only one year of experience working for a landscape architect would qualify to take BLA's exam. At BLA's July 14 meeting, DCA legal counsel Don Chang reported that Berte had misinterpreted the Board's proposed changes, and clarified that the amended section requires all applicants (with the exception of landscape architects in internship programs) to have formal education in landscape architecture in order to sit for the exam. Chang stated that he would send a letter of clarification to Berte, who subsequently approved the Board's proposed changes.

Also at its July 14 meeting, BLA approved revisions to the proposed changes to section 2621. As revised, the changes to section 2621 provide that an applicant who fails to take an assigned examination must forfeit his/her examination fee; the language also provides that BLA may transfer the examination fee to the next scheduled examination if the applicant submits proof to BLA, at least 90 days prior to the assigned examination, that reasons of health, certified by a medical doctor, or other good cause prevented him/her from taking the examination.

Also in July, BLA discussed its proposed changes to section 2649, which would increase the application fee for the examination from \$325 to \$425; the Board noted for the record that the purpose of the fee increase is to help cover the costs of administering the examination.

On November 14, the Office of Administrative Law approved BLA's changes to sections 2620, 2621, and 2649.

**Enforcement Committee Activity.** At its November 16 meeting, BLA's Enforcement Committee decided to create a

prioritization scheme for the processing of complaints filed against licensees and nonlicensees. The Committee approved the following prioritization, in order of priority: (1) alleged violation of Business and Professions Code sections 5671 (negligence or misconduct) or 5672 (incompetence); (2) alleged violation of section 5677 (fraud in obtaining the license); (3) alleged violation of section 5640 (unlicensed activity or false advertising); (4) alleged violation of section 5668 (impersonation by a licensee of another licensee with the same or similar name); (5) alleged violation of section 5673 (misuse of name and/or seal by others); and (6) alleged violation of section 2671, Title 16 of the CCR (failure to list license number in telephone directories or other public presentments). BLA approved this prioritization scheme at its December 8 meeting.

Also on November 16, the Enforcement Committee decided to recommend that the Board seek legislation to amend Business and Professions Code section 5615, to more clearly define the scope of practice of a landscape architect; section 5641, to eliminate some of the existing exemptions and exceptions to BLA's licensure requirement (*see above*); and sections 5680, 5680.1, and 5680.2, to clearly require the payment of all outstanding fees and fines by a licensee with a delinquent license if BLA decides to reinstate the license without requiring the licensee to retake its examination. BLA approved these draft legislative changes at its December 8 meeting.

## RECENT MEETINGS

At its July 14 meeting in Irvine, the Board reviewed proposed position descriptions which set forth the responsibilities of BLA's president, vice-president, committee chairs, and Board members. Among other things, the descriptions provide that the Board president must approve the draft agenda for Board meetings four weeks in advance; gather input and feedback from Board members and the Executive Officer; work regularly with the Executive Officer to improve the leadership and management of the Board's business; and annually manage the evaluation of the Executive Officer. The vice-president must fulfill all tasks of the president in his/her absence, and must hold committee chairs accountable for conducting effective and efficient meetings. Among other things, committee chairs must select volunteer members who are committed and willing to perform work for the committee, and ensure that issues raised in their committees are researched, discussed, and brought



to the Board for a vote in the most expeditious manner. Finally, Board members must—among other things—attend all Board and committee meetings regularly; have a thorough knowledge of all issues before voting; respond expeditiously to questions posed by officers of the Board; and prioritize consumer interest and protection prior to decisionmaking. Following discussion, BLA adopted the proposed position descriptions.

Also at its July 14 meeting, BLA elected public member Sandra Mandel to serve as vice-president. [15:2&3 CRLR 60]

### ■ FUTURE MEETINGS

February 2 in Ontario.

May 3 in Sacramento.

## MEDICAL BOARD OF CALIFORNIA

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The Medical Board of California (MBC) is an administrative agency within the state Department of Consumer Affairs (DCA). The Board, which consists of twelve physicians and seven public members appointed to four-year terms, is divided into two autonomous divisions—the Division of Licensing and the Division of Medical Quality. The Board and its divisions are assisted by several standing committees, ad hoc task forces, and a staff of 250 who work from 13 district offices throughout California.

The purposes of MBC and its divisions are to protect the consumer from incompetent, grossly negligent, unlicensed, or unethical practitioners; enforce the provisions of the Medical Practice Act (Business and Professions Code section 2000 *et seq.*); and educate healing arts licensees and the public on health quality issues. The Board's regulations are codified in Division 13, Title 16 of the California Code of Regulations (CCR).

