



defective and should be stricken; however, the court failed to invalidate the rule in its July 2 decision. Moore urged the court to strike section 2 in order to ensure compliance with its own conclusion and directive. *Amicus curiae* Center for Public Interest Law filed a brief in support of Moore's petition, arguing that the court had improperly acted as legislature and regulatory agency by effectively rewriting the rule at issue, instead of striking it and leaving the decision about its content to the legislative branch. On August 27, again on a 4-3 vote, the Supreme Court denied Moore's petition for rehearing without explanation.

At this writing, Moore's counsel is considering a petition for *certiorari* to the U.S. Supreme Court.

In *Ross A. Johnson v. Board of Accountancy, et al.*, No. CIV. S-91-1250 LKK (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. Johnson's complaint seeks a preliminary and permanent injunction prohibiting BOA from taking any disciplinary action against him. [12:1 CRLR 42]

Plaintiff is a CPA, and is also licensed as a real estate broker, an insurance broker, and a securities dealer; he performs no attest functions in his business, instead focusing on tax consultation, bookkeeping, compilation of financial statements, and financial planning. As a result of his tax consultation work, he occasionally arranges for the sale of mutual funds, limited partnerships involved in leasing and oil and gas production, unit investment trusts, and real property to his clients, for which he receives a commission. Under Business and Professions Code section 5051, one who holds him/herself out as a CPA may not accept commissions; however, a CPA who does not hold him/herself out as a CPA may accept commissions. Johnson alleged that the Board's statute and rules have the effect of impairing his commercial speech rights under first amendment. In response, the Attorney General's Office contended that section 5061 of the Business and Professions Code does not prohibit or infringe "speech" protected by the constitution, but conduct (the acceptance of a commission) which the Board believes impairs an accountant's ability to be independent and objective. The AG argued that Johnson is attempting to intertwine the "commissions" statute (section 5061) with the "holding out" statute (section 5051) in order to create a commercial speech cause of action where none exists.

On July 15, U.S. District Court Judge Lawrence K. Karlton agreed with the Attorney General that "the regulations at issue address conduct and affect speech, if at all, only incidentally." The court denied Johnson's motion for a preliminary injunction "because it does not appear that plaintiff is likely to succeed on the merits nor that he raises serious constitutional questions."

RECENT MEETINGS

At BOA's July 31 meeting in South San Francisco, the Board unanimously adopted the Continuing Education Committee's recommendation to approve a request from the Institute of Chartered Accountants in Australia and the New Zealand Society of Accountants, that—subject to their certifying that they practice in the spirit of BOA Rule 53 (non-discrimination)—the two organizations be extended recognition equal to that given to the Institutes of England, Wales, and Ireland. BOA found that these institutes have entrance standards, training requirements, and practical experience terms which are essentially the same as the Board's requirements for admission to the Uniform CPA Examination.

At BOA's September 18 meeting in San Diego, the Board agreed to continue considering the use of outside counsel. The Board instructed its Outside Counsel Advisory Committee to continue its work in light of SB 1594 (Boatwright) and SB 1847 (Royce), which relate to state agency use of outside counsel. Specifically, SB 1594 (Chapter 1287, Statutes of 1992) states legislative intent that efficiency and economy in state government is enhanced by the employment of the Attorney General as counsel for representation of state agencies and employees in judicial and other proceedings. SB 1594 also provides that, with specified exceptions, the written consent of the Attorney General is required prior to employment of counsel for representation of any state agency or employee in any judicial proceeding. SB 1847 (Chapter 734, Statutes of 1992) requires all contracts for legal services to contain provisions for, among other things, legal cost and utilization review, legal bill audits, and law firm audits. According to BOA's Enforcement Policy Manual (*see supra* MAJOR PROJECTS), it is BOA's policy to employ outside legal counsel as necessary for complaint investigation and prosecution and to assist the Board from time to time with its legal actions.

The Board plans to respond to Governor Wilson's request that all state agencies provide feedback on the impact of the

North American Free Trade Agreement (NAFTA); BOA is primarily concerned with the issues of international reciprocity, protecting the public interest, and limiting the practice of accounting in California to those who have the necessary training, education, and experience.

FUTURE MEETINGS

February 12-13 in Los Angeles.
May 14-15 in Sacramento.

