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 (Aguilar), 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 (JLSRC) in preparation for BLA’s sunset review. On November 27, BLA benefited from the Governor’s support of AB 778 at a meeting of the Legislature’s Sunset Review Committee (JLSRC) when the Governor requested support of the bill.

SB 914 (Alquist), as amended April 6, would require BRGG 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 plans, specifications, reports, or documents for the design and construction of all architectural, geological, or engineering work regulated 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 & U]

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


BOARD OF LANDSCAPE ARCHITECTS

Executive Officer: Jeanne Brode (916) 445-4954

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 Architect 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 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 licensees 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 (McCormadale) (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-
At its October 23 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 summarized 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 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 that BLA’s licensing scheme is overly restrictive, and that 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 CRR 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 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 efforts 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 misrepresented 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 (personation 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 presentations). 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 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 expedi-
tious 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 pro-
tection prior to decisionmaking. Following
discussion, BLA adopted the proposed
position descriptions.

Also at its July 14 meeting, BLA elected
public member Sauda 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

Executive Director: Ron Joseph (916) 263-2389
License/Discipline Information:
(916) 263-2382
Toll-Free Complaint Number:
1-800-MED-BD-CA

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 ap-
pointed 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 incom-
petent, grossly negligent, unlicensed, or
unethical practitioners; enforce the pro-
visions of the Medical Practice Act (Busi-
ness 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 pub-
lic members, is responsible for ensuring that
all physicians licensed in California have
adequate medical education and training.
DOL issues regular and probationary li-
enses and certificates under the Board’s
jurisdiction; administers the Board’s contin-
uing medical education program; and ad-
misters 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 psycho-
analysts, and medical assistants.

In response to complaints from the pub-
lic 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 crim-
inal provisions of the Medical Practice
Act. In this regard, DMQ receives and
evaluates complaints and reports of mis-
conduct 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 appropri-
ate administrative action. For purposes of
reviewing individual disciplinary cases,
DMQ is divided into two six-member pan-
els (Panel A and Panel B), each consisting
of four physicians and two public mem-
bers. DMQ also oversees the Board’s Di-
version 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 function-
ning with four vacancies—each division
lacks one physician member and one pub-
lic member (see RECENT MEETINGS).

MAJOR PROJECTS

Arnett Resigns; MBC Hires New Ex-
ecutive Director. At the full Board’s July
29 meeting, then-Executive Director Dixon
Arnett announced his resignation effec-
tive 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 Af-
fairs (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 pro-
posed at the Summit—including the cre-
ation of mid-level sanctions (such as cita-
tions and fines and the public letter of
reprimand) to supplement the Board’s en-
fowment arsenal, improved public disclo-
sure of physician information to inquir-
ing consumers, a complete review and over-
haul 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 sub-
stance-abusing physicians, and the devel-
opyment of a priority system for use in
efficient complaint processing and inves-
tigation—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 Jo-
seph 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 Depart-
ment of Health Services, where he was
responsible for the management of pro-
gram operations; together with the DHS
Director, he established policy for the op-
eration of the Medi-Cal program, primary
care programs, public health services pro-
grams, and licensing and certification pro-
grams which oversee 5,000 facilities li-
censed to provide health care services.

Joseph began his new post on No-
ember 1, and attended his first Board meet-
ning 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