



capacity of a licensee or registrant under the jurisdiction of that board, bureau, or commission. [A. CPGE&ED]

**AB 2743 (Lancaster)**, as amended April 9, would revise revocation, suspension, or refusal to renew requirements with respect to the licensure of accountants. Specifically, existing law provides that a candidate who qualifies for admission to BOA's CPA examination under Business and Professions Code section 5081.1(d) and who passes the examination in one or more subjects shall have the right to be reexamined in the remaining subject(s) only at subsequent examinations held by the Board; if he/she passes the remaining subject(s) within a period of five years, he/she shall be considered to have passed the examination. This bill would require such candidates to pass the examination in two or more subjects in order to be eligible to be reexamined only in the remaining subject(s).

This bill would also amend Business and Professions Code section 5100 to provide that a violation of Business and Professions Code sections 478, 498, or 499 dealing with false statements or omissions in the application for a license, in obtaining a CPA certificate, registration under BOA's enabling act, or a permit to practice public accountancy under BOA's enabling act shall constitute grounds for discipline by the Board. [A. Floor]

**SB 869 (Boatwright)** is a controversial bill which would revise existing educational prerequisites for admission to the examination for a CPA certificate by, among other things, revising Business and Professions Code section 5081.1(a) to require 45 hours of instruction in a four-year institution in accounting, commercial law, economics, finance, and related business administration subjects and, effective January 1, 1997, 55 semester units in those subjects; providing for qualification by examination by BOA rather than by an agency approved by the U.S. Department of Education; and, as of January 1, 1997, requiring applicants for admission to the CPA exam to have completed at least 150 semester hours of education in a four-year institution and a baccalaureate or higher degree, or be a public accountant. [A. CPGE&ED]

**AB 1142 (Chacon)** would provide that licensees engaged in the practice of public accountancy shall display their Board license designation and other specified information in a manner determined by BOA to be appropriate. [S. B&P]

## LITIGATION:

BOA is a party in two pending commercial speech cases. In *Moore v. State*

*Board of Accountancy*, oral argument was heard on April 8 before the California Supreme Court. Plaintiff Bonnie Moore challenges the validity of section 2, Title 16 of the CCR, which prohibits non-CPA accountants from using the words "accounting" or "accountant" to describe themselves or their services; Moore contends that section 2 violates her constitutionally-protected commercial speech rights. [12:1 CRLR 42]

In *Ross A. Johnson v. Board of Accountancy, et al.*, No. CV-S-91-1250 LKK-JFM (U.S. District Court, Eastern District of California), Johnson, a CPA, seeks a declaration that Business and Professions Code section 5061 and sections 56 and 57, Title 16 of the CCR, constitute an unconstitutional restraint of his commercial speech rights. Among other things, Johnson seeks a preliminary and permanent injunction prohibiting BOA from taking any disciplinary action against him for alleged violation of section 5061 or CCR sections 56 and 57. [12:1 CRLR 42] On February 21, the court heard argument on Johnson's preliminary injunction motion, as well as BOA's motion to dismiss; however, the judge requested additional briefing and scheduled further argument for June 22.

## RECENT MEETINGS:

At BOA's January 31 meeting in Millbrae, the Board adopted a policy statement on committee appointments, which states that committee members are appointed at the pleasure of the Board; the term of office is one year; committee members may be removed at any time for neglect of duties, incompetence, unprofessional or dishonorable conduct, or for other good cause; and any reappointment to a subsequent term shall be solely at the pleasure of the Board. [12:1 CRLR 42-43]

Also at its January meeting, the Board adopted the Positive Enforcement Program Committee's (PEPC) recommendation that upon the occurrence of a second substandard report after a licensee's completion of mandatory continuing education, PEPC will refer the licensee to the Administrative Committee.

At its March 21 meeting in Los Angeles, the Board welcomed James Phipps, BOA's new Assistant Executive Officer.

