

REGULATORY AGENCY ACTION



STATE & CONSUMER SERVICES AGENCY

(Department of Consumer Affairs)

BOARD OF ACCOUNTANCY

Acting Executive Officer: Karen Scott
(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, Chapter 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; only 3% of this population passes the entire four-part exam during the first sitting. 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; approximately 75% of these applicants are issued licenses.

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

On January 26, Governor Deukmejian appointed Mr. Avedick Poladian,

Managing Partner/Southern California Region of Arthur Andersen & Co., to the Board, replacing Board member Thomas Orr, whose term expired in November 1989. On the same day, the Governor reappointed Janice B. Wilson of Sacramento to BOA. Ms. Wilson has served on the Board since 1988; she is Vice-President of Grant Bennet Accountants of Sacramento, a position she has held since 1969.

Effective June 1, Della Bousquet left her post as Executive Officer (EO) of the Board; Assistant EO Karen Scott concurrently assumed the duties of Acting EO until the board appoints another EO. On April 26, the Board found it regrettable but necessary to terminate Ms. Bousquet. The Board will announce its recruitment program and appointment goals for the new EO once it elects to initiate the search; the EO is not a civil servant, but serves at the pleasure of the current Board members.

MAJOR PROJECTS:

Certification (Form E) Requirements. For over a year, the Board has focused on modifying its current Form E. The Form E "Certificate of Experience" must be completed by licensee employers of all persons applying for CPA licensure from the Board; the form sets forth standards and requirements of the state of California which the applicant must meet before becoming eligible to receive state CPA licensure. The modifications have become necessary to liberalize the existing 500-hour audit experience standard (also known as the "Rule 11.5 requirement"), in recognition of the facts that few CPAs actually perform audits in practice and that the volume of auditing work available in the state is insufficient to supply most prospective CPAs with the auditing experience now required for licensure. BOA has traditionally favored retention of a substantial audit experience requirement; large accounting firms and trade associations favor considerable relaxation of the existing requirement. (See CRLR Vol. 10, No. 1 (Winter 1990) pp. 51-52; Vol. 9, No. 4 (Fall 1989) p. 40; Vol. 9, No. 3 (Summer 1989) p. 43; and Vol. 9, No. 2 (Spring 1989) p. 36 for extensive background information.)

At its February 2-3 meeting in San Francisco, BOA "conditionally approved in concept" a new Form E, which was actually Draft #11 prepared by the Board's Experience Task Force (ETF). This move was immediately and vigorously opposed by the California Society of Certified Public Accountants (CSCPA) and many large accounting firms, because it required the candidate to demonstrate "the ability to perform an audit" rather than merely "an understanding of auditing concepts and the ability to perform basic audit procedures." Simultaneously, the Board decided that it would consider proposed modifications to Draft #11 at any time prior to the printing of the new Form E. The Board also assigned the task of drafting instructions and guidelines for completing and implementing the new Form E (the language of which has proven to be as controversial as the language of the form itself) to the existing ETF, after rejecting a motion to reconstitute the ETF to include three CSCPA members and three members of the Society of California Accountants (SCA).

Following a March 16 ETF meeting, the Task Force presented a new version of the Form E (Draft #13) at the Board's March 17 meeting, and announced that both CSCPA and SCA supported the new draft. Draft #13 fairly represents a reversal in the Board's originally professed intent to retain a somewhat rigorous auditing standard and a capitulation to the desires of CSCPA/SCA for a much more diluted auditing standard. The new Form E merely requires the licensee endorsing the applicant to testify positively and with some supporting evidence that the applicant's experience "enables the applicant to demonstrate that he/she has an understanding of the requirements of planning and conducting an audit with minimum supervision which results in full disclosure financial statements." The Board again delegated the task of drafting instructions for completing the form and guidelines for implementing and evaluating the new form to the ETF.

On April 26-27, the Board's Qualifications Committee (whose members evaluate Form E applications) held a two-day workshop to discuss implementation of the new form; participants at the meeting worked largely through a question/answer dialogue in focusing on problem areas involving proper application of the new rules, procedures, and instructions inherent in the task of evaluating new Form E applications. The new form seems to have raised more



questions than it has resolved, including questions which existed at the very start of the controversy and which were intended to be clarified with the reformulation of Form E. At the Board's May 11-12 meeting, the QC presented BOA with the following questions emanating from the two-day workshop:

-what does "participation" mean as stated in the new Form E?

-what and how much "piecemeal" experience is acceptable under the new Form E guidelines?

-what is the Board's expectation concerning the 500-hour guidelines? (e.g., audit vs. review or compilation hours?)

-how is equivalent experience counted in granting credit for time? (must the entire time requirements be fulfilled by performing audit and attest activities?)

-how should the applicant's work be shown and documented?

-which of the "4 out of 8" procedures set forth in the eight categories listed in the Form E instructions need to be completed by applicants?

BOA directed ETF to review and respond to the questions.

