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MAJOR PROJECTS

Parrish Resigns; BRGG Selects New EO. On June 30, John Parrish resigned as BRGG's Executive Officer; he had served in that position for less than eight months. During July and August, Michal Moore served as the Board's Interim EO. At its August 26 meeting, BRGG selected Dalton Pollard to serve as its new EO; Pollard has a bachelor of science degree from Stanford and a master of arts degree from the University of California at Los Angeles, both in geology. He worked as a subsurface petroleum geologist for Texaco in Canada from 1958 to 1962, and for Dow Chemical in California from 1962 to 1964; he has been a consulting geologist since 1964, except for a three-year period during which he was the exploration manager and president of a small oil company, managing its exploration and production activities in California, the mid-continent, and Gulf Coast areas.

Hydrogeology Regulations Approved. In March 1994, the Office of Administrative Law (OAL) disapproved BRGG's adoption of new section 3042 and amendments to section 3003, Title 16 of the CCR; the regulatory package defines the term "hydrogeology" and establishes a specialty certification program within BRGG for hydrogeologists. OAL's rejection of the proposed regulatory action was based on its findings that section 3042(c) was unclear, and that BRGG failed to properly respond to all of the comments received during the public comment period. Following OAL's disapproval, BRGG amended the proposed language and released the modified version for an additional 15-day public comment period. [14:2&3 CRLR 60; 14:1 CRLR 46; 13:4 CRLR 50] At its June 3 meeting, BRGG adopted the revised rulemaking package, which was approved by OAL on July 18.

Also at its June 3 meeting, BRGG agreed to establish, under the direction of the Executive Officer, a special committee to develop and administer a one-time hydrogeology examination to identify qualified individuals who can prepare and administer the regular hydrogeology specialty certification examination.

Citation and Fine Regulations. On May 19, BRGG's Professional Affairs Committee held a public hearing on the Board's proposed adoption of new sections 3062, 3062.1, 3062.2, 3062.3, 3062.4, 3063, 3063.1, 3063.2, 3063.3, and 3063.4, Title 16 of the CCR, which would implement BRGG's authority under Business and Pro-

fessions Code sections 125.9 and 148 by establishing a citation and fine system for the intermediate discipline of registrants and certificants for minor violations and of nonregistrants and noncertificants for engaging in activity for which registration or certification is required. [14:2&3 CRLR 59; 14:1 CRLR 46]

Under the proposed regulatory scheme, BRGG's Executive Officer would be empowered to issue citations, which may be accompanied by orders of abatement and/or a fine of at least \$500 but not more than \$2,500; the regulations specify ranges of fines for particular violations. In determining the fine, the Executive Officer must consider the gravity of the violation, the good faith of the person cited, and the history of previous violations. The citation must be in writing, must describe with particularity the offense for which it is being issued, must be served by certified mail on the cited individual, and must inform the cited individual of his/her right to appeal the citation by requesting an informal conference with the Executive Officer. If the Executive Officer affirms the citation after the informal conference, the cited individual is entitled to request a hearing before an administrative law judge.

At its June 3 meeting, BRGG adopted the proposed regulations, which await review and approval by OAL.

LEGISLATION

The following is a status update on bills reported in detail in CRLR Vol. 14, Nos. 2 & 3 (Spring/Summer 1994) at page 60:

SB 2036 (McCorquodale), as amended August 26, creates a "sunset" review process for occupational licensing boards within DCA, requiring each to be comprehensively reviewed every four years. SB 2036 imposes an initial "sunset" date of July 1, 1997 for BRGG; creates a Joint Legislative Sunset Review Committee which will review BRGG's performance approximately one year prior to its sunset date; and specifies 11 categories of criteria under which BRGG's performance will be evaluated. Following review of the agency and a public hearing, the Committee will make recommendations to the legislature on whether BRGG should be abolished, restructured, or redirected in terms of its statutory authority and priorities. The legislature may then either allow the sunset date to pass (in which case BRGG would cease to exist and its powers and duties would transfer to DCA) or pass legislation extending the sunset date for another four years. This bill was signed by the Governor on September 26 (Chapter 908, Statutes of 1994).

