

REGULATORY AGENCY ACTION



STATE & CONSUMER SERVICES AGENCY (Department of Consumer Affairs)

BOARD OF ACCOUNTANCY

Executive Officer: Della Bousquet
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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 Yee, and Secretary/Treasurer Ira M. Landis.

MAJOR PROJECTS:

Regulatory Changes. At its November 20-21 meeting in San Francisco, the Board adopted a proposal to add new section 87.5 to Title 16 of the California Administrative Code. The new section would require continuing education in lieu of disciplinary action (e.g., fines) in response to substantiated complaints against licensees, excluding allegations of gross negligence. The Board adopted the proposal in order to minimize public harm resulting from inadequate accounting services. At this writing, the Board's staff is in the process of compiling its rulemaking file for submission to the Office of Administrative Law.

The Board is still in the process of compiling its rulemaking file for proposed changes to section 69.1, Title 16 of the California Administrative Code, which concerns mileage limitations for licensees required to appear before the Board at specified locations. (See CRLR

Vol. 7, No. 4 (Fall 1987) p. 37 and Vol. 7, No. 3 (Summer 1987) p. 55 for background information.)

Following a formal hearing in November, the Board adopted changes to subsections (a) and (b) of section 54, Title 16 of the California Administrative Code, which presently prohibits a licensee from disclosing information concerning a client or prospective client without the permission of the client or prospective client, unless required to comply with a subpoena or summons or to respond to specified official inquiries. The proposed changes would permit disclosure of client information under additional circumstances, including (1) in response to official inquiries of governmental regulatory agencies; (2) in connection with the proposed sale or merger of a practice; (3) in accordance with generally accepted professional standards (e.g., from a predecessor to a successor auditor); (4) for purposes of professional consultation between licensees; (5) involving communications with professional standards or peer review organizations; and (6) when specifically required by law.

The Board also adopted a proposal to amend and renumber subsection (c) of section 54, which presently prohibits Board members and professional practice reviewers from disclosing confidential client information except to investigative or disciplinary bodies. Under the proposed changes, the language presently appearing in subsection (c) would be revised and expanded and would appear, as amended, under new section 54.2. The proposed new section would prohibit members of the Board and its committees, as well as professional practice reviewers of private organizations, from disclosing information of any kind which has been obtained in carrying out official responsibilities, except (1) in administrative disciplinary proceedings; (2) in legal actions involving the Board as a party; (3) in response to official inquiries by governmental regulatory agencies; or (4) when specifically required by law.

In addition, the Board proposes to add new section 54.1 to Title 16 of the California Administrative Code. The new section would require a licensee to respond to any inquiry by the Board or its committees, and to make available all requested files, working papers, and documents. Failure of a licensee to respond within 30 days would constitute cause for formal disciplinary action by the Board.

Implementation of New Reporting Requirement. Section 89.1 of Chapter 1, Title 16 of the California Administrative Code, became effective on June 5, 1987. The Board began implementation of the rule in December 1987 by requiring licensees to submit, upon request, a self-selected sample of financial reports issued during previous calendar years. (For background information, see CRLR Vol. 6, No. 4 (Fall 1986) p. 26.)

LEGISLATION:

AB 941 (Lancaster), effective January 1 (Chapter 850, Statutes of 1987), is an omnibus bill covering numerous Department of Consumer Affairs agencies. Under one of its provisions, section 5061 was added to the Business and Professions Code. Section 5061 will codify section 56, Chapter 1, Title 16 of the California Administrative Code, which provides that no person engaged in the practice of public accountancy shall pay a commission to obtain a referral of a client, nor shall any person engaged in the practice of public accountancy accept a commission for a referral to a client of products or services of others. This section does not prohibit payments for the purchase of an accounting practice or retirement payments to individuals presently or formerly engaged in the practice of public accounting or payments to their heirs or estates.

SB 422 (Montoya), AB 527 (Chacon), AB 949 (Chacon). At an interim hearing on October 19, the Assembly Committee on Governmental Efficiency and Consumer Protection heard testimony from several individuals concerning various issues related to the regulation of accountants. The informational hearing focused on three areas: (1) the proposed unity of title between public accountants and certified public accountants (AB 527); (2) the establishment of an additional licensing class known as "registered accountants" (AB 949); and (3) clarification as to the scope of practice for non-licensees (SB 422). (For background information on these bills, see CRLR Vol. 7, No. 3 (Summer 1987) p. 55.)



Among those presenting testimony were the California Society of Certified Public Accountants, the California Association of Independent Accountants, the Inland Society of Tax Consultants, and the National Society of Public Accountants. Throughout the hearing, Committee Chair Rusty Areias repeatedly reminded the special interests testifying that the Committee is charged with protecting the public interest. He challenged each group's spokesperson to tell Committee members how the public would be helped by the group's proposals.

