



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



conjunction with the Board's Enforcement Committee, whereby the Enforcement Committee or the Board would review and concur in the closure of disciplinary cases. At its August 17 meeting, BAE's Enforcement Committee discussed reasons for case closures, noting that complaints are closed when there is insufficient substantiation of a violation; when no violation has occurred; when the complaint falls within the jurisdiction of another board, bureau, or entity and is referred to the appropriate entity; when evidence of compliance is obtained in a minor violation case; when a letter of warning or notice of violation is issued in a minor violation case; when a citation has been paid and/or evidence of compliance with an order to correct is obtained in a minor violation case; when the Board adopts, amends, or rejects an administrative law judge's proposed decision or adopts a stipulation; or when the Board's interests have been satisfied in criminal court. The Committee agreed to recommend to the full Board that, for the span between Committee meetings, the Enforcement Committee chair may appoint two of its members to review all closed cases, with the exception of advertising cases, and verify the reasons for closure.

At BAE's September 8 meeting, BAE adopted the Committee's recommendation regarding the complaint closure procedure, and appointed Merlyn Isaak and Richard Crowell (who are Enforcement Committee members but not Board members) to review all closed cases, with the exception of advertising cases, during the span between Enforcement Committee meetings.

BAE Considers Revision of Complaint Disclosure Policy. At its September 8 meeting, BAE considered the Enforcement Committee's recommendation that the Board revise its complaint disclosure policy, which provides that it is BAE's policy to release information on complaints against its licensees under the following conditions:

-Upon receipt by Board staff of a written inquiry, information shall be promptly disclosed on any closed complaint cases wherein the complaint was filed within the last seven years. Such disclosures shall include the number and nature of the complaints and the disposition or action in each case. Such disclosures must be approved by the Board's Executive Officer and Enforcement Officer prior to release of the information.

-In cases which have been referred to the Attorney General for action, inquiries shall also be referred to the Attorney General for response.

-Cases which are open shall not normally be disclosed in response to inquiries. However, under extraordinary circumstances and in consultation with the Board President, the Executive Officer may disclose certain information not covered in the above policies.

The Enforcement Committee noted that because disclosure of information on complaints against a licensee is detrimental to his/her practice, licensees would probably prefer that no complaint disclosure take place. On the other hand, consumers would like to have disclosure early in the complaint process, viewing complaints as important and relevant information to be used in selecting an architect. Staff noted that opponents of early disclosure contend that a consumer's complaint is only an unconfirmed allegation; a large number of complaints are found to be without merit and disclosure of these complaints might be unfair to licensees; and the number of complaints against a licensee, standing alone, may not be indicative of the quality of practice. However, proponents of early disclosure contend that consumers have a right to know about complaints filed against a licensee; complaints may reflect on the licensee's quality of practice; the Board's failure to disclose complaints gives a misleading picture of the licensee's competence or ethical practices; and the disciplinary process is so lengthy that early complaint disclosure is imperative.

Based on its review, the Enforcement Committee recommended that BAE revise its complaint disclosure policy to provide that upon receipt by Board staff of an inquiry regarding an open complaint which has not yet been referred to the Attorney General or district attorney, staff should inform the person making the inquiry that a complaint has been opened and is being investigated but that no violation has yet been substantiated, using language to be drafted by legal counsel.

At its September 8 meeting, BAE discussed the Committee's recommendation; following discussion, the Board referred the matter back to the Committee for further refinement of the statements to be used by staff in disclosing the information.

BAE to Seek Legislation Authorizing Discipline Based on Discipline Imposed by Another Agency. Currently, the Architects Practice Act does not authorize BAE to take disciplinary action against a licensee based solely on the fact that another public agency has taken disciplinary action against that licensee (e.g., when a BAE licensee is disciplined by another state agency for an act substantially related to the qualifications, functions, or

duties as an architect). At the Board's June 11 meeting, its Enforcement Committee recommended that BAE seek legislation adding new section 5586 to the Business and Professions Code, to provide that the fact that the holder of a license has had disciplinary action taken by any public agency for any act substantially related to the qualifications, functions, or duties of an architect shall constitute a ground for disciplinary action. The Board unanimously agreed to seek this statutory change; BAE is expected to include the proposal in legislation introduced during 1994.

1993 Building Official Information Guide. At its June 11 meeting, BAE approved the 1993 Building Official Information Guide, which assists local building officials who enforce building code requirements designed to protect the public health and safety; building officials rely on BAE to license architects who will design structures that meet code standards, and BAE relies on building officials to ensure that only properly licensed or registered professionals sign and prepare non-exempt plans and specifications. Since 1985, BAE has conducted a Building Official Contact Program to familiarize building officials with the requirements of the Architects Practice Act; the program is implemented through seminars, informational bulletins, and the dissemination of BAE's Guide.

Also at its June meeting, BAE reviewed the results of its annual Building Official Survey, which indicated that 80% of the respondents are aware of BAE's Building Official Contact Program; 76% receive BAE publications; and 79% believe that BAE's Building Official Information Guide helps them carry out their administrative duties. Of those who have contacted BAE's offices, 98% received satisfactory service; and 86% believe BAE's Contact Program helps them to carry out their administrative duties.

