



lently 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*  
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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 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



the Board. The Board then approves the exam at its next scheduled meeting. The comments of the review group are forwarded to NCARB for consideration prior to the grading of the exam.

As noted above, beginning this year, BAE will administer the two graphic divisions of the ARE each December in addition to administering the entire ARE each June. The pre-examination review sessions will be held in conjunction with Examination Committee meetings prior to each administration. Due to time constraints involved in scheduling Board meetings, it may be difficult to schedule Board meetings immediately after the review sessions and prior to exam administrations.

At its September 14 meeting, BAE unanimously voted to delegate to the Examination Committee the authority to approve the results of the pre-examination review sessions and approve the ARE for administration in California. This will alleviate Board meeting scheduling conflicts and ensure that the exams are approved in sufficient time for administration. The results of the review sessions and the Examination Committee's recommendations will be reported to the Board as part of the Committee's summary reports.

**Examination Development.** BAE recently contracted with CTB/McGraw-Hill (CTB) to provide exam development services for the Board's supplemental oral exam. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 67; Vol. 10, No. 1 (Winter 1990) p. 54; and Vol. 9, No. 4 (Fall 1989) p. 43 for background information.) The final test plan for the supplemental oral exam was approved by the Board at its May 15 meeting. Since then, the Oral Examination Development Committee has developed a series of questions and grading criteria for the oral exam and has conducted a field test of the revised exam materials.

On August 20, the Oral Exam Review Committee received an update on the oral exam development process from CTB staff and voted to approve the exam as developed to date. On August 21, Review Committee members met with members of the Development Committee and CTB staff to conduct a training session for master commissioners on the revised exam format and content. Also, CTB staff planned to develop a training video for use in two one-day training sessions which were scheduled to be held in October. BAE plans to use only trained, experienced commissioners for the administration of the new oral exam, which will begin in January 1991.

At BAE's September meeting, the Board unanimously approved the following recommendations of the Oral Examination Review Committee:

- BAE should conduct a standard-setting workshop to determine the appropriate passing standard for the oral exam and to develop alternate exam forms;

- BAE should require that each oral exam interview panel consist of three trained commissioners;

- BAE should discontinue the use of a portfolio by oral exam candidates; and

- BAE should change the scoring method from pass/fail by section to pass/fail for the entire exam.

**1990 Architect Registration Examination.** In June, BAE administered NCARB's Architect Registration Examination (ARE) for the first time in three years. (See CRLR Vol. 9, No. 2 (Spring 1989) pp. 44-45 for background information on the Board's shift from the ARE to its own licensing exam, the California Architect Licensing Exam (CALE), and back to NCARB's ARE.) Approximately 4,700 candidates took all or part of the ARE in California, and BAE had an average "no show" rate of 7.5%. The Board spent \$112,000 for exam site contracts and a total of \$645,000 for exam booklets, design solution pads, and answer sheets.

## LEGISLATION:

**AB 3136 (McClintock)**, as amended August 21, adds specified architects, professional engineers, and licensed land surveyors to the list of experts entitled to fees under specified expert witness fee provisions. This bill was signed by the Governor on September 26 (Chapter 1392, Statutes of 1990).

The following is a status update on bills reported in detail in CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) at pages 67-68:

**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 21, this bill adds the limitation of nonseismic to nonstructural elements of that work with respect to (a), (b), and (c) above, and deletes the prohibition in (c) above upon unlicensed persons rendering services to others in connection with the services specified in (c). However, the bill makes the effectiveness of (c) contingent upon those alterations not changing or affecting the structural system or safety of the building. This bill was signed by the Governor on July 19 (Chapter 396, Statutes of 1990).

**AB 3242 (Lancaster)**, as amended July 27, authorizes BAE to discipline a licensee of the Board who fails to pay an administrative fine. This bill was signed by the Governor on September 21 (Chapter 1207, Statutes of 1990).

**ABX 9 (Epple)** provides that acting as an architect, engineer, or contractor without appropriate licensure may be punishable as either a misdemeanor or a felony, if committed in connection with the offer to perform or the performance of services for repair of damage caused to a structure by natural disasters for which a specified state of emergency is proclaimed by the Governor or for which a specified emergency or major disaster is declared by the President. Further, this bill doubles the amounts of fines which may be imposed under those circumstances, requires the defendant to make full restitution subject to the defendant's ability to pay, adds a one-year enhancement where the offense is a felony and the defendant has a prior felony conviction of such an offense, and requires probation of at least five years or until restitution is made. This bill was signed by the Governor on September 22 (Chapter 36X, Statutes of 1990).

