



STATE & CONSUMER SERVICES AGENCY (Department of Consumer Affairs)

BOARD OF ACCOUNTANCY

*Executive Officer: Carol Sigmann
(916) 574-2155*

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, currently a five-part exam encompassing the categories of Audit, Law, Theory, and combined sections Practice I and II. Generally, in order to be licensed, applicants must successfully complete all parts of the exam and three or more years of qualifying accounting experience (including experience in applying a variety of auditing procedures); one year of the experience requirement may be waived with college credit. Under certain circumstances, an applicant may repeat only the failed sections of the exam rather than the entire exam.

The current members of BOA are CPAs Janice Wilson, Avedick Poladian, Victor Calderon, Eileen Duddy, Ira Landis, Diane Rubin, and Robert Shackleton; PA Walter Finch; and public members Robert Badham, Karen Mier, Baxter Rice, and Joseph Tambe.

MAJOR PROJECTS

Exam Changes to be Implemented in 1994. The American Institute of Certified Public Accountants (AICPA), the trade association responsible for preparing the Uniform CPA Examination, will change the format of the exam effective May 1994. The revised exam will be condensed from five sections to four sections; the four new sections are business law and professional responsibility, auditing, accounting and reporting, and financial accounting and reporting. Existing sections entitled Practice I and II have been combined into the accounting and reporting section, and the former theory section has become the financial accounting and reporting section. The new exam is expected to make greater use of objective answer formats; however, it will also contain essay problems that will be graded for writing skills. BOA will continue to award conditional credit to candidates who pass at least two parts of the exam (meaning they need not repeat those parts).

Board Proposes New Rulemaking Package. On June 18, BOA published notice of its intent to amend sections 6 and 7 and repeal sections 87.1(b) and 87.2, Title 16 of the CCR. Proposed amendments to section 6 would delete existing references to the May and November Uniform CPA Examination dates and the March 1 and September 1 filing dates in order to provide the Board with greater flexibility regarding the dates for administering the CPA examination. This amendment will allow BOA to administer the 1994 revision of the Uniform CPA Examination. Amendments to section 6 would also repeal an existing provision regarding reasonable accommodations for handicapped examination candidates and add a new provision specifying that the Board will accommodate disabled examination candidates in accordance with the requirements of the Americans with Disabilities Act.

Section 7 governs the granting of conditional examination credit if a candidate passes the Uniform CPA Examination in two or more subjects or in the "single subject of accounting practice." However, the AICPA's 1994 revision to its Uniform CPA examination does not contain a section called "accounting practice." BOA's proposed amendments would delete the reference to the "single subject of accounting practice," to ensure that section 7 is not inconsistent with the section titles of the 1994 Uniform CPA Examination.

Section 87.2 currently requires completion of up to 120 hours of continuing education (CE) for licensees re-entering the practice of public accountancy; the section became operative on July 1, 1993. According to BOA, the section lacks clarity, could be interpreted to allow licensees to re-enter public practice without sufficient CE to ensure they are qualified, and should be repealed. Section 87.1 sets forth the CE requirements which were in effect until July 1, 1993; and section 87.1(b) provides that these requirements are effective until that date. In light of BOA's proposed repeal of section 87.2, it also proposes to repeal section 87.1(b) so that the previous CE requirements for licensees re-entering public practice will remain in force.

On June 23, the Office of Administrative Law (OAL) approved BOA's emergency repeal of sections 87.1(b) and 87.2; the emergency action became effective on July 1. On August 6, BOA held a public hearing on its proposed amendments to sections 6 and 7 and the permanent repeal of sections 87.1(b) and 87.2; following the hearing, BOA adopted the proposed changes. At this writing, the rulemaking



file is pending review and approval by the Department of Consumer Affairs (DCA) and OAL.