Also testifying was Mary Livingston of the Center for Public Interest Law (CPIL). While CPIL supports certification of CPAs, it believes such certification does not warrant a comprehensive licensing system. Hence, CPIL believes that SB 422 overreaches in its attempt to limit the scope of practice for those not certified by the Board of Accountancy. As for the proposal in AB 949 that the state create what appears to be a permit system for accountants who are not CPAs, CPIL recommends that any such permit system have as its only barrier to entry the passage of a required test, as it should not matter where or how one obtains the requisite knowledge.

The major controversy in the testimony presented by the different groups surrounded the scope of practice issue. Unlicensed accountants assert the right to practice accounting within the state, while the Board and CPA groups challenge that unrestricted right. This conflict has been waged for several years, and resolution of the issue may now lie in the state courts with the suit brought against the Board by the independent accountants, *Moore v. California State Board of Accountancy*. (For more information, see CRLR Vol. 7, No. 4 (Summer 1987) p. 55 and LITIGATION report, *infra*.)

Proposed Legislation. At its October 9-10 meeting in Fresno, the Board voted to sponsor legislation in 1988 which would provide that continuing education be required for all CPAs who seek to reenter the profession after a five-year absence. The legislation would require a licensee to enroll in up to forty hours of continuing education for each year out of public practice, not to exceed a total of 280 hours. In lieu of the continuing education, a licensee could retake the accountancy examination.

The Board intends to pursue other legislation as well. At the November 20-21 meeting, Deputy Attorney General Granen recommended statutory amendments which would, among other things,

expand section 5051 of the Business and Professions Code (definition of public accountancy) to include those activities currently included in section 5, Chapter 1, Title 16 of the California Administrative Code. Other proposed changes to the Business and Professions Code would (1) modify section 5052 to clearly exclude applicability of certain section 5051 provisions to unlicensed persons; and (2) expand section 5100 (causes for discipline) to correct problems previously identified by other Deputy Attorneys General. He also presented new sections which would define the terms "commissions" and "client." The Board requested that Deputy Attorney General Granen make certain modifications to his proposals and then resubmit them to the Board for final approval.

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 November 20-21 meeting in San Francisco, the Board unanimously adopted the recommendations of the CPA Qualifications Committee and ordered 430 certificates approved, 212 deferred, and 19 rejected.

FUTURE MEETINGS:

March 12 in Los Angeles.
May 19-21 in Lake Tahoe.
July 29-30 in San Diego.
October 7 in Fresno.
November 11-12 in San Francisco.

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 en-

forcement of Board guidelines. BAE is a ten-member body evenly divided between public and professional membership.

Attorney Richard Stephens has recently been appointed to fill a public member vacancy on the board.

MAJOR PROJECTS:

Implementation of AB 1113. AB 1113 (Bradley), which is now law, provides for reciprocal licensure for out-of-state architects. (See CRLR Vol. 7, No. 4 (Fall 1987) p. 38.) In implementing the bill, BAE has identified two requirements which must be met in order for individuals with out-of-state licenses to be considered for California licensure, including (1) California acceptance of the exam of the state in which the individual is licensed; and (2) that state's acceptance of California's architectural exam. BAE has taken the position that all exams given in the United States prior to 1987 are substantially equivalent to the exam administered in California prior to 1987, and will continue to recognize pre-1987 exams as such.

In a related matter, BAE continues its involvement in third-party mediation with the National Council of Architectural Registration Boards (NCARB). (See CRLR Vol. 7, No. 3 (Summer 1987) p. 56.) At its November 6 meeting in South Lake Tahoe, BAE reaffirmed its commitment to the mediation, which seeks to resolve reciprocity issues between California and states which utilize NCARB-produced exams. BAE also reaffirmed its support of the current mediator, Frances McGovern.

Regulatory Changes. At its November 6 meeting, the Board approved a recommendation by the Examination Committee to establish an examination application fee. The establishment of such a fee will require both statutory and regulatory amendments. Staff was directed to draft appropriate language to amend sections 122.5, Title 16 of the California Administrative Code. The Board will also seek an author for the necessary legislation.

At its October 16 meeting in San Luis Obispo, the Examination Committee approved a recommendation to amend section 109, Title 16 of the California Administrative Code, to repeal procedures which allow candidates who graduate after the March 1 application filing deadline but before the July CALE is administered, to sit for the CALE upon verification of graduation.

The Board has also approved proposed amendments to section 125 of its regulations, concerning exam appeals.