

REGULATORY AGENCY ACTION



STATE & CONSUMER SERVICES AGENCY (Department of Consumer Affairs)

BOARD OF ACCOUNTANCY

Executive Officer: Della Bousquet
(916) 920-7121

The Board of Accountancy, a twelve-member board, regulates, licenses and disciplines public accountants and certified public accountants (PAs and CPAs). Each member serves a four-year term and receives no compensation other than expenses incurred for Board activities. The Board establishes and maintains standards of qualification and conduct within the accounting profession, primarily through its power to license. It is a misdemeanor to practice accountancy without a license in California.

The Board's staff administers and processes the nationally standardized CPA examination. Approximately 16,000 applications are processed each year. Three to four thousand of these applicants successfully complete the entire exam and are licensed.

The current Board officers are President Sam Yellen, Vice President Henry Lee, and Secretary/Treasurer Jeffery Martin.

MAJOR PROJECTS:

Regulatory Changes. At its January 29-30 meeting in Santa Monica, the Board adopted a proposal to redraft section 87.5, Title 16 of the California Code of Regulations (CCR). New section 87.5 would authorize the Board, after an investigation or disciplinary hearing, to impose continuing education requirements in addition to those already required for license renewal. The Board will schedule the redrafted section 87.5 for a hearing as soon as feasible.

The Board's proposed changes to section 69.1, Title 16 of the CCR, have been submitted to the Office of Administrative Law (OAL) for approval. The proposed change to section 69.1 states that willful failure or refusal by a licensee to comply with a written notice of the CPA Administrative Committee or the PA Administrative Committee, as appropriate, to appear in person before that Committee in proceedings pursuant to

section 5020 or section 5020.3 of the Accountancy Act, constitutes a violation of section 5100(f) of the Accountancy Act. The written notice must be delivered not less than ten working days in advance of the appearance and must specify the place of the appearance. Language limiting the distance from the licensee's address to the place of the proceeding was stricken from the proposed regulation text.

At this writing, the Board's changes to section 54 regarding disclosure requirements are at the OAL awaiting approval. (See CRLR Vol. 8, No. 1 (Winter 1988) p. 41 for complete details on these proposed regulatory changes.)

Proposed Citation and Fine Regulations. Deputy Attorney General Alan Meth has drafted proposed regulations to implement the citation and fine authority given to the Board pursuant to Business and Professions Code section 125.9. The Board briefly discussed the draft at its March 12 meeting, and will address the issue at a future meeting.

Executive Officer's Report. At the January 29 meeting in Santa Monica, Executive Officer Della Bousquet reported that she would seek a budget appropriation to contract with outside consultants to study the Board's enforcement program structure, process, and policies. The Executive Officer stated that she would keep Board members informed of the status of this project. The balance of the Executive Officer's report was deferred.

At the Board's March 12 meeting in Los Angeles, Executive Officer Bousquet continued her report. Pursuant to a request by the Department of Consumer Affairs, the Board has drafted its proposed mission statement and goals. Bousquet stated that the Board's mission is to promote the integrity of financial information by ensuring that consumers and third-party users of CPA/PA services can place an appropriate degree of reliance on the quality of a licensee's work product, which collectively and directly impacts the California and national economies. The Board's goals

are to establish and maintain systems of education, examination, and licensure which are uniformly applied, job-related, competency-based, and administered in a manner which encourages fair competition and broad consumer choice. In addition, the Board strives to advocate and implement educational and rehabilitative practices which ensure its licensees' continuing competency. Finally, the Board's goals are to improve enforcement timeliness, techniques, and alternatives to achieve vigorous consumer protection objectives while recognizing the broader goal of consumer choice and the value of sanctions and rehabilitative measures.

