



## BOARD OF LANDSCAPE ARCHITECTS

Executive Officer: Jeanne Brode  
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The Board of Landscape Architects (BLA) licenses those who design landscapes and supervise implementation of design plans. To qualify for a license, an applicant must successfully pass the written exam of the national Council of Landscape Architectural Registration Boards (CLARB). 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.

The Board investigates verified complaints against any landscape architect and prosecutes violations of the Practice Act. The Board also governs the examination of applicants for certificates to practice landscape architecture and establishes criteria for approving schools of landscape architecture.

Authorized in Business and Professions Code section 5615 *et seq.*, BLA consists of seven members. 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. Currently, the Board has only six members; the southern California landscape architect seat is vacant. Board members are appointed to four-year terms. BLA's regulations are codified in Division 26, Title 16 of the California Code of Regulations (CCR).

### MAJOR PROJECTS:

**BLA Rescores the 1991 UNE, Decides Not to Contract with CLARB for 1993 Licensing Exam.** After years of dissatisfaction, demands, and ultimatums, BLA on May 8 decided to break off its relationship with CLARB and administer its own licensing exam.

The move came after BLA—due in large part to pressure from the Department of Consumer Affairs (DCA)—agreed to review and rescore the examinations of California takers of CLARB's 1991 Uniform National Examination (UNE). Under CLARB's scoring method, only 9% of California applicants successfully completed that exam; the pass rates in some states were as low as 0% and the national

pass rate was 6%. Last December, DCA Director Jim Conran expressed serious concern about the low pass rate, suggesting that an exam which fails 91% of the candidates raises the question whether the exam is being used to restrict entry into the profession by testing for non-job-related knowledge. DCA Central Testing Unit (CTU) Manager Dr. Norman Hertz echoed Conran's concern, stating that his review of the 1991 exam materials provided by CLARB indicated that the procedures used by CLARB to establish the passing score were unacceptable, and that CLARB had failed to provide the raw statistical data necessary to enable CTU to properly adjust the passing score. [12:1 CRLR 66-67]

Accordingly, BLA and CTU convened a score modification workshop on December 20-21, at which professional landscape architects and a psychometrician re-weighted the exam questions, assigning high values to those which were job-related and necessary to the performance of landscape architecture, and lower values to those which were non-job-related and unnecessary to the performance of landscape architecture. The overall purpose of the workshop was to ensure that the passing scores reflect entry-level practice standards in California. The examination content was not changed, nor were any questions deleted, as a result of the workshop. Dr. Hertz opined that CLARB's use of a non-compensatory examination model, which requires a candidate to pass each and every section in order to pass the examination, should be replaced with a compensatory model; Dr. Hertz noted that a non-compensatory model is acceptable only if competence is critical in each content area and the content areas are statistically independent. However, the workshop maintained the non-compensatory model.

Based on the results of the workshop, California's pass rate increased to 32%; successful appeals by applicants accounted for an additional 2% increase, raising California's overall pass rate to 34%. At its January 17 meeting, BLA discussed the results of the workshop, noting that the issue of whether it would accept appeals of the workshop grades would have to be addressed by the Board at a later date. Karen McGagin, Special Assistant to the DCA Director, expressed DCA's approval of the workshop results, and noted DCA's willingness to assist BLA in avoiding a repeat of the low pass rate resulting from CLARB's 1991 exam. Following discussion, BLA approved the score modification workshop results for the 1991 examination.

On February 13, CLARB notified all state boards regarding BLA's modification of the scoring process for California takers of the 1991 UNE. In response, BLA was notified by the landscape architecture boards in states such as Oregon, Ohio, and Texas that those states would not grant reciprocity to any applicant whose California registration was granted on the basis of a modified passing score. In reply, DCA Director Conran observed that his responsibility—and that of BLA—is to protect the people of California, and that “[s]uch a responsibility obligates the Board to administer a licensing examination that protects the public by screening out unqualified practitioners, while not establishing artificial barriers for entry into the profession. The Board met this responsibility by evaluating the 1991 UNE and establishing a passing score which reflected entry-level practice standards in California.” Although acknowledging that reciprocity is important to many practitioners, Conran stated that “the fundamental purpose of state licensing programs is to protect the public of the state issuing the license. Reciprocity can only be an incidental benefit not the primary reason for state licensure.”

