



Bureau must afford an opportunity for a hearing, as specified in section 125.9. If the person to whom a citation and order of correction is issued fails to comply with the order of correction after that order is final, BHFTI will inform the Public Utilities Commission (PUC) of the violation and the PUC will require the telephone corporation furnishing services to that person to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising. [12:4 CRLR 85]

In order to implement these statutory provisions, BHFTI recently released a questionnaire seeking informal input regarding draft language for the proposed citation regulations; as drafted, the proposed regulations would define who may assess citations and fines under the citation system; the range of fines; criteria for determining the amount of fines; provisions regarding the appeal of citations and/or fines; and provisions regarding citations issued to unlicensed persons. The intent of the citation and disconnect regulations will be to establish a form of discipline which is more effective than warnings or notices of violation, but less costly and time-consuming than formal adjudicatory proceedings to suspend or revoke a license. At this writing, the Bureau has not published its proposed regulations for public comment in the *California Regulatory Notice Register*.

**Update on Proposed Insulation Regulations.** As a result of the transfer from the California Energy Commission (CEC) to BHFTI of jurisdiction over the sale of insulation in California, BHFTI has proposed amendments to CEC's regulations setting forth the standards which manufacturers must meet before their insulation material may be sold or installed in California. The Bureau's amendments will include in the regulatory scheme products not currently covered, such as insulated roof and wall panels, pipe insulation, and flexible insulated ducting, as well as newly-developed insulation materials including calcium silicate, flexible cellular plastic, and phenolic insulation. The proposed amendments would also update and amend existing product standard regulations to include the latest acceptable testing criteria. Finally, the regulations would establish labeling standards to minimize fraudulent labeling of insulation products. The Bureau conducted a public hearing on the proposed amendments on September 16. [12:4 CRLR 84] At this writing, Bureau staff and DCA legal counsel are reviewing the comments received at the hearing; BHFTI anticipates conducting a second public hearing in early 1993.

**Dry Cleaning Plant Registration Program Transferred.** Effective January 1, the authority to oversee the registration program for dry cleaning plants was transferred from BHFTI to the Department of Commerce (DOC) by SB 2044 (Boatwright) (Chapter 1135, Statutes of 1992). [12:4 CRLR 85] On and after January 1, no person shall operate a dry cleaning plant in this state unless he/she is registered with DOC. All funds remaining in the Dry Cleaning Account in the Bureau of Home Furnishings Fund on January 1 were transferred to the Dry Cleaning Fund within DOC, which was created by SB 2044.

**Final Version of Technical Bulletin 129 Released.** In October, BHFTI released the final version of Technical Bulletin 129, which consists of a full-scale fire performance test for mattress systems intended for use in various public buildings. [12:4 CRLR 83; 12:2&3 CRLR 90] Although not yet law in California, TB 129 has been endorsed by the International Sleep Product Association and the American Society for Testing and Materials. Also, the University of California and the California State University school systems have referred to TB 129 as procurement documents for furniture for residential halls and dormitories.

The Bureau has not yet set a date for formal adoption of the Bulletin; Chief Damant would prefer to phase it in through public awareness, making it available first as a testing procedure, after which the necessity of making it a mandatory regulation will be determined.

**BHFTI Takes Disciplinary Action.** Recently, BHFTI filed 25 lawsuits through the Sacramento, Los Angeles, Alameda, and Santa Clara district attorney offices against specified Taiwanese furniture manufacturers who were found to be selling a substantial quantity of goods in California which are not in compliance with state regulations. The Bureau's investigations of the products in question has consumed much of its limited resources and detracted from its ability to conduct follow-up surveys in areas such as the futon industry's compliance with applicable laws. [12:4 CRLR 84]

**Article Highlights BHFTI's Activities.** A November 20 article published in the *San Diego Union-Tribune* concerning the Department of Consumer Affairs featured a section on the Bureau. The article noted that BHFTI concentrates on product quality testing to ensure that all upholstered furniture and bedding meet strict state standards for consumer protection. Bureau scientists also test products to make sure claims for product efficiency,

properties, and performance are factual. The article informed consumers of their rights to file a complaint with BHFTI if they are unable to resolve a problem with a furniture manufacturer, report flammable bedding or upholstered furniture, report mislabeling of upholstered furniture and bedding, and report unsatisfactory service by a retailer. However, the article noted that the Bureau is not authorized to collect money for consumers, recommend certain products or stores, become involved in civil litigation, give legal advice, or provide a list of top-rated products.

