



STATE & CONSUMER SERVICES AGENCY (Department of Consumer Affairs)

BOARD OF ACCOUNTANCY

*Executive Officer: Carol Sigmann
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The Board of Accountancy (BOA) licenses, regulates, and disciplines certified public accountants (CPAs). The Board also regulates and disciplines existing members of an additional classification of licensees, public accountants (PAs); the PA license was granted only during a short period after World War II. BOA currently regulates over 60,000 licensees. The Board establishes and maintains standards of qualification and conduct within the accounting profession, primarily through its power to license. The Board's enabling act is found at section 5000 *et seq.* of the Business and Professions Code; the Board's regulations appear in Title 16, Division 1 of the California Code of Regulations (CCR).

The Board consists of twelve members: eight BOA licensees (seven CPAs and one PA), and four public members. Each Board member serves a four-year term and receives no compensation other than expenses incurred for Board activities.

The operations of the Board are conducted through various standing committees and, for specific projects, task forces which are sunsetted at project completion. The Board's major committees include the following:

-The Qualifications Committee, among other things, reviews all applications for licensure, reviews workpapers to determine qualifications if it is unable to do so based on a file review, and considers all policy and/or procedural issues related to licensure.

-The Legislative Committee reviews legislation and recommends a position to the Board; reviews and/or edits proposed statutory language and regulatory language developed by other committees before it is presented to the Board; and serves as an arena for the various trade associations to express their concerns on issues.

-The Committee on Professional Conduct considers all issues related to the professional and ethical conduct of CPAs and PAs.

-The Administrative Committee is responsible for handling disciplinary matters concerning licensees.

The Board's staff administers and processes the nationally standardized CPA examination, a four-part exam encompassing the categories of Audit, Law, Theory, and combined sections Practice I and II. Applicants must successfully complete all four parts of the exam and 500 hours of qualifying auditing work experience in order to be licensed. Approximately 20,000 examination applications are processed each year. Under certain circumstances, an applicant may repeat only the failed sections of the exam rather than the entire exam. BOA receives approximately 4,000 applications for licensure per year.

Governor Wilson recently appointed E. Eileen Duddy, CPA, to the Board; the Governor also reappointed Walter Finch, PA, and Robert E. Badham, a public member, to BOA. There is presently one CPA vacancy on the Board.

MAJOR PROJECTS

Board Seeks to Amend Rule 89.1. On March 26, BOA published notice of its intent to amend section 89.1, Title 16 of the CCR, which gives the Board's Continuing Education Committee responsibility for requesting that licensees provide copies of financial reports for review. Section 89.1 also indicates that requests will be directed only to those licensees who, within the previous two years, have had primary responsibility for or authority to sign financial reports; in addition, existing section 89.1 makes reference to the Continuing Education form. [13:1 CRLR 17]

BOA's proposed amendments would delete the reference to the "Continuing Education Program" so that the review of financial statements may be administered by the Positive Enforcement Program Committee or any other committee the Board deems appropriate. The amendments would change the phrase "primary responsibility for or authority to sign" to

"primary responsibility for and authority to sign." According to BOA, this language more clearly specifies that these reviews would be required only of licensees with the authority to sign, not of management or supervisory personnel. The amendments would also delete the reference to the Continuing Education form; this reference is obsolete since the form is no longer in use.

The Board held a public hearing on the proposed changes on May 14; following the hearing, BOA adopted the proposed changes to section 89.1. At this writing, the amendments await review and approval by the Office of Administrative Law (OAL).

BOA Considers New Rulemaking Proposals. At its February and May meetings, BOA discussed suggested changes to section 54, Title 16 of the CCR, which provides that no information obtained by a licensee, in his/her professional capacity, concerning a client or prospective client, shall be disclosed by the licensee without the permission of the client or prospective client, except as specified. According to the California Society of Certified Public Accountants (CSCPA), some CPAs dedicate their practices to litigation support services; CSCPA claims that there are situations when attorneys or their clients contact virtually all known CPAs who engage in litigation support services in a given geographic area "to purportedly inquire about the accountants' familiarity with litigation support and their availability to come on board the litigation team if asked. During these conversations, the CPAs are exposed to information regarding the potential client." Even if those CPAs are not retained, they are estopped from representing the opposing parties because they have been made privy to potential client information which must be held confidential pursuant to section 54. According to CSCPA, these tactics are used primarily in dissolution proceedings, and result in consumers being "denied the services of capable CPAs who would otherwise have been able to represent them had it not been for the purposeful disclosure of potential client information."