Also at BLA's January 17 meeting, Executive Officer Jeanne Brode reported that the 1993 amended examination contract had been mailed to CLARB with a condition that the contract be approved by CLARB by February 15; the amended contract called for CLARB to comply with specified requirements, including the following:

—CLARB must use criterion-referenced methodology for establishing the passing score for each section of the examination;

—CLARB must provide California with the recommended passing score for each section of the examination and the results of its passing score workshop, including the average of the passing scores from all judges, the standard deviation, the highest and lowest average passing score from the judges, and an estimate of reliability of the judges' ratings;

—CLARB must agree to pretest the multiple choice questions;

—CLARB must use a procedure for scoring the graphic sections of the UNE where each solution is graded independently by at least two evaluators. Where there is disagreement on the scores assigned, the difference in scores shall be resolved by a second scoring where the solution is graded by two different evaluators; a master grader would be used to resolve the final score in cases where the jurors disagree.



At its January 17 meeting, the Board agreed that if CLARB did not sign the amended contract by February 15, the Board would initiate a request for proposals (RFP) process with the intention of administering its own 1993 licensing examination; further, the Board approved a draft RFP to be released on February 28 if necessary.

Because BLA was subsequently unable to reach a satisfactory agreement with CLARB, the Board released the RFP for the development and administration of its own 1993 licensing examination. At its May 8 meeting, BLA noted that it had received four responses to the RFP. Neither CLARB nor its vendor chose to submit a proposal. Based on the recommendation of its evaluating committee, which consisted of DCA legal counsel Don Chang, BLA Executive Officer Jeanne Brode, CTU's Norman Hertz, and BLA member Bob Hablitzel, the Board selected Human Resources Strategies (HRS) of Newport Beach to administer BLA's 1993 licensing exam, breaking the Board's traditional alliance with CLARB. The Board selected the firm according to its ranking in the categories of understanding and quality of response to the RFP, capability to design the licensing exam, and the quality of its previous experience in the licensing industry. Jeanne Brode described HRS as a consulting firm specializing in industrial psychology with over 70 employees, half with master's or doctoral degrees. In addition, Brode noted that the firm had performed testing for many large corporate clients in the past, although never in the public sector. HRS representative Anita Kamouri stated that the firm would work closely with BLA to design an exam which emphasizes a California content; use landscape architects as subject matter experts; pretest questions on recent licensees; and design a defensible exam with an adequate estimated passage rate. Kamouri also stated that her firm would use the occupational analyses prepared by CLARB and Psychological Services, Inc. to assist in designing the exam. [11:4 CRLR 82-83; 11:2 CRLR 79]

HRS bid \$132,830 to complete the project, well under the \$150,000 maximum bidding price. Because this price is lower than CLARB's \$154,000 estimate for providing the 1993 exam, a representative from DCA's budget office recommended that BLA not pursue amendments to section 2649, Division 26 of the CCR, which would increase specified licensing fees. [12:1 CRLR 68] DCA opined that fee increase would be unnecessary in light of the budget savings

the Board would experience by not contracting with CLARB.

**Regulatory Actions.** On March 25, the Office of Administrative Law (OAL) approved BLA's repeal of section 2620 and adoption of new section 2620, Title 16 of the CCR, which sets forth the maximum credit that BLA will allow toward the statutory six-year requirement for various education, training, and practice experiences. Last October, OAL disapproved this regulatory action on the basis that several provisions of proposed section 2620 were inconsistent and in conflict with Business and Professions Code section 5650, which states that "any person, over the age of 18 years, who has had six years of training and experience in actual practice of landscape architectural work shall be entitled to an examination for a certificate to practice landscape architecture." OAL found that proposed section 2620 required candidates to have more than six years of training and experience in actual practice of landscape architectural work. [12:1 CRLR 67-68; 11:1 CRLR 65; 10:2/3 CRLR 95-96]

BLA secured OAL's approval on new section 2620 by agreeing to extend 100% credit (rather than 50% or 75% credit) for experience gained in the following situations: (1) experience as a landscape architectural employee under the direct supervision of a licensed landscape architect, where the candidate lacks specified educational training; (2) self-employment as, or employment by, a landscape architect in a foreign country; and (3) self-employment as, or employment by, a licensed architect, a registered civil engineer, a licensed landscape contractor, or a person licensed under Chapter 1 of the Food and Agricultural Code authorizing the selling of nursery stock in California.