## LEGISLATION

**Future Legislation.** DCA is expected to sponsor a fee bill for BHFTI to raise the statutory cap on the Bureau's licensing fees. Increasing its revenues will be a high priority for BHFTI, which anticipates a \$300,000 budget shortfall if its fees are not raised.

## 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 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 may be a combination of education from 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).



## REGULATORY AGENCY ACTION

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

**Board Responds to Industry Concerns, But Reaffirms Decision to Administer Own Exam.** At BLA's October 16 meeting, Executive Officer Jeanne Brode read a letter from absent professional Board member Dan Johnson requesting that BLA reconsider its decision to discontinue its use of CLARB's national examination in favor of a California-specific, BLA-administered exam. BLA made the decision to develop and administer its own Professional Examination for Landscape Architects (PELA) following years of dissatisfaction with CLARB's test, and specifically with the troubling low pass rates on CLARB's 1991 Uniform National Examination (UNE), recently renamed the Landscape Architects Registration Examination (LARE). [12:4 CRLR 86] Following BLA's decision, and in spite of a 6% national pass rate and a 9% California pass rate on the 1991 LARE, a number of licensure candidates and industry members have requested that BLA rescind its action and continue to require that applicants successfully complete CLARB's exam; many candidates fear a probable lack of license reciprocity from other states if California administers its own exam.

Also at BLA's October meeting, 1992 exam candidate Karen Loy presented the Board with petitions containing the signatures of 370 licensees and candidates who oppose BLA's action; Loy contended that the LARE is a fair examination, regardless of the historically low pass rates. Loy requested that BLA reverse its decision and continue its relationship with CLARB.

In addition to objecting to the potential lack of reciprocity, many candidates appear to have accepted the fact that few candidates pass the entire exam on the first attempt; they contend that because they have already invested time and effort in taking and passing parts of the seven-part LARE over previous years, BLA's decision effectively robs them of any advantage they had achieved over other candidates. Other candidates are concerned that because BLA's test has never been admin-

istered before, they will not receive enough reliable information to assist them in their 1993 examination preparation.

Some industry representatives also voiced objection to BLA's action, noting that the Board of Architectural Examiners (BAE), after making a similar break from the nationally-administered architectural examination, ultimately returned to the national exam following an expensive and unsuccessful attempt to administer a state-specific test. [9:2 CRLR 44] One of the major obstacles to BAE's administration of a California exam instead of the national test was the reciprocity issue.

Following discussion, Board member Marian Marum moved that BLA reconsider its decision to develop and administer a California exam for 1993; the motion died for lack of a second. BLA members acknowledged that the Board's administration of a California exam will inconvenience those candidates who have been preparing for and/or taking the LARE over the past few years; however, Board members agreed that the decision was made after substantial and thorough public debate and after numerous attempts to resolve BLA's differences with CLARB. The Board noted that its purpose is to protect the health, safety, and welfare of California consumers by requiring candidates for employment as landscape architects to demonstrate minimum competence as a condition to licensure. Some experts view LARE's consistently low passage rate as an indication that the exam is testing for mastery instead of competence; the effect of such an extreme standard is that otherwise competent candidates are prevented from practicing in the profession, thus minimizing competition for licensees. Board members reminded those in attendance that BLA has been harshly criticized by Department of Consumer Affairs (DCA) Director Jim Conran for "protecting the turf of the profession, not the consumer." Conran has expressed displeasure with the content of CLARB's exam, the extremely low pass rate, and BLA's continued use of the test; in light of such criticism, BLA stated that it can no longer defend its use of the LARE or postpone the changes that must occur.

In response to specific complaints made by candidates, the Board noted that candidates concerned about reciprocity are free to take the LARE in another state, so long as they successfully complete the PELA and are licensed by BLA before practicing in California. Also, BLA will be pursuing the adoption of regulations to—among other things—facilitate the transfer of credit for candidates who have passed specific portions of the UNE or

LARE (*see infra*). The Board agreed that less information about PELA's precise format and type of questions might be available for 1993 candidates, but noted that the overall pass rate will still be substantially higher than LARE's, even for first-time takers. Executive Officer Jeanne Brode added that staff has been making information about the new exam available by including information in the *Design* newsletter and the Board's meeting minutes which are mailed to anyone who requests to be on the mailing list.