Also included in the Executive Officer's Report were budgetary matters. In response to recommendations by the Office of the Legislative Analyst regarding the Board's budget, Executive Officer Bousquet stated that the Board is not adverse to exploring the feasibility of establishing position classifications to investigate complaints against major firms and accountants. However, the concept may present several practical problems. First, expert witnesses may be required for preliminary investigations as well as trial. Second, it is unknown whether a classification in the \$60,000-75,000 range would attract candidates with sufficient expertise and credibility in current public accounting practices to competently investigate major firms. Third, a staff investigator would preclude concurrent investigations and may result in scheduling conflicts due to trial dates, meeting schedules, etc. Finally, it is unknown whether the cost of a staff person (including benefits, travel, and other associated costs) plus the cost of an additional expert for trial testimony would be significantly less than contracted experts.

LEGISLATION:

SB 2313 (Campbell) would define the terms "commission" and "client," as those terms are used in statutes which prohibit an accountant from paying a commission to obtain a client or to accept a commission for a referral to a client of products or services of others.

SB 2313 would also define the practice of public accountancy and prohibit persons from engaging in that practice without a permit issued by the Board of Accountancy. The bill would include in that definition a person who (1) keeps books, makes trial balances, or prepares statements, makes audits, or prepares reports as a part of bookkeeping operations for clients; (2) prepares or signs as



REGULATORY AGENCY ACTION

the tax preparer, tax returns for clients; (3) prepares or provides personal financial or investment plans or services, or (4) provides management consultant services to clients. The bill provides that these described activities constitute "public accountancy" only when performed by a CPA/PA, and that if the above-described functions are the only services prepared by a person, he/she is not engaged in "public accountancy" if he/she does not hold him/herself out as a licensee.

SB 2313 is pending in the Senate Business and Professions Committee.

SB 1009 (*Montoya*) would amend section 5100 of the Business and Professions Code to include acceptance of a commission or payment for the referral or sale of any product or services to or on behalf of a client as grounds for disciplinary action by the Board. The bill would define the term "commission" to mean any payment that is usually, but not limited to, a measurement by a percentage of the value of a product or services rendered.

At the Board's March 12 meeting in Los Angeles, Charles Dean of the Society of California Accountants offered testimony that SB 2313 (*Campbell*) and SB 1009 (*Montoya*) should be merged. SB 1009 has passed the Senate and is pending in the Assembly Committee on Governmental Efficiency and Consumer Protection.

SB 422 (*Montoya*) would state that provisions of law regulating the practice of accountancy do not prohibit an unlicensed person from attaching a transmittal letter to financial statements under specified conditions. The bill would also revise existing law by defining a "report" for purposes of provisions regarding the preparation of financial statements, and including the preparation or certification of reports on reviews and compilations, as specified, in the definition of the practice of public accountancy. (See CRLR Vol. 8, No. 1 (Winter 1988) pp. 41-42 and Vol. 7, No. 3 (Summer 1987) p. 55 for background information.) The bill is pending in the Assembly Committee on Governmental Efficiency and Consumer Protection.

SB 1824 (*Rosenthal*) proposes to increase the maximum amount which the Board of Accountancy may pay a non-profit organization controlled by licensees of the Board to provide volunteer accounting services. The current \$65,000 per year limit would be increased to \$100,000 per year. This bill is pending in the Senate Business and Professions Committee.

AB 3387 (*Hughes*) relates to financial and compliance audits. Existing law requires the State Controller to perform quality control reviews of audit working papers to determine whether audits of school districts and offices of county superintendents of schools are performed in conformity with the audit guide. This bill would require the Controller to refer to the Board of Accountancy any CPA or PA who has not completed audit reports substantially in conformance with specified provisions of existing law. In addition, the bill would require the Controller to submit a report to the legislature on or before June 30 of each year regarding these referrals. SB 3387 is pending in the Assembly Education Committee.

AB 3417 (*Hughes*) would require the State Controller to institute a list of ineligible and unacceptable auditors, and would prohibit school districts and county offices of education from using their audit services. This bill is also pending in the Assembly Education Committee.