At a specially scheduled April 20 meeting in Los Angeles, BOA President Ira Landis introduced two new CPA members, Victor Calderon and Robert J. Shackleton. Also introduced was Barbara Hadley, BOA's new Executive Analyst.

At its May 14-16 meeting, BOA was addressed by Jim Conran, Director of the

Department of Consumer Affairs (DCA); Conran discussed DCA's philosophy and its agenda for the boards it oversees. Conran noted that he and BOA may well have philosophical differences on a variety of issues, such as SB 869 (Boatwright), which would, as of January 1, 1997, require applicants for admission to the CPA exam to have completed at least 150 semester hours of education in a four-year institution and a baccalaureate or higher degree, or be a public accountant. DCA considers the bill to be an unnecessary barrier to entry into the profession; BOA considers it an upgrading of the qualifications of candidates for licensure.

Conran also announced the establishment of a direct liaison between BOA and his office by appointing one of his ranking assistants to attend each BOA meeting; members were pleased to have this direct link in place.

## FUTURE MEETINGS:

September 18-19 in San Diego.  
November 13-14 in San Francisco.

## BOARD OF ARCHITECTURAL EXAMINERS

*Executive Officer: Stephen P. Sands*  
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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:

*'Association Issues Discussed.* The Board's Enforcement Committee has



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recently engaged in lengthy discussions regarding the interpretation of section 135, Title 16 of the CCR, which provides that, among other things, an architect who associates with a person who is not a California licensed architect, civil or structural engineer, or bona fide employee to jointly offer architectural design services shall, prior to offering architectural services, enter into a written agreement of association with the unlicensed person whereby the architect agrees to be responsible for the preparation of the instruments of service and other phases of the work required by law. Section 135 also provides that an architect who associates with one who is not a California licensed architect shall send a copy of the written agreement of association by certified mail to the Board for each such association prior to engaging in the design phase of the project.

Following its review of the regulation, the Committee requested that the Department of Consumer Affairs' (DCA) Legal Office determine whether section 135 authorizes such an association between an architect and an unlicensed person to advertise its architectural services. In a January 22 memorandum, DCA legal counsel Don Chang noted that section 135 requires that the notice of association be executed "prior to offering architectural design services." Based on the California Supreme Court's definition of the term "offer" in *People v. Ah Fook*, 62 Cal. 493 (1881), Chang opined that offering architectural services is synonymous with advertising to the public that the association performs architectural services, and concluded that section 135 allows an association which has been formed pursuant thereto to advertise architectural services. However, Chang noted that an association which is advertising architectural services pursuant to an agreement of association would have to comply with the advertising provisions set forth in section 134, Title 16 of the CCR.

In light of this opinion, staff recommended that the Committee review section 134 and consider possible revisions which would be appropriate if the Committee determines that the existing language does not adequately regulate advertising by associations. For example, a possible provision would require that any entity which includes a licensee who has associated with an unlicensed person and which advertises architectural services must list the name of the licensee followed by the word "architect." The Committee is expected to continue to review its options at a future meeting.

### *Elimination of the Oral Examination*

**Discussed.** At its January 27 meeting, the Board discussed the possible elimination of its oral examination, the articulated purpose of which is to ensure that the entry-level architect understands the integration of the phases of architectural practice and the architect's responsibilities as they relate to each other. The oral exam, which lasts approximately one hour, assesses a candidate's competence in the phases of predesign, schematic design, design development, construction documents, bidding/negotiation and construction contract administration, and aspects of architectural practice specific to California. After reviewing the history of BAE's decision to administer an oral exam, the Board unanimously agreed to retain the oral exam.