**BLA Releases 1992 LARE Results.** At BLA's October 16 meeting, Executive Officer Brode announced the 1992 LARE test results, explaining that CLARB did not formulate the pass rates this year, but instead submitted the raw data for all California candidates and left the computation of pass rates to the state. Using these data, BLA determined pass rates of 7.46% for new candidates; 22.7% for retake candidates; and 89.7% for reciprocity candidates. Although the 24% overall pass rate indicates a significant increase over the 9% overall pass rate from the 1991 LARE, staff noted that the 1991 pass rate might not have included successful reciprocity candidates; if this category is not included in the 1992 overall pass rate, the figure drops to approximately 18%. Richard Ratcliff, lobbyist for the California Chapter of the American Society of Landscape Architects, contended that the preliminary figures show an improvement over 1991 scores, and opined that these results indicate that BLA should continue to use CLARB's exam. Board members were pleased that more candidates passed CLARB's 1992 test than passed the 1991 test, but agreed that the improvement is not substantial enough to merit reconsideration of the Board's decision to administer its own exam; Board member Larry Chimbole noted that the 7.46% pass rate for first-time examinees is still extremely low.

Board member Sandra Mandel reported that, based on CLARB's valid item analysis and a review of the 1992 LARE exam results, BLA's Examination Committee determined that there is no need for BLA to ask DCA's Central Testing Unit (CTU) to conduct a score modification workshop, as it did to rescore the 1991 LARE results. [12:4 CRLR 86] Based on this recommendation, the Board agreed that it would not convene a workshop to review the 1992 LARE results. However, CTU Manager Dr. Norman Hertz commented that the Board should not base its decision to conduct a workshop solely on the pass rate of the examination; DCA legal counsel Don Chang also recom-



mended that the Board conduct a workshop to review the exam. As a result, BLA rescinded its original decision and agreed to conduct a workshop for the purpose of reviewing the 1992 LARE exam.

**BLA Reviews Examination Development Progress.** At its December 4 meeting, BLA reviewed the progress of its examination vendor, Human Resources Strategies (HRS), in developing BLA's 1993 licensing examination. Among other things, HRS recommended that the examination be administered over two days: the first half of the first day would be objective, the second half of the first day would be design performance, and the entire second day would be a comprehensive construction performance problem. HRS representatives presented several options and asked for Board direction on the following issues:

- **Communications Skills Assessment.** Mark Blankenship of HRS explained the different options for the assessment of communication skills, which include the following:

- graphic communication skills, which constitutes a critical knowledge area, can be included in a performance problem, can be evaluated in a reliable manner, and includes technical content, for which the general public cannot evaluate minimum competency;

- oral communication skills, which is a critical knowledge area, but which requires individual assessment, is costly to administer, is difficult to assess in a reliable manner, and is a general skill area for which the general public can evaluate competency; and

- written examination skills, which is also a critical knowledge area and can be evaluated in a performance problem, but which is difficult to assess in a reliable manner, and which is difficult to assess independent of grammar and style, which are not related to public health, safety, and welfare.

With the approval of CTU's Dr. Hertz, the Board agreed to test for graphic communication skills, but not to test for oral and written communication skills.

- **Alternative Grading Strategies.** HRS' Anita Kamouri explained the different scoring options available to BLA. For example, a compensatory test has a single pass score that is obtained by summing test items across all test sections; the sum of scores on some variables can be compensated by higher scores on other variables. Conversely, a noncompensatory test has separate pass scores for different test sections; each test section must be passed before a complete pass is granted. Upon the recommendation of HRS and Dr.

Hertz, BLA agreed to use a semi-compensatory structure for the 1993 PELA; under this format, high scores in some sections can compensate for lower scores on other sections, provided that a minimum score is met on each section.

- **Pre-Testing.** HRS recommended that the Board conduct a pre-test of 15–25 recent licensees to confirm the adequacy of time limits, evaluate the appropriateness of item difficulty, evaluate the comprehensiveness of performance problem scoring guidelines in relation to potential responses, and make refinements to test items and scoring keys. The Board agreed to this suggestion, noting that a small testing sample is preferred in order to ensure examination security.

