

# REGULATORY AGENCY ACTION



## STATE & CONSUMER SERVICES AGENCY

(Department of Consumer Affairs)

### BOARD OF ACCOUNTANCY

*Executive Officer: Carol Sigmann*  
(916) 920-7121

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 50,000 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 (six CPAs and two PAs), and four public members. Each Board member serves a four-year term and receives no compensation other than expenses incurred for Board activities.

The Board's staff administers and processes the nationally standardized CPA examination, a four-part exam encompassing the categories of Audit, Law, Theory, and combined sections Practice I and II. Applicants must successfully complete all four parts of the exam and 500 hours of qualifying auditing work experience in order to be licensed. Approximately 20,000 examination applications are processed each year. Under certain circumstances, an applicant may repeat only the failed sections of the exam rather than the entire exam. BOA receives approximately 4,000 applications for licensure per year.

The current Board officers are President Ira Landis, Vice President Janice Wilson, and Secretary/Treasurer Jeffery Martin.

#### MAJOR PROJECTS:

*Board Enters into Agreement with Former Lincoln Savings and Loan Auditors.* On April 25, BOA announced the settlement of its November 1990 disci-

plinary proceeding against Arthur Young & Company, its successor firm, Ernst & Young, and Francis J. O'Brien, CPA, regional director of accounting and auditing for Arthur Young & Company in its western regional office. In its accusation, BOA accused Ernst & Young, one of the nation's largest accounting firms, of gross negligence in auditing Irvine-based Lincoln Savings & Loan and its parent company, American Continental Corporation (ACC). The Board charged that the firm's gross negligence resulted in reliance by small investors on faulty financial statements in purchasing approximately \$200 million in now-worthless ACC junk bonds at Lincoln branches. Additionally, BOA alleged that O'Brien agreed to the improper recognition of approximately \$62 million in profits on eight real estate transactions; without those reported profits, Lincoln and ACC would have had to report a consolidated pre-tax loss of approximately \$36 million. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 53 and Vol. 11, No. 1 (Winter 1991) p. 48 for background information.)

According to the terms of the stipulated agreement between the Board and Ernst & Young, the firm agreed to conduct substantial educational and training programs for its partners and audit professionals within its California offices over the next three years; establish, maintain, and comply with detailed policies and procedures required by the Board covering audit issues, consultation, differences of professional opinion within the firm, and the professional standards relating to the acceptance of new audit clients; require every Ernst & Young audit professional in California to read the Board's accusation and the stipulation, and to acknowledge having done so in writing; and pay \$1.5 million toward the Board's enforcement program, the largest sum ever paid to BOA in a disciplinary matter. These funds will be used to cover the costs of the proceeding and to fund the prosecution of other cases brought by BOA.

The stipulation further provides that O'Brien is placed on probation for three years and is prohibited from participat-

ing in any audits for twelve months. O'Brien must appear before the Board on a regular basis and complete additional continuing education during the probationary period. All elements of the stipulation are subject to Board monitoring; any material failure to comply with the terms of the stipulation will itself be a violation subject to additional discipline.

According to Mort Meyerson, director of public communications for Ernst & Young in New York, the firm settled with BOA to avoid costly litigation. Meyerson also stated that the stipulated agreement contains "no admission of any fault by the firm or any partner."

BOA did not suspend or revoke the state license of the firm, as was suggested by the Attorney General's office in November. According to BOA Executive Officer Carol Sigmann, a license suspension was ruled out because most of the accountants who worked on the Lincoln audit are licensed in Arizona, where ACC was based. The Board's acquiescence to the agreement was criticized by attorneys for thousands of California stock and bondholders who lost more than \$250 million in the April 1989 collapse of Lincoln and ACC. Attorney Ronald Rus, one of the attorneys representing bondholders, stated that BOA "exists for the benefit of the Big Six accounting firms and is reluctant to discipline its own." Board president Ira Landis countered that BOA's aim in this proceeding was discipline, not restitution.

BOA's action is separate from a \$250 million lawsuit filed by the state Attorney General against Ernst & Young for its Lincoln work. The firm has also been named in a private \$250 million class action lawsuit filed on behalf of 23,000 bondholders. In yet another action, the federal government recently announced that the firm agreed to a \$43 million out-of-court settlement stemming from a \$1.1 billion federal lawsuit against Lincoln owner Charles Keating and others involved with the thrift. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 53 for background information.)