Rulemaking Update. The following is a status update on rulemaking proposals discussed in detail in previous issues of the *Reporter*:

—On May 14, BOA adopted proposed amendments to section 89.1, Title 16 of the CCR, which currently gives the Board's Continuing Education Committee responsibility for requesting that licensees provide copies of financial reports for review; 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; and makes reference to the Continuing Education form. BOA's proposed amendments would delete the reference to the "Continuing Education Program," change the phrase "primary responsibility for or authority to sign" to "primary responsibility for and authority to sign," and delete the reference to the Continuing Education form. [13:2&3 CRLR 44] At this writing, these amendments await review and approval by DCA and OAL.

—BOA's proposed amendments to sections 11.5, 89, and 95.2, Title 16 of the CCR, still await review and approval by OAL. [13:2&3 CRLR 45] Among other things, BOA's proposed amendments to section 89 would provide that for a licensee to receive credit for attending a continuing education course, the licensee must comply with specified requirements. BOA's 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.

BOA Rejects New Rulemaking Proposal. At its May meeting, 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 attorneys or their clients sometimes 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 regard-

ing 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. This results 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."

However, the Board decided the concerns raised by CSCPA might be avoided if, prior to any discussion with a caller interested in litigation support, the licensee obtains the caller's permission (preferably in writing) to disclose whatever information the caller provides about a party who may be a prospective client. This written permission to disclose, which would be faxed to the licensee, would take the conversation out of the realm of Rule 54. Thus, BOA decided not to adopt the amendments proposed by CSCPA.

LEGISLATION

SB 842 (Presley), as amended July 14, permits BOA to issue interim orders of suspension and other license restrictions, as specified, against its licensees. This bill was signed by the Governor on October 5 (Chapter 840, Statutes of 1993).

SB 839 (Ayala), as amended May 27, provides for the issuance of a retired CPA or retired PA seal to an individual who holds either an unexpired permit to practice public accountancy or an expired permit which remains subject to renewal. The bill requires an applicant for a retired CPA or retired PA seal to pay an application fee, as specified. This bill was signed by the Governor on July 30 (Chapter 262, Statutes of 1993).

AB 1392 (Speier), as amended July 1, would—among other things—provide that BOA's executive officer is to be appointed by the Governor, subject to Senate confirmation, and that the Board's executive officer and employees are under the control of the Director of the Department of Consumer Affairs. [S. B&P]

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 June 22, would authorize BOA to contract with and employ CPAs and PAs as consultants and experts to assist in its enforcement program. The bill would also require the Board to report annually to the legislature regarding these contracts. [S. Jud]

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]

AB 1807 (Bronshvag), as amended September 8, would revise the required membership of BOA's Administrative Committee, which currently consists of not less than three nor more than five PAs and not less than ten nor more than twelve CPAs. AB 1807 would provide that the Committee consist of not less than thirteen nor more than seventeen licensees, at least one of whom shall be a PA. AB 1807 would also delete the existing requirement that at least one member of the Board's Continuing Education Committee be a licensed PA under specified circumstances.

AB 1807 would also 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. This bill would also revise the educational requirements for an applicant for admission to the examination for a CPA certificate, to require applicants who do not have a baccalaureate degree from a four-year institution in accounting or a related subject to have completed at least ten semester hours or the equivalent in accounting subjects at a college-level institution. [A. Inactive File]

LITIGATION

The parties to *Moore v. State Board of Accountancy* are still disputing the proper application of the California Supreme Court's decision in the matter. In that case, 2 Cal. 4th 999 (1992), the court held that



BOA'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 or other explanation that the practitioner is not licensed by the state or that the services provided do not require a state license. [13:2&3 CRLR 45; 12:4 CRLR 52]

Following the Supreme Court's decision, the Board obtained a modified injunction and judgment against Bonnie Moore and her co-plaintiff, the California Association of Independent Accountants (CAIA), in March 1993. The modified judgment and injunction names BOA as the prevailing party in the litigation; prohibits CAIA and Moore from engaging in any unlawful practice of public accountancy; prohibits CAIA and Moore from representing or suggesting to any unlicensed person engaged in the offering or rendering of professional services to the public that unlicensed persons may lawfully hold themselves out to the public as "accountants" or are lawfully authorized to advertise their services as "accounting" or "accounting services" in contravention of the court's ruling; and prohibits CAIA and Moore from "promoting or encouraging or soliciting directly or indirectly the unlawful practice of public accountancy" in contravention of the judgment and injunction of the court.