Accordingly, CSCPA requested that BOA amend section 54 to provide that disclosures made by a prospective client to a CPA regarding prospective retention for litigation support services, including testimony as an expert witness, are not subject to confidentiality under section 54. Although BOA is considering such an amendment, it has not yet published notice of its intent to pursue the change in the *California Regulatory Notice Register*.



Also at its February and May meetings, BOA discussed draft amendments to section 75.8, Title 16 of the CCR, which provides that security for claims against an accountancy corporation by its clients or others shall consist of a written agreement of the shareholders that they shall jointly and severally guarantee payment by the corporation of liabilities imposed upon it by law for damages arising out of all claims against it by its clients or others arising out of the rendering of or failure to render professional services by the corporation. An executed copy of the written agreement must be furnished to BOA. CSCPA requested that BOA amend this section to allow for insurance in lieu of written shareholders' agreements. According to CSCPA, "the consumers of professional accountancy corporation services should be afforded the same liability insurance protection opportunities granted to the consumers of other professions." Although BOA is considering such an amendment, it has not yet published notice of its intent to pursue such a change in the *California Regulatory Notice Register*.

Other Board Rulemaking. At this writing, the Board has not yet published notice of its intent to amend sections 87 and 90, Title 16 of the CCR. The proposed amendments to section 87 would clarify the Board's required continuing education requirements for licensees; the amendments to section 90 would describe in detail those licensees who are deemed to be in public practice for purposes of mandatory continuing education and not eligible for an exemption. [13:1 CRLR 17]

At this writing, BOA's proposed amendments to sections 11.5, 89, and 95.2, Title 16 of the CCR, still await review and approval by OAL. [13:1 CRLR 16-17] The Board's amendments to section 11.5 would clarify how experience of out-of-state licensees shall be evaluated for purposes of qualifying experience for California licensure. BOA's proposed changes to section 89 would—among other things—require that for a licensee to receive credit for attending a continuing education course, the licensee must obtain and retain for four years after renewal a certificate of completion signed by the course provider disclosing the school or organization conducting the course, the location, course title or description of the content, dates of attendance, and the number of hours of actual attendance. Finally, proposed amendments to section 95.2 would modify BOA's schedule of citations and range of minimum and maximum fines applicable to various violations of the Board's statutes and regulations.

November 1992 CPA Exams Lost. One out of the eight boxes containing the Uniform Exam of the American Institute of Certified Public Accountants administered in California last November was lost en route from San Diego to New York, where they were to be graded; the lost exams were in the law and accounting practice portions of the four-part test. According to BOA, all 678 affected candidates have been notified. The Board will make special accommodations for the candidates whose exams were lost, and who had the potential to pass based on the portions that were graded; retake fees for all affected candidates will be waived. BOA is expected to seek recovery of all of its costs associated with the lost exams and continue to monitor the security procedures in place; however, even if the exams are found, they are not valid because of the breach of security.

LEGISLATION

SB 839 (Ayala), as amended May 4, would provide for the issuance of a retired CPA or retired PA license to an individual who holds an unexpired permit to practice public accountancy upon surrender of the permit. The bill would allow the holder of a retired license to perform specified activities, and would allow a retired licensee to restore his/her license upon meeting certain conditions. This bill would require an applicant for a retired CPA or retired PA license to pay an application fee, as specified. [A. CPGE&ED]

SB 308 (Craven). Business and Professions Code section 5050 prohibits any person from engaging in the practice of public accountancy in this state unless the person is the holder of a valid permit to practice public accountancy issued by BOA, except that CPAs or PAs from another state or foreign country may temporarily practice in California on professional business incident to their regular practice in the other state or country. As introduced February 17, this spot bill would provide an unspecified definition of the word "temporarily." [S. B&P]

