

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.

MAJOR PROJECTS:

New Form E Approved. At its September 7 meeting, BOA finally approved a new Form E "Certificate of Experience." This form—which has been the subject of considerable debate for over a year—is completed by employers of all persons applying for CPA licensure by the Board. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 64-65; Vol. 10, No. 1 (Winter 1990) pp. 51-52; and Vol. 9, No. 4 (Fall 1989) for detailed background information.) The Board's modification of the form (and the information requested of the employer on the form) represents a relaxation of the once-strict requirement that CPA applicants secure 500 hours of "audit experience," in recognition of the fact that the volume of auditing work available in the state is insufficient to provide all CPA applicants with their required hours.

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."

The Form E instructions to the employer set forth three types of experience: qualifying experience, public accounting experience, and "substantially equivalent experience" (that is, accounting experience not undertaken at a public accounting firm). At its August and September meetings, the Board discussed the fact that it has not yet defined the term "substantially equivalent experience," nor has it set forth guidelines for evaluating such experience and determining whether it qualifies toward the 500-hour experience requirement. At the August meeting, the Board instructed its Qualifications Committee (QC) to simply exercise its judgment on a case-by-case basis. In September, however, the Board instructed the QC to establish guidelines for evaluating "substantially

equivalent experience," but set no deadline for completion of this task.

150-Hour Education Task Force. On July 12, the Board's special task force considering the imposition of additional academic requirements for CPA licensure held a public hearing to gather information on the proposal. The proposal would increase the Board's educational requirement to 150 hours, which has been tentatively defined as a baccalaureate degree plus 30 units of "curriculum neutral college coursework," all of which must be completed at an accredited institution. Although the requirement would initially be imposed by the American Institute of Certified Public Accountants as a condition of membership, eight states have already adopted the 150-hour requirement, and BOA is seriously considering it for California.

At the Board's August meeting, BOA member Janice Wilson reported that only three organizations appeared at the July 12 hearing, and no one expressed opposition to the idea. In fact, the task force has received several papers in support of the idea, and has reviewed studies which indicate that there is a higher CPA exam passage rate among candidates who have completed 150 hours of education.

Proposed Regulations. At its November 16 meeting, the Board was scheduled to hold a public hearing on the following proposed regulatory changes:

-an amendment to section 5.1, Chapter 1, Title 16 of the CCR, to comply with the Permit Reform Act of 1981 (Government Code section 15374 *et seq.*), which requires state agencies which issue licenses or permits to adopt regulations setting maximum timeframes for the processing of applications.

-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 delete that section's provision that no fee for registration of a fictitious name will be charged by the Board.

-an amendment to section 75.8. That section 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 damages arising out of all claims against it by its clients or others. Existing regulations also require the corporation to furnish the Board with an executed copy of that agreement. The proposed amendment would delete the words "and others" from section 75.8, and require an executed original of the written agreement to be furnished to the Board.

-an amendment to section 95.2, which currently provides a schedule for citations by the Board and a range of minimum and maximum fines applicable to various violations of statutes and regulations. The proposed amendment would include violations of Business and Professions Code section 5100(a)-(g) as the basis for citations. The range of fines for these violations would be from a minimum of \$500 to a maximum of \$2,500.

Update on Other Regulatory Changes. BOA kept the Office of Administrative Law (OAL) busy this summer. The following is an update on numerous regulatory changes approved by the Board over the past year, which were considered by OAL over the past few months (see CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 65-66; 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 more detailed information on these changes):

-On June 19, OAL approved BOA's adoption of new section 37, which establishes criteria under which applications for relicensing without reexamination from former licensees whose licenses have expired may be approved.

-On June 26, OAL approved the Board's amendment to section 87, which sets forth more burdensome continuing education (CE) requirements for practicing licensees.

-On June 27, OAL approved BOA's amendments to section 90, which clarify the existing extensions or exceptions which may be granted to licensees attempting to comply with CE requirements; it also specifies that willful failure to complete CE requirements is grounds for discipline.