Moore has appealed the trial court's modified injunction and judgment to the First District Court of Appeal on various grounds; Moore focuses on the fact that the modified injunction bars the unlicensed practice of public accountancy, which was not an issue in the case. Moore also disputes the idea that the Board was the prevailing party, arguing that the court held Rule 2 to be unconstitutional and rejected the Board's attempt to bar all use of the terms "accounting" and "accountant" by non-CPA accountants. Oral argument on the appeal is scheduled for November 17.

In a related matter, non-CPA accountant Shaun Carberry filed *Carberry v. California State Board of Accountancy*, No. 954687 (San Francisco Superior Court), on September 7. Carberry challenges BOA's March 30, 1993 cease and desist letter ordering him to change the name of his business, Citizens Accounting & Tax Service, because he is not licensed as a CPA and his use of the word "accounting" does not include an explanation that Car-

berry is not a CPA or that the services he provides do not require a CPA license. Carberry, who has used this business name since 1987, is admitted to practice before the Internal Revenue Service as an enrolled agent, a status granted by the U.S. Department of the Treasury. He uses the business name together with his name and professional designation, *i.e.*, "Shaun Carberry, EA." Carberry asserts that his use of the acronym "EA" "is equivalent to stating 'Not a CPA,'" and provides the explanation required by the California Supreme Court in its *Bonnie Moore* decision.

Carberry also argues that BOA is effectively engaging in underground rulemaking, as Rule 2 prohibits *any* use of the terms "accountant" or "accounting" by non-CPA accountants (which violates the *Bonnie Moore* decision), and BOA has not modified Rule 2 to define the ways in which non-CPAs can comply with the Supreme Court's ruling. Thus, Carberry argues that BOA's apparent determination that the use of the term "EA" is insufficient to convey non-CPA status is improper because it has not adopted this interpretation pursuant to the state Administrative Procedure Act rulemaking process.

Finally, Carberry argues that his constitutionally protected commercial speech rights are violated by the Board's letter, as he is licensed as an enrolled agent by the federal government, is accurately and truthfully conveying that information in his advertising, and is permitted to do so in this manner by federal regulations.

On behalf of the Board, the Attorney General's Office has demurred to Carberry's complaint, alleging that the matter does not present a justiciable "case or controversy" because it is resolvable by applying the California Supreme Court's holding in *Bonnie Moore*. The AG also claims that Carberry is improperly attempting to relitigate the issues resolved in *Bonnie Moore*, and that his use of the term "EA" "neither asserts that the user 'is not licensed by the state, or that the services being offered do not require a state license,' as required by the *Moore* decision."

At this writing, the court has scheduled oral argument on the Board's demurrer for December 1.

RECENT MEETINGS

At its August 6-7 meeting, BOA reviewed its accomplishments for fiscal year 1992-93. Among other things, BOA noted that press releases on disciplinary cases are now issued after every Board meeting; new exam security and oversight procedures were developed and implemented; disciplinary guidelines were printed and made available; and a new automated phone system was installed.

MGT Consultants, the contractor conducting BOA's fee study, is evaluating costs incurred by the Board for providing services and comparing those with the fees charged for those activities, in order to conclude how the fees should be adjusted. [13:1 CRLR 16] The study is scheduled to run through September; at this writing, the report is expected to be available in draft form by October.

FUTURE MEETINGS

February 4-5 in Los Angeles.
March 19 in San Francisco.
May 13-14 in Sacramento.
July 29-30 in San Diego.

BOARD OF ARCHITECTURAL EXAMINERS

Executive Officer:
Stephen P. Sands
(916) 445-3393

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.

On August 26, Raymond Cheng was sworn in as a new BAE member; Cheng, an architect from Alhambra, replaces Paul Neel on the Board.

MAJOR PROJECTS

BAE Approves New Complaint Closure Procedure. At its June 11 meeting, BAE approved a motion directing its Executive Officer to establish a procedure, in