Despite the Board's action, BAE staff requested on February 18 that DCA Central Testing Unit Manager Norman Hertz respond to various questions regarding BAE's oral exam, including identification of issues the Board should explore to determine whether to continue its oral exam; the problems and benefits Dr. Hertz recognizes in BAE's oral exam process; and any comments or recommendations Dr. Hertz has regarding the Board's oral exam process. On February 25, Dr. Hertz responded that the Board should determine the purpose of the examination. According to Dr. Hertz, administration of an oral examination is inappropriate unless it assesses higher order cognitive skills; includes a rating system with a continuum rather than a "pass/fail"; and requires examiners to make judgments about the level of performance. Dr. Hertz also stated that the Board should determine whether the higher order skills are being assessed in other ways, and opined that—based on his review of the ARE—they may be. Dr. Hertz also stated that the Board should determine whether the validity of the licensing decision is enhanced with the use of the oral examination and whether there are any other ways of ensuring that candidates are competent, noting that oral examinations should be viewed as a "last resort."

According to Dr. Hertz, the major problem with BAE's oral exam is the difficulty in administering a fair examination when it is given by a variety of panels under unknown degrees of consistency. The examination must be standardized to ensure that all candidates are treated fairly and equitably; all candidates should receive examinations of equal difficulty, be asked questions of equal difficulty, be given equal opportunities to respond, and be evaluated on the same standards. Dr. Hertz noted that the fairness and validity

of the examination are questionable unless these criteria are met.

Dr. Hertz concluded his response by opining that it is appropriate to reconsider the purpose and efficacy of BAE's oral examination, noting that oral examinations should be utilized only where there are absolutely no other alternatives available to assess candidates' competence.

At the Board's March 2 meeting, staff recommended that the Board develop an alternative to its oral exam, noting that there might be a more cost-effective method for ensuring that candidates possess the minimum qualifications for licensure in California. On April 3, BAE's Written Examination Committee and Internship and Orals Committee conducted a joint meeting to discuss the Board's overall examination process. Although no decisions were made, the committees are scheduled to continue their discussion at an August meeting.

**Budget Cutbacks.** The Assembly Ways and Means Committee recently requested that the Board submit a plan that would balance BAE's budget while maintaining at least a three-month reserve. At its March 2 meeting, the Board spent the majority of its time making budget cutbacks. Board staff recommended specific reductions which were developed after one-on-one interviews with each Board member. The recommendations included decreasing out-of-state travel, reducing Board staff by two positions, and consolidating administrative functions; these recommendations passed unanimously.

Even with these reductions, the Board still needs \$340,000 in cuts or increased revenue to balance its budget over the next five years and maintain the three-month reserve. Although elimination of the oral exam would solve this deficit, the Board has decided against such an action at this time (*see supra*). Instead, several other proposals were discussed, such as a \$50 fee increase and elimination of the Board members' per diem; however, these suggestions were tabled for future study.

### LEGISLATION:

**SB 2044 (Boatwright)**, as amended April 2, would declare legislative findings regarding unlicensed activity and authorize all DCA boards, bureaus, and commissions, including BAE, to establish, by regulation, a system for the issuance of an administrative citation to an unlicensed person who is acting in the capacity of a licensee or registrant under the jurisdiction of that board, bureau, or commission. This bill would also provide that the unlicensed performance of activities for which a BAE license is re-



quired may be classified as an infraction punishable by a fine of not less than \$250 and not more than \$1,000. [A. CPGE&ED]

**AB 2593 (Frazee)**, as amended April 21, would provide for the issuance of a "retired architect's license" to an architect who holds an active license upon payment of a specified fee. The holder of such a license would be prohibited from engaging in any activity for which an active architect's license is required. [A. Floor]

**AB 2456 (Klehs)**, as amended May 13, would provide that in the event of damage to residential real property caused by a natural disaster declared by the Governor, if the damage may be covered by insurance, any architect or other person who has prepared plans used for construction or remodeling shall, upon request, release a copy of the plans to the homeowner's insurer, the homeowner, or the duly authorized agent of the insurer or the homeowner, for use solely for the purpose of verifying the fact and amount of damage for insurance purposes. The bill would also prohibit a homeowner or any other person from using any copy of the plans, released for such specified purpose, to rebuild all or any part of the residential real property without the prior written consent of the architect or other person who prepared the plans. In the event prior written consent is not provided, no architect or other person who has prepared the plans who releases a copy of the plans, as required, shall be liable to any person if the plans are subsequently used by the homeowner or any other person to rebuild all or any part of the residential real property. [A. Floor]