**SBX 46 (Lockyer)**, as amended July 2, provides 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, wrongful death, or property damage



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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 bill was signed by the Governor on September 19 (Chapter 30X, Statutes of 1990).

**AB 1789 (Cortese)**, as amended July 27, gives architects, engineers, and 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. This bill was signed by the Governor on September 30 (Chapter 1615, Statutes of 1990).

**SBX 16 (Roberti)**, which would have made offenses by unlicensed architects, engineers, or contractors punishable as either a misdemeanor or a felony, died in the Senate Appropriations Committee.

### RECENT MEETINGS:

At BAE's September 14 meeting, Executive Officer Steve Sands reported that the year-end expenditure statements for fiscal year 1989-90 reflected a projected 5% reversion of BAE's budget, which will return approximately \$177,000 to its reserve fund. He also noted that the Governor approved BAE's 1990-91 budget as submitted and approved by the legislature.

### FUTURE MEETINGS:

To be announced.

### 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 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.

Commissioners Jerry Nathanson, Robert Wilson, P.B. Montemayor, and Charles Westlund were recently reappointed to another four-year term with the Athletic Commission.

### MAJOR PROJECTS:

*Commission Reviews Drug Testing Policies.* In the continuing discussion of its drug testing policy, the Commission reviewed reports on the drug testing programs used by boxing regulators in New York, New Jersey, and Nevada at its July meeting. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 68 for background information.) Commission staff reported that the New York Athletic Commission obtains a urine sample from each boxer before his bout. The samples are tested for illegal drugs at the Commission office by a technician. If a positive result is obtained, the remaining urine sample is sent to an independent laboratory for testing. A boxer with a positive result is suspended, but the decision of the contest is not changed. The New York Commission's drug testing equipment costs \$15,000.

The New Jersey Athletic Commission obtains urine samples from all boxers after their bouts and the samples are tested by the New Jersey State Police Laboratory. New Jersey tests for all illegal drugs except steroids; the cost of the test was not available.

The Nevada Athletic Commission obtains a urine sample only from boxers selected at random from each boxing show. Nevada tests for a large number of drugs. A boxer with a positive result is suspended pending a hearing, but the contest decision is not changed. In Las Vegas, the laboratory cost for the drug test is \$60; in northern Nevada, the pre-screening test is \$18 and positive samples are sent out for further testing.

Following this presentation, staff made the following recommendations, which the Commission subsequently approved:

-The Commission should consider a drug testing program that would test the

winner of the main event contest and the winner of a preliminary bout randomly selected.

-The test should include those substances whose use is prohibited under section 303, Title 16 of the CCR, which states: "The administration or use of any drugs, alcohol or stimulants, or injections in any part of the body, either before or during a match, to or by any boxer is prohibited."

-If the winning boxer tests positive for illegal drugs, the bout should be declared a "no decision" bout. This would require an amendment to section 369 of the Commission's regulations.

-Appropriate disciplinary guidelines should be established for the first and second offenses; a third offense should be grounds for revocation of the offender's license.

-The Commission should draft legislative language authorizing random drug testing by the Commission.

-The Commission should submit a budget change proposal requesting funds to test 250 boxers per year.

*Commission Budget.* At the August 17 meeting, Executive Officer Ken Gray reported that Commission staff had submitted the following budget change proposal items to the Department of Consumer Affairs (DCA):

-to increase the overall budget by \$49,859 in order to rectify overexpenditures in the area of postage, communication, travel, general expenses, and rent;

-to increase the personnel years in the neurological examination program from .5 per year to 1 per year, at a cost of \$17,000;

-to obtain \$100,000 in order to hire a private attorney to challenge the constitutionality of the legislature's action to deregulate wrestling (see CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 69; Vol. 10, No. 1 (Winter 1990) p. 55; and Vol. 9, No. 4 (Fall 1989) p. 43 for background information); and

-to increase data processing funds by \$50,000 to complete the Commission's automation process and provide its continued maintenance.

Gray also reported that the Commission's proposed 1990-91 budget was decreased by 3%, or about \$24,000.

*Update on Regulatory Changes.* On June 11, the Office of Administrative Law (OAL) rejected the Commission's amendments to section 220 and adoption of new section 279 of its regulations, both approved at its February 1990 meeting. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 69 and Vol. 10, No. 1 (Winter 1990) p. 54 for background information.) Amended section 220 would permit the Commission to