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

BAE Modifies Its Table of Educational/Experience Equivalents. On May 22, BAE published notice of its intent to amend section 117, Division 2, Title 16 of the CCR, regarding its Table of Equivalents which specifies the criteria by which BAE recognizes educational and vocational credit toward licensure. Specifically, the Table of Equivalents specifies the categories that a candidate may utilize to meet the minimum education and experience requirements for each phase of the licensing process. The Board



REGULATORY AGENCY ACTION

recently determined that revisions to the table were necessary to delete obsolete and ambiguous language and to credit certain types of work experience and education not recognized by the current regulations.

On July 7, BAE conducted a public hearing on the proposed modifications to section 117, which were based upon recommendations and information provided by NCARB, the National Architectural Accrediting Board, and the Board's Written Exam Committee. Among other things, the Board's changes:

- provide that a four-year degree in landscape architecture confers upon a candidate a maximum of two years worth of credit instead of one;

- add a category that provides up to one year of credit for a city or community college degree or technical school certificate in a field related to architecture;

- delete the current six-month credit for technical school degrees in fields not related to architecture;

- expand an existing provision to provide that anyone who works under the direct supervision of a U.S. licensed architect shall be granted 100% credit;

- delete a provision that grants work experience credit for experience under the direct supervision of a California registered building designer, as the Board has not licensed any building designers since 1986 and thus determined the provision to be extraneous;

- create another category which grants five years of educational equivalency and three years of experience equivalency to candidates certified by NCARB. According to BAE, NCARB certification, which requires a professional architecture degree and three years of work experience under a licensed architect, should properly be recognized by California in its licensing procedures. However, a California candidate who has NCARB certification must still demonstrate competency in additional areas such as seismic forces, regional construction, and handicapped access requirements;

- provide a maximum of three years of either educational or work experience credit for completion of the NCARB Intern Development Program (IDP). Although it does not require candidates to complete an IDP prior to licensure, BAE contends that NCARB's IDP, which reflects structured exposure to fourteen key areas of practice, merits this type of reciprocity;

- allow eight years' experience for all licensed architects practicing in another U.S. jurisdiction. The previous rule was quite restrictive and required such an ar-

chitect to be a principal or manager of the architectural activities at an out-of-state firm in order to receive credit;

- reduce the maximum amount of work experience credit from two years to one for self-employment as or employment by a California licensed general building contractor;

- delete language requiring employment to be full-time in order to qualify for work experience credit, in order to allow a licensure candidate working under the direct supervision of a licensed architect while simultaneously enrolled at a college or university to receive work experience credit based upon actual hours worked;

- allow for a maximum of one year of additional credit for a post-professional master of science degree in architecture, in addition to credit for a similar master's or Ph.D. degree;

- require that foreign transcripts be evaluated by an educational evaluation service approved by the National Association of Credential Evaluation Services, Inc., with the costs of this evaluation covered by the candidate;

- exempt licensed architects practicing on federal property from a requirement that training credit based upon employment experience be granted only to candidates whose experience is under the direct supervision of an architect licensed by the state or country in which the candidate is employed; and

- allow a candidate to receive work experience credit for construction work experience performed under the supervision of a "responsible managing officer" operating under a corporate contractor license.

Following the July 7 hearing, BAE adopted the proposed amendments to section 117; the rulemaking file was subsequently approved by the Office of Administrative Law on August 26.

BAE Proposes Increase in Examination Fees. On July 10, BAE published notice of its intent to amend sections 100, 102, and 144, Title 16 of the CCR. Section 100 specifies the name of the Board as the "California State Board of Architectural Examiners" and lists the location of the Board's office. However, AB 766 (Frazee) (Chapter 566, Statutes of 1991) officially changed the Board's name to the California Board of Architectural Examiners [11:4 CRLR 59] and the Board has relocated since section 100 was enacted. Therefore, the Board proposes to amend section 100 to specify its new statutory name and to revise its address. Section 102 specifies the definition of the term "board" as the "California State Board of Architectural Examiners." BAE's proposed

amendments to section 102 would delete the word "State."

Section 144 specifies the fee for each examination administered by the Board and associated application review fees. BAE's proposed changes would amend section 144 to specify new fees beginning January 1, 1993, for each division of the California architectural licensing examination, the fee for the Board's oral examination, and the application fee for reviewing a candidate's eligibility to take any section of the examination. Specifically, the fee for eight divisions of the licensing exam would increase \$5 per division, the oral examination fee would increase from \$75 to \$100, and the application fee for reviewing a candidate's eligibility to take the examination and the fee for reviewing a reciprocity candidate's eligibility to take the examination would increase from \$30 to \$35.