AB 1392 (Speier), as amended August 17, is no longer relevant to BRGG.

RECENT MEETINGS

At its June 3 meeting, BRGG noted that the Department of Parks and Recreation released a request for proposals (RFP) for various services including "water witching," the practice of using bent twigs or sticks to find buried springs or deep underground streams. Because the RFP also calls for geological investigative work to be performed, the Board stated that it is calling for a non-qualified person to practice geology. The Board directed its Executive Officer to notify the Department that the services required in its RFP are inconsistent with state law regarding the regulation of the practice of geology.

Also at its June meeting, the Board discussed its application review process; under the current process, an incoming application is reviewed by BRGG staff, then by the Executive Officer, and then by a professional member of the Board. The Board agreed to simplify this process so that the Executive Officer will refer applications to a professional member of the Board only if he has a problem or question regarding the file.

Also at the June meeting, then-Executive Officer John Parrish reported on BRGG's enforcement activities. According to Parrish, BRGG no longer has a backlog of enforcement cases; it has one case pending at the Attorney General's Office; and it is not receiving complaints at the same rate as in the past.

At its August 26 meeting, BRGG elected geologist Robert Lindblom as Board President and geologist Seena Hoose as Vice-President.

FUTURE MEETINGS

November 18 in Los Angeles.

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.

MAJOR PROJECTS

Strategic Planning Update. During its 1993-94 session, the legislature considered a bill to abolish BLA and the existing licensure requirement for landscape architects, and/or replace the licensure requirement with a certification program and a bond requirement; these proposals were based on findings of the Senate Subcommittee on Efficiency and Effectiveness in State Boards and Commissions that BLA has operated to bar qualified landscape architects from entry into the field; BLA does not set standards for the profession; and BLA engages in little, if any, enforcement activity. The Subcommittee concluded that "no serious public harm...would result if Landscape Architects were deregulated." Following intense lobbying by the Board and the landscape architect trade association, the legislature agreed to postpone any restructuring of the Board until it participates in the sunset review process created by SB 2036 (McCorquodale) (Chapter 908, Statutes of 1994) (*see* LEGISLATION); SB 2036 imposes an initial sunset date for BLA of July 1, 1997. [14:2&3 CRLR 61]

In anticipation of the upcoming sunset review process, BLA created a Strategic Planning Committee which scheduled a series of "strategic planning sessions" de-

signed to clarify the Board's role, function, and constituencies, and to improve its communication both internally and with external forces which impact it (such as the legislature and the Department of Consumer Affairs). At its first strategic planning session in March 1994, the Committee identified six goals for BLA: (1) to effectively and successfully address the sunset legislation by establishing a database and constantly updating it with evidence of BLA's effectiveness in meeting its statutory responsibilities; (2) to improve communication with the legislature, DCA, and the profession; (3) to fairly test candidates for landscape architect licensure; (4) to obtain accurate and complete information about the profession; (5) to define the Board's role in all aspects of its operation and develop internal definitions of rules and procedures for operations as needed; and (6) to effectively address the sunset legislation and other challenges to the legitimacy of the Board. [14:2&3 CRLR 61]

On June 10, the Committee held another strategic planning workshop in San Diego. The participants reviewed and discussed the criteria set forth in SB 2036 upon which BLA's performance will be evaluated. Among other things, the SB 2036 sunset criteria require the occupational licensing agency under review to prove that regulation of the profession is necessary in general, that the particular form of regulation utilized by the agency is the least restrictive form of regulation consistent with the public interest, and that the board operates and enforces its regulatory responsibilities in the public interest. The agency under review must also provide the legislature with detailed statistics about its enforcement program, including priorities, complaint and disciplinary action statistics, budget expenditures with average and median costs per case, and case aging data.