AB 1754 (Frazee), as amended April 27, would authorize BOA to contract with and employ CPAs and PAs as consultants and experts to assist in its enforcement program. [A. Floor]

AB 719 (Horcher), as introduced February 24, would require the written CPA examination to include the rules of professional conduct and the provisions of existing law relating to the practice of accountancy. [A. CPGE&ED]

SB 1111 (Deddeh), as amended April 12, would require each accountancy corporation to renew its permit to practice

biennially and to pay the renewal fee fixed by BOA, as specified; the bill would also make related changes. Existing law requires each accountancy corporation to file with BOA a report pertaining to qualification and compliance with statutes and regulations, as specified, and to pay a fee for filing this report. This bill would delete the fee requirement for that report. [A. CPGE&ED]

SB 842 (Presley), as amended April 13, would permit BOA to issue interim orders of suspension and other license restrictions, as specified, against its licensees. [A. CPGE&ED]

AB 1807 (Bronshvag), as amended May 3, would authorize BOA to issue citations if, upon investigation, the Board has probable cause to believe that a person is advertising in a telephone directory with respect to the offering or performance of services without being properly licensed, and to require the violator to cease the unlawful advertising. [A. W&M]

LITIGATION

Late last year, Bonnie Moore filed a petition for certiorari to the U.S. Supreme Court seeking review of the California Supreme Court's 4-3 decision in *Moore v. State Board of Accountancy*, 2 Cal. App. 4th 999 (1992). In that case, the California Supreme Court affirmed a First District Court of Appeal ruling that the Board's "Rule 2" (section 2, Division 1, Title 16 of the CCR)—which prohibits anyone but a CPA from using the generic terms "accountant" or "accounting" to describe themselves or their services—is constitutionally defective because it is overbroad. The court held that non-CPA accountants must be permitted to use the generic terms so long as their use is accompanied by a disclaimer that the practitioner is not licensed by the state or that the services provided do not require a state license. Although the court ruled that the Board's regulation is unconstitutional, and although the regulation as codified forbids non-CPA accountants to use the terms "accountant" or "accounting" with or without a disclaimer (as specified by the court), the California high court failed to invalidate the rule, thus prompting Moore's petition for certiorari. [13:1 CRLR 19; 12:4 CRLR 52] On February 22, the U.S. Supreme Court declined to hear the case, thus leaving the California Supreme Court's decision intact.

Meanwhile, prior to the U.S. Supreme Court's decision, the Board returned to state superior court, seeking to modify an existing injunction against Moore and her co-plaintiffs, purportedly to conform the injunction to the decisions of the First



District Court of Appeal and the California Supreme Court. As requested, and over the objection of plaintiffs, the superior court entered a modified judgment and injunction against plaintiffs. Moore objects to the modified injunction on grounds it improperly expands the scope of the action by broadly prohibiting "the unlicensed practice of public accountancy," when both the First District and the California Supreme Court specifically found that the Board has not alleged Moore has engaged in the unlicensed practice of public accountancy. Moore also disputes the modified judgment, which characterizes the Board as the "prevailing party" in the litigation. Moore notes that throughout this lengthy action, the Board has consistently urged the position that non-CPA accountants should be absolutely prohibited from any use of the terms "accountant" or "accounting"; that position was expressly rejected by both the First District and the California Supreme Court. While Moore's primary position—complete invalidation of the rule—was not adopted either, the courts' decisions now permit her and other non-CPA accountants to use the terms "accountant" and "accounting" with a disclaimer. Thus, Moore has appealed the trial court's injunction and judgment to the First District Court of Appeal, filing her opening brief on May 10; at this writing, the Board is expected to file a response in late June.

On February 26, the First District Court of Appeal retroactively applied *Bily v. Arthur Young*, 3 Cal. 4th 370 (1992), and overturned a trial court's ruling which granted a new trial to determine damages against Touche Ross in a professional negligence and negligent misrepresentation proceeding. In *Industrial Indemnity Co. v. Touche Ross & Co.*, No. A055844, the First District found that because Industrial did not contract for or engage Touche's audit services, it may not recover for general negligence under the *Bily* decision, which limits an auditor's liability for general negligence in the conduct of an audit of its client's financial statements to the person who contracts for or engages the audit services. [12:4 CRLR 51] The court also found that Touche is not liable to Industrial for negligent misrepresentation under *Bily*, which found that auditors retained to conduct an annual audit and to furnish an opinion for no particular purpose generally undertake no duty to third parties, even though such an auditor "knows that the financial statements, accompanied by an auditor's opinion, are customarily used in a wide variety of financial transactions...and may be relied

upon by lenders, investors, shareholders, creditors, purchasers, and the like..." The court found no evidence in the record to support a departure from this general rule.