BAE Addresses "Preliminary Plans" Issue. At the Board's June 11 meeting, BAE's Enforcement Committee requested Board guidance regarding "preliminary plans" and if and when preliminary plans must be stamped and signed by a licensee. Staff noted that this issue originally arose due to language in a disciplinary decision proposed by an administrative law judge (ALJ) in which the ALJ concluded that an unlicensed individual had prepared drawings which were "very preliminary and conceptual," and a 1951 case holding that "the preparation of preliminary sketches and drawings is not architectural work which requires the supervision and signature of a licensed architect." However, BAE's Build-



ing Official Information Bulletin No. 86-03, adopted by the Board in 1986, states that "[a]ll plans, specifications, and other instruments of service for non-exempt structures which are used (a) for submission resulting in construction authorization or issuance of a building permit, or (b) for review before any person, body or agency having legal authority for the project approval during any phase associated with the planning or construction of the building or structure, shall be signed by an architect prior to their presentation." The Board unanimously agreed to create a special committee consisting of architect members of the Board and other professional architects, as determined by the Board, to develop recommendations on this issue, including whether use of the term "preliminary plans" is necessary; if so, how the term should be defined; and whether the Board's adoption of regulations regarding this issue is warranted.

At BAE's September 8 meeting, the committee presented its findings to the full Board. The committee explained that—based on the ALJ's proposed decision and committee and board discussion—an entry in the Building Official Information Guide dealing with preliminary plans was deleted and staff had discontinued distributing and referring to Information Bulletin 86-03. The committee also noted that it had surveyed all California building officials requesting information relating to their interpretation of relevant statutory provisions, any problems they have with the interpretation, and the stage of a project at which they require stamp and signature. As a result of its review, the committee reported that there is no problem with the current statutory provisions; building officials and architects have no problem complying with or understanding the statutes; there is no justification for taking any action which would limit local control in this area; and there is no legal basis or need for Building Official Information Bulletin 86-03. Therefore, the committee recommended that BAE rescind Bulletin 86-03; following discussion, the Board approved the committee's recommendation.

■ LEGISLATION

SB 842 (Presley), as amended July 14, permits BAE to issue interim orders of suspension and other license restrictions against architects; the bill requires notice and hearing on the proposed issuance of an interim order, except where it appears that serious injury would result to the public before the matter is heard on notice. This bill was signed by the Governor on October 5 (Chapter 840, Statutes of 1993).

AB 295 (Eastin), as amended September 2, would have—among other things—specified that architects and other design professionals contracting on or after January 1, 1994, for public or private works of improvement, are entitled to any progress payments due under the contract from the project owner within thirty days, and to the final retention payment within 45 days, after receipt of a written demand for payment, except as to amounts in good faith dispute. This bill was vetoed by the Governor on October 11.

AB 1807 (Bronshvag), as amended September 8, would authorize BAE to establish by regulation a category of inactive licensure. [*A. Inactive File*]

AB 1392 (Speier), as amended July 1, would—among other things—provide that BAE'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*]

■ RECENT MEETINGS

At BAE's September 8 meeting, NCARB Second Vice-President Richard Quinn and Director of Examination Development Jeff Kenney addressed the Board to discuss NCARB's organization, services, and goals, as well as the future of architecture. One topic discussed in detail was NCARB's Intern Development Program (IDP), which was established to provide a formal means of evaluating interns' training; enable interns to better prepare themselves for their careers as architects; recognize interns' professional development by compiling a continuing, comprehensive record of internship activities; and present interns with information on the training and experience required for them to qualify for registration.

Quinn explained that NCARB voted at its annual meeting to require applicants for NCARB certification, after July 1, 1996, to have satisfied the IDP's criteria, with few exemptions. BAE members generally responded favorably to the program and its goals, but noted that completion of IDP is not a requirement for licensure in California.

Also on September 8, BAE welcomed members of the Nevada State Board of Architecture for a roundtable discussion regarding the differences and similarities in the two states' regulation of the profession. Some of the discussion focused on problems dealing with violations of the states' practice acts and reciprocity; the boards agreed to communicate further regarding these issues.

■ FUTURE MEETINGS

December 9–10 in Sacramento.

ATHLETIC COMMISSION

Executive Officer:
Richard DeCuir
(916) 263-2195

The Athletic Commission is empowered to regulate amateur and professional boxing and contact karate under the Boxing Act (Business and Professions Code section 18600 *et seq.*). The Commission's regulations are found in Division 2, Title 4 of the California Code of Regulations (CCR). The Commission consists of eight members each serving four-year terms. All eight members are "public" as opposed to industry representatives. The current Commission members are Willie Buchanon, William Eastman, H. Andrew Kim, Jerry Nathanson, Carlos Palomino, Kim Welshons, and Robert Wilson. The term of Ara Hairbedian recently expired and no replacement has been named at this writing.

The Commission has sweeping powers to license and discipline those within its jurisdiction. The Commission licenses promoters, booking agents, matchmakers, referees, judges, managers, boxers, and martial arts competitors. The Commission places primary emphasis on boxing, where regulation extends beyond licensing and includes the establishment of equipment, weight, and medical requirements. Further, the Commission's power to regulate boxing extends to the separate approval of each contest to preclude mismatches. Commission inspectors attend all professional boxing contests.

The Commission's goals are to ensure the health, safety, and welfare of boxers, and the integrity of the sport of boxing in the interest of the general public and the participating athletes.

■ MAJOR PROJECTS

Commission Suspends Administration of Current Neurological Examination. At its June 4 meeting, the Commission engaged in a lengthy discussion of ways to reduce the cost and complexity of administering its neurological examination. [*13:2&3 CRLR 48; 12:4 CRLR 56*] Business and Professions Code section 18711 provides that as a condition of licensure and annual licensure renewal, every boxer in California must be examined by a licensed physician who specializes in neurology or neurosurgery. Since the enactment of section 18711, the Commission has implemented an examination which is initially administered by a licensed neurologist; the examination, which costs approximately \$175, is comprised of two sections and takes approximately 45 minutes to administer. The first section is