AB 3818 (*Bader*) proposes to amend section 5027 of the Business and Professions Code. Under existing law, the Board is required to adopt regulations defining the basic requirements for continuing education of CPAs and PAs. This bill would require the Board to provide that at least 25% of the qualifying hours of continuing education shall be in the area of governmental accounting, except as specified. This bill is pending in the Assembly Committee on Governmental Efficiency and Consumer Protection.

SB 91 (*Boatwright*), as amended January 11, would repeal the Tax Preparers Program, and instead enact the Tax Practitioner Program in the Franchise Tax Board. The bill is currently pending in the Assembly Committee on Governmental Efficiency and Consumer Protection.

SB 315 (*Montoya*) would amend the Civil Code to require financial planners, as defined, to be subject to the existing licensure requirements relative to investment advisers. This bill is currently pending in the Assembly Committee on Finance and Insurance.

AB 4537 (*Cortese*) would define as grounds for disciplinary action the imposition of a fine or penalty, or the forfeiture of fees withheld according to law, by any state governmental body or agency for negligence in the practice of public accountancy. AB 4537 would also increase certain maximum examination and licensure fees. Finally, this bill would also require the Board on and after July 1, 1988, to fix the biennial

renewal fee so that, together with specified other revenues, the reserve balance in the Board's contingent fund shall be equal to approximately six months of annual authorized expenditures.

This bill is pending in the Assembly Committee on Governmental Efficiency and Consumer Protection.

LITIGATION:

Moore v. California State Board of Accountancy, No. 863037 (San Francisco Superior Court), which challenges the Board's policy that unlicensed persons may not legally use the term "accounting" or "accountant" in describing themselves or their services, is still pending in the discovery phase. During the pendency of this litigation, the Board continues to enforce the law against unlicensed persons purporting to engage in the practice of public accountancy.

RECENT MEETINGS:

At its January 29-30 meeting, the Board discussed the Continuing Education Committee's actions pertaining to Western Schools' application for a Program Sponsor Agreement (PSA) with the Board. A PSA is a statement from the Board of Accountancy accepting the instruction being offered by a school for a specified number of course hours. Such an agreement generally assures a licensee that if he/she enrolls in the school's accountancy courses, the Board will credit the number of hours specified by the school to the licensee.

Dr. Alan Johnson, chair of the Continuing Education Committee, stated that the Committee determined that only 25 hours of credit would be granted for Western Schools' course entitled "Explanation of the Tax Reform Act of 1986," rather than 50 hours as requested by Western Schools. Approximately 100 licensees submitted 50 hours of continuing education for the course, but were informed that only 25 hours were qualifying; as a result of this action, a number of license renewal applications were denied. On January 25, Western Schools corresponded with the Board and indicated that it would no longer market the course.

Dr. Johnson also indicated that information gained while reviewing the Tax Reform Act course caused the Committee to question the validity of the hours claimed by Western Schools for its other courses. The Board's existing PSA with Western Schools terminated on February 29, 1988. At its January 29 meeting, the Board approved a motion not to renew the existing PSA nor accept new courses under it until Western Schools provides



satisfactory evidence regarding the content and hours claimed by it.

The Board also discussed a recent brochure from Western Schools, which states that all of its courses are "registered" with the Board. However, none of the courses included in the brochure are registered with the Board or included in any existing PSA. The Board also voted to request that the Continuing Education Committee review the PSA form in order to make recommendations for improvement and consider whether new regulations or statutory changes are necessary.

At its March 12 meeting in Los Angeles, the Board adopted a proposal to approve a Memorandum of Understanding between the Board of Accountancy and the Department of Corporations, which concerns the duties and responsibilities of the Department's Internal Review Committee (IRC), and the Board's intention to rely upon the IRC's certification of the experience of Department employees, for purposes of qualifying for CPA certification.

Also, the Board reported a reduction in exam cheating due to its new security procedures. In November 1986, there were 1,168 exam cheating incidents; in November 1987, there were only 256 such incidents. This is a reduction of 78%.