*Form E Implementation.* At the Board's May meeting, the Experience Task Force reported on its meeting of April 24, at which it further attempted to clarify the standard to be used to evaluate audit experience obtained within review engagements. The Experience Task Force recently spent over a year revamping the Board's "Form E Certificate of Experience" which must be submitted by all CPA licensure applicants attesting to their fulfillment of BOA's 500-hour "audit experience" requirement



under Rule 11.5 of the Board's regulations. Under the new Form E, the employer is no longer required to attest that the applicant has actually performed or significantly participated in an audit; the employer must simply state that, in his/her opinion, the applicant's work experience "enables the applicant to demonstrate that he/she has an understanding of the requirements of planning and conducting an audit with minimum supervision that results in full disclosure financial statements." (See CRLR Vol. 10, No. 4 (Fall 1990) p. 50; Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 64-65; and Vol. 10, No. 1 (Winter 1990) pp. 51-52 for extensive background information.)

At the request of the Board's CPA Qualifications Committee (QC), the Experience Task Force reconvened in April to address several outstanding matters related to the evaluation of audit experience under the new Form E. After considerable discussion, the Board agreed that auditing procedures performed in a review engagement shall be considered qualifying Rule 11.5 experience, and that an applicant may gain such experience on a piecemeal basis through a series of engagements.

*Proposed Regulations.* At this writing, BOA has yet to submit the following proposed regulatory changes to the Office of Administrative Law (OAL). These regulatory changes were adopted by the Board at its November 1990 meeting; BOA plans to submit them to OAL in late July or early August:

- an amendment to section 5.1 to comply with the Permit Reform Act of 1981 (Government Code section 15374 *et seq.*);

- an amendment to section 11.5 to require applicants whose accounting experience is obtained outside the United States and its territories to appear before the QC and present work papers substantiating that their experience meets the requirements of Rule 11.5 and the Generally Accepted Accounting Standards. Alternatively, the applicant may acquire one year of U.S. public accounting experience or its equivalent, which meets the requirements of Rule 11.5 and the Accountancy Act;

- an amendment to section 67 to enable to enable BOA to charge a fee for registration of a fictitious name;

- an amendment to section 75.8, which currently provides that security for claims against an accountancy corporation by clients or others shall consist of a written agreement of the shareholders that they shall jointly and severally guarantee payment by the corporation of liabilities imposed upon it by law for dam-

ages arising out of all claims against it by its clients and others. The proposed amendment would delete the words "or others" from section 75.8, and require an executed original of the written agreement to be furnished to the Board; and

- an amendment to section 95.2, to include violations of Business and Professions Code section 5100(a)-(g) as bases for citations and fines.

(See CRLR Vol. 10, No. 4 (Fall 1990) pp. 50-51 for background information on these changes.)

## LEGISLATION:

*AB 1783 (Speier)*, as amended May 15, would authorize BOA's executive officer to request an administrative law judge, as part of any proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate found guilty of specified acts of unprofessional conduct to pay the Board all reasonable costs of investigation and prosecution of the case, including but not limited to attorneys' fees, except that the Board may not recover costs incurred at the administrative hearing. This bill passed the Assembly on May 30 and is pending in the Senate Business and Professions Committee.

The following is a status update on bills reported in detail in CRLR Vol. 11, No. 2 (Spring 1991) at page 53:

*SB 869 (Boatwright)*, as amended April 30, would revise existing educational prerequisites for admission to the examination for a CPA certificate. It would amend provisions relating to the accreditation of educational institutions; revise 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; and provide for qualification by examination by BOA rather than by an agency approved by the U.S. Department of Education. As of January 1, 1997, applicants for admission to the CPA exam must 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. This bill passed the Senate on May 23 and is pending in the Assembly Committee on Consumer Protection, Governmental Efficiency, and Economic Development.

*AB 965 (Alpert)*. Existing law authorizes BOA, until January 1, 1992, to enter into a contract with a nonprofit organization controlled by licensees of the Board to provide volunteer accounting services within the state. The maxi-

mum amount of the contract is not to exceed \$100,000 per year. As amended April 30, this bill would reduce the maximum amount of the contract to \$65,000 per year, and extend the repealer date to January 1, 1995. This bill passed the Assembly on May 29 and is pending in the Senate Business and Professions Committee.

*AB 1142 (Chacon)*, as introduced March 5, is a spot bill which would make technical changes in section 5036 of the Business and Professions Code, which specifies that the term "certified public accountant" includes "public accountant" for specified purposes. This bill passed the Assembly on May 16 and is pending in the Senate Rules Committee.

## LITIGATION:

On May 23, the California Supreme Court denied Union Bank's petition for review in *Union Bank v. Ernst & Whinney*, No. S020408, in which the Second District Court of Appeal held that Ernst & Young is not liable to Union Bank for a \$7 million loan default resulting from the ZZZZ Best stock swindle. (See CRLR Vol. 11, No. 2 (Spring 1991) pp. 53-54 for background information.) However, the Supreme Court also depublished the court of appeal's decision, which held that the claims against the accounting firm were barred by the statute of frauds, which requires that representations regarding the creditworthiness of a third party be in writing and signed by the attester.