At the June session, BLA Executive Officer Jeanne Brode noted that one major focus of past legislative criticism is the Board's lack of enforcement activity; BLA receives very few complaints (and most of them are from landscape architects complaining about unlicensed practice) and takes almost no disciplinary action. The participants discussed several ways of enhancing BLA's enforcement statistics, ranging from the creation of new licensing categories so the Board would have enforcement jurisdiction over more licensees, increased prosecution of unlicensed practice, implementation of BLA's citation and fine system authority under Business and Professions Code section 125.9, and a public relations program to educate

consumers and legislators about the existence of the Board and the function of landscape architects.

Following discussion, the participants agreed to recommend that the Board refine its mission statement and goals; direct its legal counsel to develop legislative and regulatory amendments to help increase BLA's enforcement activities; create and distribute surveys to a sample of the general public and licensees to develop a consensus of their interpretations of the current state of the profession; and address a number of specific issues described in SB 2036. Workshop participants also agreed that the profession, through the California Chapter of the American Society of Landscape Architects (CCASLA), should collect information to develop a database on public agency requirements for utilizing licensed landscape architects; discuss possible inclusions for adding continuing education requirements to current licensure requirements to strengthen the profession's visibility in the public eye; develop a database to be used in developing future standards of practice within the profession; develop a list of political "connections" by region within the profession, and identify "targets" with whom licensees should meet and develop a working relationship; collect information from licensees regarding case histories, including litigation "horror stories" involving unlicensed practice; identify the diversity within the profession; collect data on other state boards; and identify a mission statement for the profession.

The participants also agreed that the Board's plan of action must take two directions: (1) "Plan A" involves enhancing, strengthening, and justifying the Board's regulatory programs and its existing licensure requirement; and (2) "Plan B" must involve development of "hybrid" regulatory schemes which may not involve licensing, including research into possible merger with other boards, implementation of a "title act" certification program which would protect use of the title "landscape architect," creation of a privately funded "commission" similar to an agricultural marketing order, or a private certification program.

The Strategic Planning Committee held another meeting on August 4. However, attendance was poor, and the consensus of those who attended was to pursue Plan B. At its August 5 meeting, the Board directed Executive Officer Brode and a CCASLA representative to work as a team to research alternative forms of regulation.

Board Republishes Proposed Changes to Educational Requirements for Licensure. On September 16, BLA



republished notice of its intent to amend section 2620, Title 16 of the CCR, which sets forth the maximum credits for various types and amounts of education and experience which may be allowed toward the six years of experience required for licensure as a landscape architect.

When BLA originally published this rulemaking proceeding, its stated intent was to enable experienced landscape contractors trying to become licensed as landscape architects to more easily qualify to sit for BLA's exam. An earlier version of the proposed regulatory changes would have permitted an individual with twelve years of experience as a licensed landscape contractor to sit for BLA's exam without any formal education in landscape architecture, and without working under the supervision of a licensed landscape architect as otherwise required by section 2620(c)(1). However, the landscape architect profession objected to this formulation, and the Board agreed to revise the language of the rule to require all licensees to have completed at least two years of education in landscape architecture. [14:2&3 CRLR 62; 14:1 CRLR 48; 13:4 CRLR 52]

As republished on September 16, section 2620 would require all licensure candidates to have completed at least two years of "educational credits" to be eligible to sit for BLA's exam; "educational credits" will be granted only for completion of degrees or certificates in approved landscape architecture programs. The maximum credit toward the six-year requirement which may be granted for a degree or combination of degrees from an approved school of landscape architecture is four years of educational credit. No credit will be allowed for education other than in landscape architecture, and no credit will be allowed for the partial completion of a landscape architecture educational program.