In *Edenfield v. Fane*, 113 S.Ct. 1792 (1993), the U.S. Supreme Court struck down a Florida rule prohibiting CPAs from engaging in "direct, in-person, uninvited solicitation" to obtain new clients. Although acknowledging that though the purposes behind the ban are to protect consumers from fraud and maintain the fact and appearance of CPA independence in auditing financial statements, the court found that the Florida Board of Accountancy failed to demonstrate that the ban advances those interests in any direct and material way. Accordingly, the Court ruled that Florida's outright ban against truthful, nondeceptive information proposing a lawful commercial transaction is commercial speech which is protected by the first and fourteenth amendments.

In *Reves v. Ernst & Young*, No. 91-886 (Mar. 3, 1993), the U.S. Supreme Court held that accountants, lawyers, and other professionals must actually participate in the operation or management of an illegal enterprise in order to be liable under the federal Racketeer Influenced and Corrupt Organizations Act (RICO). The Court upheld the Eighth Circuit Court of Appeals' decision affirming the trial court's decision to grant summary judgment and dismiss a case brought against the accounting firm Ernst & Young for its role in a stock offering that was later the subject of a RICO suit by investors.

RECENT MEETINGS

At its February meeting, BOA adopted a CPA firm namestyle designation policy, which provides that only the CPA credential may be part of the official namestyle of a firm; a specialty designation may not be used within a namestyle. Also, if a licensee obtains a designation related to the practice of public accountancy, such a designation must appear separate from the firm name and may be used only if it meets the following conditions: (1) any specialty designation must clearly identify the specific individual who has obtained the designation and the specific organization that issued the designation; and (2) to avoid public confusion, the designation may not appear after or follow the licensee's CPA designation. Only academic credentials appropriately earned are permitted after the licensee's CPA designation.

FUTURE MEETINGS

November 18-19 in Sacramento.
February 4-5 in Los Angeles.

BOARD OF ARCHITECTURAL EXAMINERS

Executive Officer:
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The Board of Architectural Examiners (BAE) was established by the legislature in 1901. BAE establishes minimum professional qualifications and performance standards for admission to and practice of the profession of architecture through its administration of the Architects Practice Act, Business and Professions Code section 5500 *et seq.* The Board's regulations are found in Division 2, Title 16 of the California Code of Regulations (CCR). Duties of the Board include administration of the Architect Registration Examination (ARE) of the National Council of Architectural Registration Boards (NCARB), and enforcement of the Board's statutes and regulations. To become licensed as an architect, a candidate must successfully complete a written and oral examination, and provide evidence of at least eight years of relevant education and experience. BAE is a ten-member body evenly divided between architects and public members. Three public members and the five architects are appointed by the Governor. The Senate Rules Committee and the Speaker of the Assembly each appoint a public member.

MAJOR PROJECTS

Oral Exam/Appeals Process Update.

In addition to NCARB's national standardized written exam, BAE administers a supplemental oral examination in California, the stated purpose of which is to ensure that the entry-level architect understands all phases of architectural practice and the architect's responsibilities as they relate to each other. At numerous meetings during 1992, the Board considered the possible elimination of its oral exam; however, at its October 2 meeting, BAE decided to extend its contract with CTB MacMillan/McGraw-Hill (CTB) to provide oral exam administration, scoring, and reporting services through June 30, 1993, and directed staff to develop a request for proposals (RFP) for future exam services. [13:1 CRLR 19-20]

At its January 29 meeting, BAE's Internship and Oral Exam Committee reviewed and approved the RFP, which was advertised in the *State Contracts Register* on February 11; in response, the Board received two bids. On March 18, a five-person evaluation team consisting of