## RECENT MEETINGS:

At its May 17 meeting, the Board discussed its continuing quest to establish a new staff classification—the CPA Investigator—to comply with the recommendations of last year's management study of the Board's enforcement system conducted by MGT Consultants, and to replace its current use of volunteer CPAs to perform enforcement work. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 53 and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 65 for background information.) At the May meeting, BOA Executive Officer Carol Sigmann reported that development of the new classification has been delayed in the Department of Consumer Affairs (DCA), but that new DCA Director Jim Conran has promised action on this issue. The Board's Administrative Committee (AC) reported that, as of May 14, 605 complaints were pending at the Board; of those, 106 were filed in or prior to 1988.

Also in May, Assistant Executive Officer Karen Scott reported that the Board's Major Case Program has been



nominated for recognition by the Inter-governmental Council of State Governments. The Council provides recognition of innovative government programs that may have wide application and can serve as models for other states. Scott reported that other states are already studying the Board's program.

At the Board's May meeting, the Enforcement Task Force presented its final report, and then was sunsetted. The recommendations of the Task Force include the following: (1) the AC should develop guidelines and procedures for Board staff and counsel to use in the settlement of discipline cases; (2) members of the Board's Technical Review Panels (volunteer practicing CPAs who investigate complaints against licensees and make recommendations to the AC) should be permitted to participate in enforcement matters on a negotiated basis as special consultants or expert witnesses for pay; however, members of the Board's committees should not be permitted to participate for pay exceeding the standard per diem stipend in the activities of their own committee; (3) staff should rewrite policy and procedures for prioritization and case selection for the Board's Major Case Program; and (4) the Major Case Advisory Committee should develop and implement criteria for the selection of outside counsel in enforcement cases, and develop a list of firms.

#### FUTURE MEETINGS:

September 27-28 in Sacramento.  
November 22-23 in Los Angeles.

### 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 success-

fully 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:

*Regulatory Changes.* At its May 23 meeting, BAE continued its discussion regarding proposed amendments to sections 134 and 135, Title 16 of the CCR, which would require all types of architectural businesses to advertise similarly, and require all architectural partnerships to list in their title or designation the name of a general partner and the fact that he/she is a licensed architect. At its January 18 meeting, the Board had decided to postpone adoption of the proposed amendments as written. Instead, the Board decided to rewrite the amendments; on May 22, BAE held a public hearing on the revised proposal. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 54; Vol. 11, No. 1 (Winter 1991) p. 48; and Vol. 10, No. 4 (Fall 1990) p. 52 for background information.) At its May 23 meeting, the Board decided to put the matter off again, and created a special task force to help bring the issue to closure; it will report back to the Board at its next meeting.

On March 11, BAE submitted proposed new section 136, Title 16 of the CCR, to the Office of Administrative Law (OAL); section 136 mandates the size, shape, and type of stamp which architects are now required to affix to all plans, specifications, and instruments of service when submitting them to a governmental entity for approval or issuance of a permit. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 54; Vol. 11, No. 1 (Winter 1991) p. 48; and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 68 for background information.) On April 3, OAL approved section 136.

#### LEGISLATION:

*SB 527 (Davis)*, as amended May 20, would extend until January 1, 1997, section 411.35 of the Code of Civil Procedure. This section, which is scheduled to sunset on January 1, 1992, requires the plaintiff's attorney, in specified actions for indemnity or damages arising out of the professional negligence of a person licensed as a professional architect, engineer, or land surveyor, to attempt to obtain consultation with at least one professional architect, engineer, or land surveyor who is not a party to the action

and file a certificate which declares why the consultation was not obtained or that on the basis of the consultation, the attorney believes there is reasonable and meritorious cause for filing the action. This bill passed the Senate on May 24 and is pending in the Assembly Judiciary Committee.

*AB 766 (Frazee)*, as amended April 11, would, among other things, provide that the body of law regulating the practice of architecture may be cited as the Architects Practice Act; officially change the name of the California State Board of Architectural Examiners to the California Board of Architectural Examiners; change references from "architectural corporation" to "professional architectural corporation"; and provide that a license which has expired may be renewed at any time within five years after its expiration, upon the filing of an application for renewal and payment of all accrued and unpaid renewal fees. This bill passed the Assembly on May 16 and is pending in the Senate Business and Professions Committee.

#### FUTURE MEETINGS:

September 30 in Monterey.

### ATHLETIC COMMISSION

*Executive Officer: Ken Gray*  
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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 Bill Malkasian, Raoul Silva, Ara Hairabedian, P.B. Montemayor, M.D., Jerry Nathanson, Thomas Thaxter, M.D., Charles Westlund, 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