Regarding credit for experience, all candidates must possess at least two years of training/practice credits to be eligible to sit for BLA's exam. At least one of the two years of training/practice credits must be under the direct supervision of a landscape architect licensed in a United States jurisdiction, unless the candidate possesses at least two years of training/practice credits as a licensed landscape contractor. A candidate who possesses at least two years of training/practice credits as a licensed landscape contractor shall be deemed to have satisfied the two-year experience requirement. For purposes of computing "experience," one year of training/practice experience shall consist of 1,500 hours of qualifying employment. Training/practice experience may be accrued on the basis of part-time employment.

At this writing, the Board is scheduled to hold a public hearing on the revised version of section 2620 on November 18.

Examination Fee Increases. Also on September 16, BLA published notice of its intent to amend sections 2621 and 2649, Title 16 of the CCR.

Section 2649 currently sets BLA's examination fee at \$325; because a \$325 fee does not cover the Board's costs of administering its new Professional Examination for Landscape Architects (PELA) and BLA is compelled to cross-subsidize licensure applicants' examination-related expenses with license renewal fees, BLA proposes to increase its examination fee to \$425.

Section 2621 currently requires a licensure applicant who pays his/her exam fee but fails to show up for the exam to forfeit the fee, unless the candidate makes a showing of good cause within 30 days after the date of the exam and the Board determines that good cause existed and excuses the candidate, whereupon the candidate is permitted another 15 months in which to take the exam at no extra charge. BLA proposes to amend section 2621 to require a candidate who has paid the exam fee but cannot take the exam on the assigned date to petition the Board at least 90 days prior to the scheduled examination in order to secure the Board's finding of good cause and its permission to take the exam within 15 months at no extra charge.

At this writing, BLA is scheduled to hold a public hearing on these proposed regulatory changes on November 18.

Other BLA Rulemaking. BLA's proposed amendments to section 2615, Title 16 of the CCR, relating to BLA's new PELA, would allow candidates who are not licensed landscape architects and who have received credit from a state licensing authority for sections of a written examination other than PELA to receive credit for those passed sections, provided the exam is administered prior to December 31, 1994 and the Board determines that the exam is equivalent in scope and subject matter to the written exam last given in California; candidates who begin the exam process by taking CLARB's exam after January 1, 1995 must either take the PELA in its entirety in order to be licensed in California, or become fully licensed in another state and apply to qualify for California licensure under section 2615 by taking the reciprocity section of the PELA only. [14:2&3 CRLR 62-63] At this writing, the rulemaking file on these proposed regulatory changes is being reviewed by the Office of Administrative Law.

LEGISLATION

The following is a status update on bills reported in detail in CRLR Vol. 14,

Nos. 2 & 3 (Spring/Summer 1994) at page 63:

SB 2036 (McCorquodale), as amended August 26, creates a "sunset" review process for occupational licensing boards within DCA, requiring each to be comprehensively reviewed every four years. SB 2036 imposes an initial "sunset" date of July 1, 1997 for BLA (*see* MAJOR PROJECTS); creates a Joint Legislative Sunset Review Committee which will review BLA's performance approximately one year prior to its sunset date; and specifies 11 categories of criteria under which BLA's performance will be evaluated. Following review of the agency and a public hearing, the Committee will make recommendations to the legislature on whether BLA should be abolished, restructured, or redirected in terms of its statutory authority and priorities. The legislature may then either allow the sunset date to pass (in which case BLA would cease to exist and its powers and duties would transfer to DCA) or pass legislation extending the sunset date for another four years. This bill was signed by the Governor on September 26 (Chapter 908, Statutes of 1994).

AB 1392 (Speier), as amended August 17, is no longer relevant to BLA.

RECENT MEETINGS

At BLA's August 5 meeting, Board member Michal Moore reported on the June 23 meeting of the Board's Enforcement Committee; the Committee and the full Board agreed that activating the Board's enforcement program is one of the most important things BLA must do prior to the sunset review process. The Committee agreed that it must adequately define the term "landscape architecture" so that it can better detect unlicensed practice, develop statutory professional standards, and educate the public regarding landscape architects' utility.