BOA Enforcement Program Evaluation. At the Board's March 17 meeting, staff reported that MGT Consultants had submitted a final draft of its study of the Board's enforcement program. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 53 and Vol. 9, No. 4 (Fall 1989) p. 42 for background information.) The report recommends substantial changes to BOA's existing staffing structure and investigatory procedures. Staff also reported that outside counsel, Pillsbury, Madison & Sutro, in conjunction with Deputy Attorney General (DAG) Michael Granen, is preparing a report on BOA's Major Case Program; this report will contain recommendations for strengthening and streamlining investigations. Board President Kazanjian appointed a special subcommittee to evaluate both the MGT and Major Case Program recommendations and make a presentation at the Board's May meeting.

At the May meeting, the subcommittee summarized the major MGT recommendations designed to increase both the efficiency and effectiveness of the Board's complaint handling process. The primary changes recommended include: increased use of staff CPA investigators (as opposed to volunteers); modified use of Technical Review Panels (TRP) (volunteer practicing CPAs who investigate complaints against licensees and make recommendations to BOA's Administrative Committee; see CRLR Vol. 7, No. 1 (Winter 1987) p. 32 for background

information); elimination of the contractual arrangement with a CPA consultant for initial review of cases; and elimination of the TRP coordinator function. This model contemplates the hiring of at least six in-house CPA investigators, which would require the submission of a budget change proposal (BCP).

The subcommittee endorsed the MGT proposal, finding that the centralized staff investigative structure would significantly decrease processing and lapse times for investigating cases and increase accountability. At its May meeting, BOA adopted the enforcement model proposed by MGT, and instructed staff to prepare the BCP.

The Reporting Standards Committee and the Positive Enforcement Program. Under Board Rule 98.1, the Positive Enforcement Program (PEP) Committee created in Rule 87.6 selects a random sampling of audits filed with the State Controller by government entities, or financial statements filed with the Department of Corporations by escrow and other commercial institutions. (See CRLR Vol. 7, No. 1 (Winter 1987) p. 32 for background information.) PEP, largely with the technical help of the Board's Reporting Standards Committee (RSC), reviews this random sampling of documents; PEP then counsels those licensees whose randomly-selected audit or statement reveals deficiencies or incompetency. A licensee who is instructed and ordered by PEP to take remedial continuing education (CE) courses in order to correct deviations from professional standards or to correct incompetency may be subject to disciplinary proceedings under Rule 89.1(b) if the licensee does not respond accordingly.

RSC's official purpose is to review pronouncements and proposed standards of the accounting professions (Generally Accepted Accounting Principles or "GAAP") and make recommendations to the Board on whether to accept them as standards for California licensees. However, in recent years RSC has aided PEP in reviewing the commercial financial statements of the Rule 89.1 program. In this capacity, RSC has been reviewing the work of twenty licensees (that is, twenty reports) per month.

At its February 2 meeting, the Board unanimously carried three motions proposed by Board Vice-President Landis aimed at expanding RSC's role in aiding and augmenting PEP's caseload under the Rule 89.1 program. The Board increased RSC's review of reports from twenty to thirty per month; increased RSC's membership from ten to sixteen authorized members in order to deal

with the newly increased workload; and authorized RSC, under the general aegis of PEP, to recommend specific CE courses to licensees who are found to be in need of remedial instruction or professional improvements.

Regulatory Changes. On March 14, BOA distributed its revised version of proposed new Rules 37, 87.1, 87.2 and amendments to Rules 87 and 90. The original version of these proposals was published in the *Notice Register* in June 1989; the language of each was subsequently modified, and the Board adopted them variously at a July 1989 public hearing and the Board's September 1989 and February 1990 meetings. (See CRLR Vol. 10, No. 1 (Winter 1990) pp. 52-53; Vol. 9, No. 4 (Fall 1989) p. 41; and Vol. 9, No. 3 (Summer 1989) p. 36 for background information on these changes.)

Proposed Rule 37 would set forth entry requirements for former licensees whose licenses were cancelled under operation of Business and Professions Code section 5070.7, which requires expired licenses to be renewed within five years of expiration. Proposed amendments to Rule 87 would set forth more burdensome CE requirements than presently required for active practicing licensees.

If approved by the Office of Administrative Law (OAL), proposed new Rules 87.1 and 87.2 would become effective in consecutive order, respectively; Rule 87.1 would take effect immediately upon its approval and be operative until its sunset date of July 1, 1993, at which time the more stringent Rule 87.2 would take effect. Rules 87.1 and 87.2 would set forth the number of CE hours required for the licensee who has submitted renewal fees but has not satisfied CE requirements while in the field of education or private industry, and who now wishes to reenter the consumer/government service sector of certified public accounting. CSCPA, Senator Lucy Killea, and other individuals object to Rule 87.2 on grounds that its CE requirements are unduly burdensome and impractical.

Proposed amendments to Rule 90 clarify the existing extensions or exceptions which may be granted to licensees attempting to comply with CE requirements for license renewals; it also expressly adds cause for disciplinary action if the licensee willfully fails to complete applicable CE coursework.

The Board accepted comments on the modifications to these proposed regulations until March 30. At this writing, the rulemaking packages on these changes are being reviewed by OAL.