MBC's Division of Licensing (DOL), composed of four physicians and three public members, is responsible for ensuring that all physicians licensed in California have adequate medical education and training. DOL issues regular and probationary licenses and certificates under the Board's jurisdiction; administers the Board's continuing medical education program; and administers physician and surgeon examina-

tions for some license applicants. Assisted by the Board's Committee on Affiliated Healing Arts Professions (CAHAP), DOL also oversees the regulation of dispensing opticians, lay midwives, research psychoanalysts, and medical assistants.

In response to complaints from the public and reports from health care facilities, the Division of Medical Quality (DMQ)—composed of eight physicians and four public members—reviews the quality of medical practice carried out by physicians and surgeons. This responsibility includes enforcement of the disciplinary and criminal provisions of the Medical Practice Act. In this regard, DMQ receives and evaluates complaints and reports of misconduct and negligence against physicians, investigates them where there is reason to suspect a violation of the Medical Practice Act, files charges against violators, and prosecutes the charges at an evidentiary hearing before an administrative law judge (ALJ). In enforcement actions, DMQ is represented by legal counsel from the Health Quality Enforcement Section (HQES) of the Attorney General's Office; created in 1991, HQES is a unit of deputy attorneys general who specialize in medical discipline cases. Following the hearing, DMQ reviews the ALJ's proposed decision and takes final disciplinary action to revoke, suspend, or restrict the license or take other appropriate administrative action. For purposes of reviewing individual disciplinary cases, DMQ is divided into two six-member panels (Panel A and Panel B), each consisting of four physicians and two public members. DMQ also oversees the Board's Diversion Program for physicians impaired by alcohol or drug abuse.

MBC meets approximately four times per year. Its divisions meet in conjunction with and occasionally between the Board's quarterly meetings; its committees and task forces hold additional separate meetings as the need arises.

At this writing, the Board is functioning with four vacancies—each division lacks one physician member and one public member (*see* RECENT MEETINGS).

### ■ MAJOR PROJECTS

**Arnett Resigns; MBC Hires New Executive Director.** At the full Board's July 29 meeting, then-Executive Director Dixon Arnett announced his resignation effective August 30. Arnett left his post to take a cabinet-level position as Director of the Department of Aging offered by Governor Wilson.

Arnett inherited a sea of troubles when he began his tenure as MBC Executive Director on January 3, 1993. He replaced Ken Wagstaff, who resigned under pres-

sure in October 1992 during a six-month investigation by the California Highway Patrol of alleged improprieties within the Board's enforcement program. [13:1 CRLR 44-45] Only 17 days after Arnett began his job the CHP released its report, which revealed—among other things—that up to 300 complaints against physicians had been destroyed (instead of investigated) on the orders of top MBC officials.

Shortly after the report's release, Arnett and Department of Consumer Affairs (DCA) officials convened a "Medical Summit" of over 70 physicians, other health care practitioners, community and consumer group leaders, law enforcement representatives, and MBC members and staff to discuss proposed improvements to the Board's enforcement program. [13:2&3 CRLR 78-82] Many of the reforms proposed at the Summit—including the creation of mid-level sanctions (such as citations and fines and the public letter of reprimand) to supplement the Board's enforcement arsenal, improved public disclosure of physician information to inquiring consumers, a complete review and overhaul of the Board's use of medical experts and its own in-house medical consultants, enhanced investigative and prosecutorial staffing and resources, improvements to the Board's Diversion Program for substance-abusing physicians, and the development of a priority system for use in efficient complaint processing and investigation—have been implemented under Arnett's leadership. In a brief resignation speech, Arnett thanked Board and staff members for their support and assistance during his tenure; the Board appointed Deputy Director Doug Laue as Interim Executive Director.

On September 30, MBC hired Ron Joseph as its new Executive Director. Joseph has a 21-year career in public service. Most recently, he served four years as chief deputy director of the state Department of Health Services, where he was responsible for the management of program operations; together with the DHS Director, he established policy for the operation of the Medi-Cal program, primary care programs, public health services programs, and licensing and certification programs which oversee 5,000 facilities licensed to provide health care services.

Joseph began his new post on November 1, and attended his first Board meeting on November 3.

**Board Finally Approves Concept of Fee Increase to Add Investigators, Decrease Case Processing Delay.** At its July and November meetings, the full Board reconsidered staff's modified request for a fee increase, with the revenue dedicated