Also at its August meeting, BLA discussed various issues regarding its budget; among other things, the Board discussed the impact that administration of the PELA has had on its operating budget. The Board noted that the candidate population has decreased substantially in recent years, making biennial exam administration impractical for economic reasons. Several Board members expressed concern that further administration of the PELA may be jeopardized unless the Board takes action to reduce costs or increase revenues generated by its administration. In response to a suggestion that the Board consider renegotiating with CLARB for administration of the national exam, public member Sandra Mandel reminded the Board that it discontinued use of CLARB's exam be-



cause DCA's Office of Examination Resources determined that it is not legally defensible; Mandel opined that BLA's return to an exam that is not legally defensible for strictly financial reasons is unacceptable. Following discussion, BLA agreed to offer the PELA once per year in one location; increase its examination fee by \$100 (*see* MAJOR PROJECTS); negotiate with the its PELA examination vendor, HRStrategies, to lower contract costs; and consider establishing a second licensing category in order to raise revenue. BLA also discussed the feasibility of selling advertisement space in its newsletter as a way to increase revenue; DCA legal counsel Don Chang warned that such an action might appear to constitute an endorsement by the Board, but agreed to look into the matter further and report his findings to the Board at a future meeting.

■ FUTURE MEETINGS

November 18 in Sacramento.

MEDICAL BOARD OF CALIFORNIA

Executive Director: Dixon Arnett
(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 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 examinations for some license applicants. Assisted by the Board's Committee on Affiliated Healing Arts Professions, 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.

■ MAJOR PROJECTS

MBC Overhauls Use of Medical Experts and Consultants. Following extensive debate at its July 29 meeting, the Medical Board adopted a proposal of its Task Force on Medical Quality Review which accomplishes two longtime goals of the Board: (1) It establishes minimum qualifications for physicians who review quality of care disciplinary cases and pro-

vide expert testimony at disciplinary hearings, and (2) it overhauls the Board's system of providing in-house medical review of disciplinary investigations by its employee district medical consultants (DMCs) and its employment of a single, full-time Chief Medical Consultant (CMC). The Board's vote was the culmination of nine public hearings of the Task Force since its creation soon after the March 1993 Medical Summit. [14:2&3 CRLR 65-66; 14:1 CRLR 52; 13:4 CRLR 57-58]

Compared to the restructuring of the DMC/CMC system, establishing minimum qualifications for expert witnesses and reviewers was relatively easy for the Board. Physicians wishing to serve as MBC medical experts must apply to DMQ for appointment or reappointment to two-year terms on a new statewide panel of experts, and must sign a written agreement to serve and to testify as needed in any case in which a written opinion is provided. Under the new criteria, MBC medical experts must be board certified by a specialty board approved by the American Board of Medical Specialties (ABMS) or in an "emerging" specialty, and must have a minimum of five years of practice in that specialty area. Experts must also have clear licenses with no prior discipline, no current accusation pending, and no complaints closed with merit, and must be in "active practice" (defined as at least 80 hours per month in direct patient care, clinical activity, or teaching) or be "non-active" for no more than two years at time of appointment to MBC's panel of experts. Peer review experience is recommended but not required. Experts must also successfully complete an eight-hour training program at least once every four years. The actual assignment of experts to disciplinary cases will be handled by the Board's DMCs, and the board certification or area of practice of the expert should match that of the respondent or the area of practice under review. The Board's action on the minimum qualifications proposal later prompted Governor Wilson to veto SB 1958 (Presley), a California Medical Association (CMA)-sponsored bill which would have established qualifications for medical experts in statute (*see* LEGISLATION).

Overhauling its system of using full-time, civil-service-protected DMCs and one CMC proved to be a much more difficult challenge for the Task Force and the Board. During the course of its deliberations, the Task Force considered but the full Board rejected a model proposed by MBC staff which was based on the system used by the Florida Board of Medicine; instead of using employee physicians like