- **Other Issues.** BLA also adopted a transition policy allowing candidates who passed the California section of CLARB's exam during 1989, 1990, 1991, or 1992 to be licensed in California if—during 1993 only—they successfully complete the LARE as administered in another state.

Also, BLA agreed to amend its contract with HRS to allocate an additional \$59,700 for development of a reciprocity exam, a reciprocity handbook, and a transition plan for current California candidates who have successfully passed some, but not all, of LARE's sections; \$25,300 for additional services for computer-based tracking; and \$4,250 to develop a comprehensive five-year administration plan that ensures efficient ongoing implementation of the PELA examination process.

**BLA Proposes Regulatory Amendments.** In late December, BLA announced its intent to amend sections 2606, 2620, 2623, and 2671, repeal existing sections 2624, 2625, and 2626, and adopt new sections 2614, and 2615, Title 8 of the CCR.

Existing section 2606 specifies the design for a landscape architect's seal; BLA's proposed changes to section 2606 would require that the design for a landscape architect's seal include his/her license renewal date.

New section 2614 would authorize BLA to transfer credit received by a candidate on the UNE or LARE to PELA, and provide a transition program for licensing candidates who have received credit for sections 1–7 of the 1992 or 1993 LARE and who have passed either section 6 of the 1988 through 1991 UNE or section 8 of the 1992 LARE (*see supra*).

New section 2615 would provide that a candidate who is licensed as a landscape architect in a state by having passed CLARB's examination or who is certified by CLARB and has submitted proof of job

experience equivalent to that which is required of California candidates would be eligible for licensure upon passing a new California reciprocity examination. Section 2615 would also provide that a candidate who is not a licensed landscape architect and who has passed sections of CLARB's examination in another state would be granted credit by BLA in accordance with proposed new section 2614 for those examination sections as they correspond to the California licensing examination sections.

Existing section 2620 requires all candidates for the examination to possess at least two years of training experience; such training experience shall be considered on the basis of forty-hour work weeks. The proposed amendment to section 2620 would define a year of training experience as 2,000 hours of qualifying employment, which could include part-time work experience.

Existing section 2623 provides a procedure for a candidate to inspect and appeal the result of a failing score on the graphic performance section of the licensing examination. Proposed amendments to section 2623 would revise this procedure, and require a candidate to submit his/her examination appeal within seven days after he/she reviews his/her exam.

BLA proposes to repeal section 2624, which provides that the Board's licensing exam consists of a written and oral examination, and provides that all applicants for registration are required to take both the written and an oral examination, except that an applicant who possesses a certificate to practice landscape architecture in California which has not been renewed within five years after its expiration, or an applicant who has been certified by CLARB, may be given an oral examination to determine if he/she is qualified to practice landscape architecture without the necessity of having to pass the written examination or sections thereof, or may be required to submit a treatise on a subject determined by BLA in lieu of having to take the written examination.

BLA also proposes to repeal section 2625, which provides that BLA's written licensing examination must cover history, professional practices, design, design implementation, plant materials, and general ecology, and which provides that, at the discretion of BLA, any portion of a written examination may be eliminated from, or added to the above schedule, or the subjects combined, depending upon circumstances and/or the nature of the problem given.

BLA is proposing to repeal section 2626, which provides for the administra-



# REGULATORY AGENCY ACTION

tion of an oral examination.

Existing section 2671 requires a landscape architect to include his/her license number in all public presentments; BLA's proposed amendments to section 2671 would further require that a landscape architect include his/her name and the words "landscape architect" in all public presentments.

BLA was scheduled to conduct a public hearing on these proposals on February 19 in San Diego.

## LEGISLATION

**Future Legislation.** During the 1993-94 legislative session, BLA may pursue legislation which will require landscape architects to use 20% recycled materials in their design plans; revise the definition of the term "landscape architect"; and revise Business and Professions Code section 5959 to—among other things—make mandatory instead of optional the requirement that licensed landscape architects obtain a seal of the design authorized by BLA, bearing his/her name, license number, the renewal date of the license, the legend "landscape architect," and the legend "State of California."

## RECENT MEETINGS

At its October 16 meeting, the Board elected Larry Chimbole to serve as President and Greg Burgener to serve as Vice-President during 1993. Also, the Board directed staff to publish a new version of its pamphlet, *Consumer's Guide to Hiring a Landscape Architect*.

