



REGULATORY AGENCY ACTION

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



BAE's transition from the CALE to the ARE of the National Council of Architectural Registration Boards (NCARB). (See CRLR Vol. 10, No. 1 (Winter 1990) p. 54; CRLR Vol. 9, No. 4 (Fall 1989) p. 43; and CRLR Vol. 9, No. 2 (Spring 1989) pp. 44-45 for background information.)

At its April 25 meeting in Sacramento, the Board held a hearing on proposed amendments to section 125 of its regulations. This amendment deletes the appeal procedures for the graphic site design division of the licensing exam; specifies the appeal procedures and deadlines for the graphic building design division of the licensing exam; and deletes the provisions which allow for appeals on the content or format of the licensing exam. The Board adopted this amendment at its May 15 Board meeting in Los Angeles, with the stipulation that confusing language regarding appeal deadlines be drafted more clearly. If no Board or public comments are made within fifteen days after this clarification has been officially noticed, the Executive Officer will submit the regulation to OAL for approval.

On July 17, BAE was scheduled to hold a hearing at its meeting in Sacramento on proposed amendments to sections 121 and 124 of its regulations. Section 121 currently specifies the circumstances under which a candidate may be required to appear for an oral assessment of his/her graphic building and/or site design ability. The proposed changes will delete the requirement that a candidate who fails in three attempts to pass the graphic building and/or site design oral assessment interview take the appropriate graphic design examination. The proposed changes to section 124 would eliminate the requirement that candidates bring photographs of completed work to the oral examination, and revise the scoring method for the oral examination from pass/fail by individual exam section to pass/fail for the oral exam as a whole.

Licensing Examination. BAE recently contracted with CTB/McGraw-Hill to provide exam development services for the Board's supplemental oral exam. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 54 and CRLR Vol. 9, No. 4 (Fall 1989) p. 43 for background information.) The exam will test content areas not tested on the ARE but required in California. BAE mailed a survey to approximately 1,000 licensed architects, asking them to rate various exam content areas according to frequency and importance. The survey results were used in finalizing the test plan and

developing the examination. The final test plan for the supplemental oral examination was approved by the Board at its May 15 meeting; the Board expects to begin using the supplemental exam in January 1991.

NCARB has adopted a resolution to study the feasibility of eliminating the paper and pencil version of the ARE in 1993 and switching entirely to administration of the Computer/Architect Registration Examination (C/ARE). C/ARE is currently a pilot program, and is an option to the paper and pencil exam in those states which offer it. BAE plans to administer the C/ARE for the first time in October 1991 (C/ARE is administered twice per year, in March and October). At its May 15 meeting, the Board decided to pursue the authority to administer the C/ARE on schedule, so long as it retains adequate participation in the C/ARE pre-exam review and administration process to fulfill its legally mandated responsibilities.

Newsletter. BAE's newsletter *The Examiner* was mailed on March 21. The newsletter was sent to a government printing facility in November 1989 but was delayed five months in the printing process. Consequently, some of the test date information in the newsletter is now obsolete.

Budget Proposals. The Board recently submitted three proposals to increase its budget by a total of \$658,000 in 1989-90 and \$1,160,000 in 1990-91. The purpose of the increases is to facilitate continued development of the supplemental oral exam; the Board's return to the NCARB exam; the administration of two written exams; and a permanent staff increase due to workload requirements. All three proposals have been approved by the Department of Consumer Affairs, the State and Consumer Services Agency, and the Department of Finance, and have been included in the Governor's Budget. The budget must be passed by both houses and signed by the Governor before July 1, 1990 to take effect.

WCARB Resolution Withdrawn. At its January 27 meeting in Millbrae, the Board voted to sponsor a resolution for consideration at the 1990 Western Council of Architectural Registration Boards (WCARB) held at the end of March. The Board suggested that an NCARB Budget Review Task Force be formed to explore possible areas for lowering costs; these savings would help NCARB minimize cost increases to candidates. One suggestion the Board made would require NCARB to hold

committee meetings near airports in major cities instead of in resort areas. However, BAE withdrew its resolution at the meeting; BAE agreed that this issue is already being adequately addressed by an NCARB investigation into eliminating some committees, committee members, and meetings.

BAE Relocation. BAE plans to move to a new office at 400 R Street in Sacramento sometime in October 1990. At that time, BAE staff expects to be unreachable for a week while its phone system is transferred to the new location.

LEGISLATION:

SB 153 (Craven). Existing law provides for an exemption from provisions of law requiring BAE licensure for furnishing labor and material, with or without plans, drawings, specifications, instruments of service, or other data, as specified, for (a) nonstructural elements of storefronts and interior alterations or additions, fixtures, cabinetwork, furniture, or other appliances or equipment, and (b) any nonstructural work necessary to provide for their installation. Existing law provides (c) a similar exemption for any nonstructural alterations or additions to any building attendant upon the installation of those storefronts and interior alterations or additions, fixtures, cabinetwork, furniture, appliances, or equipment. However, existing law provides, with respect to this exemption, that no unlicensed person may render or offer to render services to another person in connection with the planning, design, preparation of instruments of service, as specified, or administration, construction, or alteration of any component affecting the safety of any building or its occupants including structural and seismic components.