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At its March 17 meeting, the Board unanimously approved draft language for an amendment to Rule 67 (Approval of Use of Fictitious Name). The amendment would remove the "no registration fee" provision, thereby opening the door to the possibility that the Board may soon levy fees for registration of fictitious names. The Board expects to publish its notice of proposed rulemaking on Rule 67 during the summer. At the same meeting, the Board deferred action on draft changes to rules governing corporations, including consideration of a proposed amendment to Rule 75.8 (Security for Claims); the Board also deferred action on draft regulations concerning mergers and out-of-state licensees. The Board has deferred these subject matters, along with proposals on licensure procedures for applicants with foreign experience (Rule 11.6) and proposed Rule 87(d) (waiver of examination), for the past three Board meetings.

LEGISLATION:

SB 2185 (Royce), as introduced on February 26 and sponsored by SCA, would require the Board to appoint a single Administrative Committee consisting of both PAs and CPAs, thereby combining the two present administrative committees into one Administrative Committee. This bill is pending in the Assembly Committee on Governmental Efficiency and Consumer Protection.

AB 3427 (Eastin), as amended May 25, would require a licensed PA to issue a report which conforms to professional standards upon completion of a compilation, review, or audit of financial statements. This bill is pending in the Senate Business and Professions Committee.

AB 3824 (Bentley). Section 5100 of the Business and Professions Code authorizes the Board to take disciplinary action against a CPA or PA for unprofessional conduct, which is defined as including, among other things, fiscal dishonesty or breach of fiduciary responsibility of any kind, which includes, among other things, the knowing preparation, publication, or dissemination of false, fraudulent, or materially misleading financial statements, reports, or information. As amended April 16, this bill would make the knowing preparation, publication, or dissemination of false, fraudulent, or materially misleading financial statements, reports, or information, and embezzlement, theft, and other specified crimes separate categories of unprofessional conduct. This bill is pending in the Senate Business and Professions Committee.

AB 1336 (Eastin), which would specify that BOA licensees must complete

not less than sixty hours of CE as a condition of license renewal on and after December 31, 1990, is pending in the Senate Business and Professions Committee.

SB 465 (Montoya), which would have changed existing statutes on appeal procedures to gender-neutral language, died in committee.

LITIGATION:

Oral argument in *Moore v. California State Board of Accountancy*, No. A046279 (First District Court of Appeal), was scheduled for June 27. This litigation centers on the validity of Board Rule 2, which prohibits persons not licensed by BOA from using the generic term "accountant" in their titles or advertisements. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 53; Vol. 9, No. 4 (Fall 1989) p. 42; and Vol. 9, No. 3 (Summer 1989) p. 37 for background information on this case.) Plaintiffs-appellants challenge the validity of the rule based on statutory interpretation and constitutional grounds.

RECENT MEETINGS:

At its February 2 meeting, the Board released a summary of its total budget: the Department of Consumer Affairs (DCA) approved \$6,434,853 for BOA for fiscal year (FY) 1990-91 (FY 1989-90 was \$6,158,000); the proposed financing for BOA during FY 1990-91 approved under the Governor's budget is \$6,425,630 (FY 1989-90 was \$6,157,000).

At the Board's March 17 meeting, Steven Wolf, chair of the CPA Administrative Committee (CPAAC), BOA's central committee for handling enforcement matters, reported that 718 cases are currently open against licensees, of which 21% (153 cases) were opened in 1987 and prior years. Thirty-eight (38) of the open cases relate to the monitoring of probationers. Of the prior-year complaints, 74 cases are in the possession of Attorney General staff, while the remaining 79 cases remain under the purview of the Administrative Committee.

Also in March, the Board discussed the likelihood of relocating its facilities sometime this summer; the Board office will be moving to a downtown Sacramento location selected by DCA. The DCA Director is seeking to consolidate as many boards and bureaus as possible in a centralized location.

With regard to the May 1990 exam, Karen Scott reported that Board staff will be under intense work while it manually processes applications and schedules applicants for the exam. Ms. Scott

anticipates that by the May 1991 exam, many of these administrative tasks will be fully automated. Ms. Scott also noted that approximately 1,000 fewer exam applications than would normally be expected have been received. This reduction is most likely due to the new exam fee structure, which includes a mandatory \$60 scheduling fee.

FUTURE MEETINGS:

To be announced.

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 Chapter 2, Title 16 of the California Code of Regulations (CCR). Duties of the Board include administration of the California Architect Licensing Exam (CALE) 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:

Regulatory Changes. On March 7, the Office of Administrative Law (OAL) approved a regulation package which amends sections 109, 119, 119.5, 121, 123, and 144, Chapter 2, Title 16 of the CCR. These amendments allow BAE to accept the passing scores of candidates who took the 1987, 1988, and 1989 Architect Registration Examination (ARE); establish separate filing deadlines for new examinees and re-examinees for the June and December examinations; delete conditional credit provisions; and increase the written examination fees beginning January 1, 1991. The amended regulations further facilitate