At its January 17 meeting, BLA agreed to pursue an amendment to section 2623, Title 16 of the CCR, which specifies the procedure for inspection of examination papers and examination appeals. Under the current section, any person who has failed the graphic performance section may file an appeal with the Board. The proposed amendments would limit appeals to examinees who have received a failing score which is within one standard error of measurement of the minimum passing score. However, the proposal would allow any person who failed the examination to have an opportunity to inspect his/her examination paper so that he/she could prepare for the next examination. At this writing, BLA has not yet published its intent to pursue this regulatory action in the *California Regu-*

*latory Notice Register.*

At this writing, BLA's amendments to sections 2610 and 2671, Title 16 of the CCR, await review and approval by OAL. Amendments to section 2610 would change the deadline for filing an application for the licensing exam from the current requirement of at least ninety days prior to the date of the examination to on or before March 15 of the year in which the application is made. Amendments to section 2671 would require that a landscape architect include his/her name and the words "landscape architect" in all public presentations. [12:1 CRLR 68]

**BLA Defends Existence to Senate Committee.** By letter of April 2, BLA Executive Officer Jeanne Brode responded to questions posed by the Senate Business and Professions Committee regarding the activities of several DCA boards and bureaus, including BLA. Among other things, BLA was asked to identify the risk to public safety if the Board is eliminated; the risk and consequences of increased consumer fraud if the Board is eliminated; whether educational standards can be specified in statute so that an adequate certification can be made for professionals in the field; alternatives to state regulation that include self-regulation through a trade association or a public interest organization; and specified statistics, such as the number of licensed practitioners in the state and the number of complaints received by the Board.

In response, Brode contended that abolishing the Board would pose a primary risk to consumers in the areas of fraud and incompetence. Brode noted that a 1991 occupational analysis indicates that 80% of all clients of licensed landscape architects in California are homeowners, and that those homeowners are entitled to consumer education and protection. Brode also noted that elimination of the Board would result in homeowners relying on licensed landscape contractors for projects; Brode commented that most landscape contractors fall short of the level of competence required to design grading and drainage systems, retaining walls, and irrigation systems which are drought tolerant. Brode conceded that no other profession has as much unlicensed activity as the landscape industry, but opined that the elimination of the Board would surely result in the escalation of consumer fraud.

Further, Brode noted that regulation through trade associations often results in a conflict of interest, as such associations are primarily concerned with promotion of the profession. Brode commented that a governmental body comprised of a



## REGULATORY AGENCY ACTION

majority of public members and a minority of professional members is best suited to balance that promotion with the primary objective of consumer protection.

Finally, Brode provided the statistical information requested by the Committee covering 1988-89 through 1990-91. For example, Brode reported that in 1990-91, there were 3,533 licensed landscape architects in the state; the Board received 81 complaints; and BLA took a total of five disciplinary actions.

### LEGISLATION:

**SB 2044 (Boatwright)**, as amended April 2, would declare legislative findings regarding unlicensed activity and authorize all DCA boards, bureaus, and commissions, including BLA, 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. SB 2044 would also provide that if, upon investigation, BLA 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 by the Board to offer or perform those services, the Board may issue a citation containing an order of correction which requires the violator to cease the unlawful advertising and notify the telephone company furnishing services to the violator to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising. [A. CPGE&ED]

**AB 2743 (Lancaster)**, as amended April 9, would require that a landscape architect's certificate number and renewal date of the certificate appear on plans, specifications, and other instruments of service and contracts therefor, prepared for others, as specified. Additionally, this bill would enable BLA to create a "cost recovery program"—in disciplinary proceedings, the Board would be authorized to request the administrative law judge to direct the licentiate, in certain circumstances, to pay the Board a sum not to exceed the reasonable costs of the investigation and enforcement of the case. [A. Floor]

**AB 1996 (Campbell)**. Under existing law, in any action for indemnity or damages arising out of the professional negligence of a person licensed as a professional architect, engineer, or land surveyor, the plaintiff's attorney is required to attempt to obtain consultation with at least one professional architect, engineer, or land surveyor who is not a party to the action; the attorney is then

required to file specified certifications. This bill would have specified that these provisions also apply to actions arising out of the professional negligence of landscape architects. This bill died in committee.

### RECENT MEETINGS:

At its May 8 meeting, BLA agreed to seek legislation to amend Business and Professions Code section 5680.2(c), which currently provides that a certificate which is not renewed within five years of its expiration may not be renewed, restored, reissued, or reinstated, but that the holder of the certificate may apply for and obtain a new certificate if he/she, among other things, takes and passes the examination which would be required of the applicant if he/she were then applying for the certificate for the first time, or otherwise establishes to the satisfaction of BLA that he/she is qualified to practice landscape architecture. The Board agreed to seek legislation to delete the provision allowing an applicant to otherwise establish to BLA's satisfaction that he/she is qualified to practice landscape architecture.

### FUTURE MEETINGS:

October 18 in Sacramento.

### MEDICAL BOARD OF CALIFORNIA

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*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 divi-

sions 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, in Los Angeles, San Diego, San Francisco, and Sacramento. Individual divisions and subcommittees also hold additional separate meetings as the need arises.