As amended June 7, this bill would add the limitation of nonseismic to nonstructural elements of that work with respect to (a), (b), and (c) above, and would delete the prohibition in (c) above upon unlicensed persons rendering services to others in connection with the services specified in (c). However, the bill would make the effectiveness of (c) contingent upon those alterations not changing or affecting the structural system or safety of the building.

This bill is pending in the Assembly Ways and Means Committee at this writing.

AB 3242 (Lancaster), as amended May 15, would authorize BAE to discipline a licensee of the Board who fails to pay an administrative fine. This bill is



REGULATORY AGENCY ACTION

pending in the Senate Business and Professions Committee.

The following is a status update on bills reported in CRLR Vol. 10, No. 1 (Winter 1990) at page 54:

AB 1005 (Frazee) was signed by the Governor on May 16 (Chapter 94, Statutes of 1990). As amended March 29, the bill requires an architect to affix a stamp bearing, among other things, the architect's name, license number, the term "licensed architect," and the renewal date of the license, on plans and documents in lieu of noting his/her license number. Also, this bill makes it unlawful for any unlicensed person to use the stamp of a licensed architect or a stamp or seal which bears the legend "State of California" or words or symbols that indicate that he/she is licensed by the state on plans or documents for buildings or structures that are submitted to a governmental entity for approval or for the issuance of a permit.

SBX 16 (Roberti) and **ABX 24 (Eastin)** are twin bills aimed at preventing the victimization of persons suffering property damage in the October 1989 Loma Prieta earthquake, by making offenses by unlicensed architects, engineers, or contractors punishable as either a misdemeanor or a felony, as specified. **SBX 16**, amended January 4, is pending in the Senate Appropriations Committee. **ABX 24** was dropped by its author and reintroduced by Assemblymember Epple as **ABX 9**. The new bill has the same prohibitive language as **ABX 24** had, but additionally proposes to double the amounts of fines which may be imposed for certain offenses under those circumstances, require the defendant to make full restitution subject to the defendant's ability to pay, add a one-year enhancement where the offense is a felony and the defendant has a prior felony conviction of such an offense, and require probation of at least five years or until restitution is made. This bill was amended on May 8, and is currently pending in the Senate Appropriations Committee.

SBX 46 (Lockyer) would provide that an architect or engineer who voluntarily, without compensation or expectation of compensation, provides structural inspection services at the scene of a declared national, state, or local emergency caused by a major earthquake at the request of a public official, public safety officer, or city or county building inspector acting in an official capacity, shall not be liable in negligence for any personal injury or property damage caused by the good faith but negligent inspection of a structure used for habitation or owned by a public entity for

structural integrity or nonstructural elements affecting health and safety. This immunity would apply to inspections within 90 days of the earthquake, and would not apply to gross negligence or willful misconduct. This bill is pending in the Assembly Judiciary Committee.

AB 1789 (Cortese), which would give architects, engineers, and land surveyors a specified design professional's lien on real property for which a work of improvement is planned, and for which a specified governmental approval is obtained, is pending in the Senate Committee on Insurance, Claims and Corporations.

RECENT MEETINGS:

At its January 27 meeting, BAE conducted elections for the positions of Board President, Vice-President, and Secretary. Against the advice of legal counsel, a secret ballot was taken for the position of Secretary. The secret ballot constitutes a violation of the Bagley-Keene Open Meetings Act, which was brought to the Board's attention by the Center for Public Interest Law. At its May 15 meeting, the Board reconfirmed its election of officers during the open session of the meeting.

Members of the Nevada State Board of Architecture attended the Board's May 15 meeting. Various comity and WCARB issues were discussed, and BAE was briefed on the activities of the Nevada Board and Nevada law affecting architects.

Also in May, BAE discussed whether licensure candidates will be allowed to receive credit for passing portions of the ARE administered in Canada. The Board decided that the Canadian ARE exam is not equivalent to the ARE administered by California, and adopted the resolution of its Examination Committee not to grant BAE credit, at this time, to candidates who take the Canadian ARE.

BAE also discussed the issue of mandatory continuing education as a requirement for maintaining NCARB certification. Historically, the Board has supported voluntary continuing education because of its belief that there are significant incentives for architects to participate in continuing education without additional Board strictures. However, the Board has recognized that all states might not be similarly situated regarding this issue. The Board adopted no resolution regarding this subject at the meeting.

FUTURE MEETINGS:

September 17 in San Diego (tentative).

ATHLETIC COMMISSION

Executive Officer: Ken Gray
(916) 920-7300

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 Chapter 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 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:

Commission's Drug Testing Policy Assailed. The Commission has recently been the object of complaints and news stories criticizing its failure to inform boxers and managers of banned medications and for its weak program of testing for the use of illegal drugs. Thus, at its May meeting, the Commission discussed a proposal to create an enhanced drug testing program, which would include random testing for performance-enhancing drugs and license revocation after a third offense. The Commission's legal counsel warned that, while the Commission may test a boxer for drugs when there is a reasonable suspicion of drug use, random drug testing authority must be authorized by statute; further, the Commission must seek additional funding to finance the drug testing program. The Commission will continue to discuss this matter at future meetings.