-On July 3, OAL approved the Board's repeal of existing section 66.1, its amendment to section 75.7, and its renumbering of section 75.7 as new section 66.1; and on July 5, OAL approved new section 66.2. These changes pertain to fictitious names for accounting corporations.

-On July 5, OAL approved BOA's adoption of new section 87.1, which

increases the number of CE hours required of "reentry applicants"—that is, licensees who have submitted renewal fees but have not completed CE requirements while in the field of education or private industry, and who now wish to reenter the consumer/government service sector of certified public accounting. This regulation is effective only until January 1, 1991.

-On July 5, OAL rejected the Board's adoption of new section 87.2, which significantly increases the number of CE hours required of "reentry applicants" after January 1, 1991. OAL found that the rulemaking failed to comply with the clarity, necessity, and authority standards in Government Code section 11349.1; that the Board failed to adequately summarize and respond to all public comments on the proposed rulemaking; and that BOA failed to comply with other technical requirements of the Administrative Procedure Act (APA).

-On July 10, OAL rejected the Board's amendment of section 89. This amendment was adopted at the Board's July 1989 meeting, and would require accountants to maintain records of compliance with CE requirements; delete a provision requiring the Board to give accountants notice and an opportunity to correct deficiencies when it determines that CE requirements have not been satisfied; add an additional item to be maintained as a record; and add a disciplinary provision for willful, false, or misleading statements concerning CE. OAL concluded that the rulemaking record failed to comply with the clarity and necessity standards of Government Code section 11349.1, and that the Board's statement of reasons was deficient in several respects.

LEGISLATION:

The following is a status update on bills reported in CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) at page 66:

SB 2185 (Royce), as amended July 7, requires the Board to appoint a single Administrative Committee consisting of both PAs and CPAs, thereby combining the two present administrative committees into one. This bill was signed by the Governor on July 11 (Chapter 244, Statutes of 1990).

AB 3427 (Eastin), as amended August 24, requires 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 was signed by the Governor on September 26 (Chapter 1393, Statutes of 1990).

AB 3824 (Bentley), which amends section 5100 of the Business and Profes-

sions Code to 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, was signed by the Governor on July 16 (Chapter 301, Statutes of 1990).

AB 1336 (Eastin), which would have specified that BOA licensees must complete not less than sixty hours of continuing education as a condition of license renewal on and after December 31, 1990, died in the Senate Business and Professions Committee.

LITIGATION:

On August 1, in *Bonnie Moore v. State Board of Accountancy*, No. A046279, the First District Court of Appeal agreed with the trial court that use of the terms "accounting" and "accountant" in commercial advertising connote state licensure, and that unlicensed accountants performing lawful accounting services permitted under section 5052 of the Business and Professions Code are prohibited from using those terms unless they also use a modifier, qualifier, or disclaimer. (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.)

At issue is the Board's "Rule 2" (section 2, Chapter 1, Title 16 of the CCR), which prohibits unlicensed accountants from using the unmodified terms "accountant" or "accounting". The Business and Professions Code expressly permits unlicensed accountants to perform a substantial number of accounting services (section 5052), and prohibits these persons from using modified terms such as "certified public accountant," "public accountant," or "chartered accountant" (section 5058). The legislature has never prohibited unlicensed accountants from using the unmodified terms. In ruling that unlicensed accountants are now required to use a modified term—which appears to contradict the statute, the court relied upon a survey commissioned by the Attorney General's office, which indicated that 55% of the people surveyed believed that someone who calls him/herself an "accountant" must be licensed. Bonnie Moore has filed a petition for review with the California Supreme Court.

In *Bily v. Arthur Young & Company*, No. H003695 (July 20, 1990), the Sixth District Court of Appeal held that a CPA's professional duty extends beyond his/her clients to those third parties who "reasonably and foreseeably rely on neg-



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ligerly prepared and issued unqualified audited financial statements." In *Bily*, thirteen plaintiffs—none of whom were clients of Arthur Young—sued the company, asserting that they had justifiably relied on a January 1983 unqualified audit opinion by Arthur Young regarding Osborne Computer Corporation's condition in November 1982. Due to that reliance, plaintiffs invested in Osborne, which went bankrupt soon thereafter. In the superior court, a jury found Arthur Young liable for professional negligence and awarded plaintiffs 75% of their invested funds.