FUTURE MEETINGS:

May 19-21 in Lake Tahoe.

July 29-30 in San Diego.

October 7 in Fresno.

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 levels of competency for licensed architects and regulates the practice of architecture. Duties of the Board include administration of the California Architect Licensing Exam (CALE) and enforcement of Board guidelines. BAE is a ten-member body evenly divided between public and professional membership.

The election of BAE officers was held at the Board's January 28 meeting in Millbrae. Paul Neel was re-elected Board President; Robert DePietro was re-elected Vice-President; and Lawrence Chaffin, Jr. was selected Secretary.

MAJOR PROJECTS:

Regulatory Changes. In January, the Office of Administrative Law (OAL) approved the adoption of section 153 in Chapter 2, Title 16 of the California Code of Regulations (CCR), regarding multiplex dwellings. (See CRLR Vol. 7, No. 4 (Fall 1987) p. 38 for background information.)

BAE has filed notice with OAL of proposed changes to section 109, which (as amended) would require CALE candidates to submit all documentation relating to eligibility for the exam by March 1 in the year in which application is made; section 116(a), which would require that a CALE candidate's graduation must be confirmed by the March 1 filing deadline, and that qualifying work experience could be evaluated up until the test date; and the proposed repeal of section 125, which would eliminate applicants' ability to appeal failing scores on the CALE. (See CRLR Vol. 8, No. 1 (Winter 1988) pp. 42-43 for background information.) A hearing on the proposed changes was scheduled for March 15 at the Department of Consumer Affairs in Sacramento.

On February 8, the Board held a hearing on proposed changes to several of the Board's regulations. No public comment was received on any of the proposed changes. The Board proposes to adopt new section 134, which will specify appropriate titles which may be used by architectural firms to identify themselves in all forms of advertising. An amendment to section 135 would delete the term "registered building designer" from the regulation, and would establish requirements for architects who wish to form a partnership with unlicensed persons. A proposed amendment to section 151 would implement existing law which provides that an architect is prohibited from signing plans or specifications which have not been prepared by him/her or under his/her "immediate and responsible direction." The proposed amendment to section 151 would establish criteria for determining compliance with the intent of "immediate and responsible direction." These proposed regulations were scheduled for Board consideration and adoption at its March 29 meeting.

Training Session. On February 26, the BAE conducted a training session designed to aid the Board in setting goals and objectives for the next three to five years. The training session was facilitated by Michael Tompkins, a lecturer and consultant who specializes in management training and organizational

problem solving. Of primary concern at the session was BAE's continuing relationship with the National Council of Architectural Review Boards (NCARB).

FUTURE MEETINGS:

June 9 in Sacramento (tentative).

ATHLETIC COMMISSION

Executive Officer: Ken Gray
(916) 920-7300

The Athletic Commission regulates amateur and professional boxing, contact karate, and professional wrestling. The Commission consists of eight members each serving four-year terms. All eight seats are "public" as opposed to industry representatives.

The current Commission members are Bill Malkasian, Raoul Silva, Roosevelt Grier, P.B. Montemayor, M.D., Jerry Nathanson, Thomas Thaxter, M.D., Charles Westlund, and Robert Wilson.

The Commission is constitutionally authorized and has sweeping powers to license and discipline those within its jurisdiction. The Commission licenses promoters, booking agents, matchmakers, referees, judges, managers, boxers, martial arts competitors, and wrestlers. 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.

MAJOR PROJECTS:

Neurological Examination Program. Members of the boxing industry have reported that they do not understand the neurological examination program required by the Commission. (See CRLR Vol. 8, No. 1 (Winter 1988) p. 43 for background information.) According to a report by Executive Officer Ken Gray, the Commission has received numerous complaints from industry representatives who want to understand how the examination is conducted and how to interpret examination results.

Thus, the Commission scheduled a March 18 workshop for boxers, promoters, managers, physicians, and Commission members, to inform the boxing industry, in a medical context, as to the specific requirements and objectives of a neurological examination.