**AB 2743 (Lancaster)**, as introduced February 14, would add section 5535.5 to the Business and Professions Code, to provide that it is unlawful for any person, except as specifically excepted in Chapter 3, Division 3 of the Business and Professions Code, to practice architecture or to offer to practice architecture unless at the time of so doing he/she holds a valid unexpired license issued under Chapter 3. [A. Floor]

#### RECENT MEETINGS:

At its January 27 meeting in San Luis Obispo, the Board elected Merlyn Isaak, a public member who is a civil engineer, as President, architect Betty Landess as Vice-President, and architect Dick Wong as Secretary.

#### FUTURE MEETINGS:

To be announced.

#### ATHLETIC COMMISSION

*Executive Officer: Richard DeCuir*  
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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, Ara Hairabedian, Bill Malkasian, Jerry Nathanson, Carlos Palomino, and Robert Wilson. Citing health reasons, Commissioner Thomas Thaxter, M.D., resigned his seat in November 1991, leaving one Commission seat open for appointment.

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.

On March 12, the Senate unanimously approved Governor Wilson's appointment of William Eastman to the Commission.

#### MAJOR PROJECTS:

**Update on DCA Study of Neurological Examination.** In May 1991, the Commission agreed to have the Department of Consumer Affairs' (DCA) Central Testing Unit (CTU) evaluate the Commission's neurological exam program for boxers, which has recently been the subject of considerable controversy. [12:1 CRLR 44; 11:3 CRLR 60; 11:2 CRLR 55] CTU's research will be completed this summer; the study is expected to be based on the profiles of 2,800 prior examinees, rendering a database with comparative statistics on cultural background, age, and numerous other factors. The results will be used in evaluating the feasibility and

validity of the professional boxers' neurological examination. The program is often opposed by boxing promoters for financial reasons.

**Budget Crisis.** Currently, the Commission is projecting a budget deficiency of over \$34,000 for fiscal year 1991-92. Because of this fiscal crisis, the Commission will seek alternative funding sources and investigate measures to reduce its current spending. At its February 28 meeting, the Commission decided to space its regular meetings seven weeks apart in order to save money; the Commission also voted to pursue an emergency budget change proposal for additional funding for fiscal year 1992-93.

In its *Analysis of the 1992-93 Budget Bill*, the Legislative Analyst's Office (LAO) recommended that legislation be enacted to change the funding source of the Commission's budget from the general fund to a special fund; LAO also recommended that the legislature adopt budget bill language to limit the Commission's expenditures to the revenues collected in 1992-93. According to LAO, the Commission annually receives part of its support from a general fund appropriation. In turn, revenues from various fees collected by the Commission are deposited in the general fund. Fee revenues in excess of the Commission's annual expenditures remain as general fund revenues. However, there is no assurance that the Commission's fee revenues will cover its expenditures fully; any deficit is therefore funded from the general fund. According to LAO, the Commission has required a general fund subsidy every year since 1987-88; for 1992-93, the Governor's Budget proposes a subsidy of \$22,000 for the Commission. LAO opined that the Commission—like other boards that license occupations and professions—should be fully self-supporting from assessments and fee revenues. LAO concluded that there is no analytical basis for the Commission to be subsidized by the general fund, noting that with the general fund available as a back-up to fund any deficit, the Commission has no incentive to live within its revenues and does not have to raise fees to cover expenditure increases, as other boards and bureaus must. At this writing, the legislature has not yet acted on LAO's recommendations.

**DCA Completes Internal Audit of Commission.** On February 10, DCA's Internal Audits Section released its completed fiscal and management audit of the Commission; the audit was performed at the request of the Commission. [12:1 CRLR 44]

The audit revealed that the Commis-