## FUTURE MEETINGS

- May 7 in Sacramento.
- July 16 in Los Angeles.
- October 22 in Sacramento.

## MEDICAL BOARD OF CALIFORNIA

*Executive Director: Dixon Arnett*  
(916) 263-2389  
*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 non-physicians appointed to four-year terms, is divided into three autonomous divisions: Licensing, Medical Quality, and Allied Health Professions.

The purpose of MBC and its three divisions is to protect the consumer from

incompetent, grossly negligent, unlicensed, or unethical practitioners; to enforce provisions of the Medical Practice Act (California Business and Professions Code section 2000 *et seq.*); and to 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).

The functions of the individual divisions are as follows:

MBC's Division of Licensing (DOL) is responsible for issuing regular and probationary licenses and certificates under the Board's jurisdiction; administering the Board's continuing medical education program; and administering physician and surgeon examinations for some license applicants.

In response to complaints from the public and reports from health care facilities, the Division of Medical Quality (DMQ) 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. It also includes the suspension, revocation, or limitation of licenses after the conclusion of disciplinary actions. The division operates in conjunction with fourteen Medical Quality Review Committees (MQRC) established on a geographic basis throughout the state. Committee members are physicians, other health professionals, and lay persons assigned by DMQ to review matters, hear disciplinary charges against physicians, and receive input from consumers and health care providers in the community.

The Division of Allied Health Professions (DAHP) directly regulates five non-physician health occupations and oversees the activities of eight other examining committees and boards which license podiatrists and non-physician certificate holders under the jurisdiction of the Board. The following allied health professions are subject to the oversight of DAHP: acupuncturists, audiologists, hearing aid dispensers, medical assistants, physical therapists, physical therapist assistants, physician assistants, podiatrists, psychologists, psychological assistants, registered dispensing opticians, research psychoanalysts, speech pathologists, and respiratory care practitioners.

DAHP members are assigned as liaisons to one or two of these boards or committees, and may also be assigned as liaisons to a board regulating a related area such as pharmacy, optometry, or nursing. As liaisons, DAHP members are expected to attend two or three meetings of their

assigned board or committee each year, and to keep the Division informed of activities or issues which may affect the professions under the Medical Board's jurisdiction.

MBC's three divisions meet together approximately four times per year. Individual divisions and subcommittees also hold additional separate meetings as the need arises.

## MAJOR PROJECTS

**Wagstaff Resigns Under Pressure; Revamped Board Hires Arnett as Executive Director.** On October 23, then-MBC Executive Director Ken Wagstaff submitted a letter stating his "intention to resign" as of November 6, in the face of what he called "a desire on the part of an apparent majority of the Board to grant a request, recently communicated to [MBC President] Dr. [Fredrick] Milkie by the Governor's Chief of Staff, that I step aside."

Wagstaff's forced resignation was in fact orchestrated by the Wilson administration, which has declined to reappoint Board members originally selected by former Governor Deukmejian and recently gained a majority of Medical Board seats. The administration's embarrassment over the performance of Wagstaff and the Medical Board has grown steadily over the past several years. In particular, MBC's mishandling of egregious and sensational medical discipline cases caught the eye of the national news media, culminating in a June 1992 "Sixty Minutes" segment which, in the words of former State and Consumer Services Agency Secretary Bonnie Gupton, left her "angry, disappointed and embarrassed." In addition, recent allegations of "case dumping" orders and other serious misconduct by top MBC enforcement staff caused Department of Consumer Affairs (DCA) Director Jim Conran to order an independent investigation of the accusations. [12:4 CRLR 88-89] Although the investigation was ongoing at the time of Wagstaff's resignation, both Wagstaff and administration officials stated that its pendency had nothing to do with Wagstaff's ouster.

Wagstaff's unusual "letter of intent to resign" indicated that he hoped MBC members might have a change of heart by the Board's November 6 meeting. The Bagley-Keene Open Meeting Act requires state agencies to take personnel actions regarding executive officers at a public meeting instead of behind closed doors, and Wagstaff apparently believed some Board members might be unwilling to vote to fire him at an open hearing. At the meeting, however, MBC members disposed of the matter rather summarily, per-