In affirming on the liability issue and rejecting Arthur Young's "privity rule" argument, the Sixth District followed the "foreseeability rule" set forth by the Fourth District in *International Mortgage Co. v. Butler Accountancy Corp.*, 177 Cal. App. 3d 806 (1986). "In sum, we find the foreseeability rule, as applied in *International Mortgage*, to be consistent with California's basic rule of responsibility for the reasonably foreseeable consequences of a failure to meet an applicable standard of care, and we discern no compelling policy reason to place additional limits on the scope of an independent auditor's duty."

FUTURE MEETINGS:

February 1-2 in San Francisco.

March 23 in Los Angeles.

May 17-18 in Sacramento.

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 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:

Regulatory Changes. On July 17, BAE held a public hearing on proposed amendments to sections 121 and 124, Chapter 2, Title 16 of the CCR. The proposed amendment to section 121 would 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 amendment to section 124 would eliminate the requirement that a candidate bring photographs of completed work to an 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. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 67 for background information.)

BAE received no written or oral testimony by the noticed deadline, and unanimously adopted the proposed amendments at its September 14 meeting. At this writing, BAE is preparing the rule-making file for submission to the Office of Administrative Law (OAL) for approval.

At its May 22 meeting, the Enforcement Committee recommended that BAE amend section 134, Chapter 2, Title 16 of the CCR, to ensure that its advertising provisions concerning architectural business names for partnerships are consistent with similar provisions relating to business names for corporations and sole proprietorships. At its September 14 meeting, BAE unanimously agreed to pursue the proposed regulatory changes. At this writing, BAE is preparing to publish notice of the proposed changes.

BAE has not yet submitted to OAL its proposed amendments to section 125, Title 16 of the CCR, which would delete the appeal procedures for the graphic site design division of the licensing exam, specify the appeal procedures and deadlines for the graphic building design division of the licensing exam, and delete the provisions which allow for appeals on the content or format of the licensing exam. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 67 for background information.) According to BAE, the fiscal impact statement prepared in conjunction with the proposed rulemaking has been approved by the Department of Finance and, at this

writing, BAE is finalizing the rulemaking package for submission to OAL.

BAE Delegates Approval of Design Appeal Review Sessions to Examination Committee. BAE is mandated by statute to allow eligible candidates to appeal their failing building design solutions. The Board convenes a group of architects who participated in the initial design grading to review and grade the failing designs. The results of the appeal review session are recorded and provided to the Examination Committee, which reviews and votes to approve the results, and recommends approval to the Board. The Board then votes approval of the appeal session recommendations at its next scheduled meeting.

Beginning this year, BAE will administer the two graphic divisions of the Architect Registration Examination (ARE) each December, in addition to administering the entire ARE each June. The design appeal review sessions will be held in conjunction with Examination Committee meetings prior to each administration. The appeal review sessions must be scheduled after the close of the appeal period and prior to the administration of the next exam. This allows staff enough time to process the appeal results and notify candidates whose designs have passed that they need not appear for the next exam. Due to time constraints involved in the appeal process and scheduling Board meetings, staff noted that it may be difficult to schedule Board meetings immediately after the appeal sessions and prior to the exam administrations.

At its September meeting, BAE unanimously approved a recommendation of its Examination Committee to delegate to the Committee the authority to approve the results of the design appeal review sessions. This will alleviate Board meeting scheduling conflicts and ensure that the results of the appeal are approved in sufficient time to notify passing candidates. The results of the appeal sessions and the Examination Committee's recommendations will be reported to the Board as part of the Committee's summary reports.

BAE Delegates Approval of Pre-Examination Review to Examination Committee. BAE is also required by statute to review and approve each examination administered to candidates for licensure in California. The Board convenes a group of subject matter experts to review the test booklets and design solutions. Their comments are recorded and provided to the Examination Committee, which reviews the results of the session, votes to approve the exam, and recommends approval to