At an August 26 public hearing on the regulatory proposals, BAE maintained that the proposed fee increases more closely reflect the actual costs of administering the exam and conducting the numerous reviews of candidate eligibility to take any section of the exam. Currently, administration of the written section of the exam results in an annual shortage of approximately \$450,000; administration of the oral section results in a \$255,000 deficit. These shortages are based upon steep increases in exam site rental rates and proctor salaries; also, in fiscal year 1991-92, the candidate population decreased by 9%. Even with the proposed fee increases, the Board still expects costs to exceed the fees generated for exam administration.

Three witnesses testified at the August 26 hearing that increased fees will make the test too costly for some potential participants and thus unfairly restrict the number of applicants who will be able to take the state-mandated licensing exam. The Board noted the testimony and postponed a decision on the entire regulatory package until its October 2 meeting.

Board Continues Discussion Regarding Oral Exam. At recent meetings, BAE has discussed the possible elimination of its oral examination, the articulated purpose of which is to ensure that the entry-level architect understands the phases of architectural practice and the architect's responsibilities as they relate to each other. Although BAE agreed at its January meeting to retain its oral exam, BAE staff requested that Department of Consumer Affairs (DCA) Central Testing Unit Manager Norman Hertz respond to various questions regarding BAE's oral



exam. Among other things, Dr. Hertz responded 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 its March meeting, BAE referred the matter to its Internship and Oral Examination Committee for further consideration. [12:2&3 CRLR 62]

At BAE's May 29 meeting, the Committee recommended that the Board continue its contract with CTB/McGraw-Hill for the administration, scoring, and recording of the oral examination, and continue the oral exam in its current format until the Internship and Oral Examination Committee and the Written Examination Committee complete their review and make a recommendation regarding the future of the exam. Although this motion passed by a vote of 6-3, the Board immediately voted unanimously to reconsider that vote, and then voted unanimously to table any decision on the CTB/McGraw-Hill contract, as well as the entire subject of the elimination of the oral examination, until the next BAE meeting, and to refer the matter back to committee. BAE also directed staff to conduct a detailed anonymous survey of BAE members' opinions regarding the oral examination.

■ LEGISLATION

The following is a status update on bills reported in detail in CRLR Vol. 12, Nos. 2 & 3 (Spring/Summer 1992) at pages 62-63:

SB 2044 (Boatwright) declares legislative findings regarding unlicensed activity and authorizes 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 also provides that the unlicensed performance of activities for which a BAE license is required may be classified as an infraction punishable by a fine of not less than \$250 and not more than \$1,000. SB 2044 also provides that if, upon investigation, BAE 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 BAE 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. This bill was signed by the Governor on September 28 (Chapter 1135, Statutes of 1992).

AB 2593 (Frazee) provides 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. This bill was signed by the Governor on September 22 (Chapter 862, Statutes of 1992).

AB 2456 (Klehs) provides 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 also prohibits 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. This bill was signed by the Governor on September 22 (Chapter 859, Statutes of 1992).

AB 2743 (Frazee) was amended to delete previous language which would have added 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.

■ RECENT MEETINGS

At BAE's May 29 meeting, Board President Merlyn Isaak presented a certificate of appreciation to former BAE President Larry Chaffin; Isaak also presented a certificate to Alex Malinkowski, architect consultant, who retired from the Board after over seven years of service.

■ FUTURE MEETINGS

To be announced.

ATHLETIC COMMISSION

Executive Officer:
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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, H. Andrew Kim, Jerry Nathanson, Carlos Palomino, Kim Welshons, and Robert Wilson.

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

Update on Study of Neurological Examination. At the Commission's August 7 meeting, Chair William E. Eastman reported that on July 31-August 1, the Neurological Validity Study Panel met in Los Angeles to review and evaluate the Commission's neurological exam given to boxers. [12:2&3 CRLR 63] Dr. Norman Hertz of the Department of Consumer Affairs' (DCA) Central Testing Unit (CTU) directed the panel of thirteen internationally-renowned neurologists which evaluated data on the Commission's neurological exam program to determine whether the exam is valid as designed.