

# California Board of Accountancy

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The California Board of Accountancy (CBA) licenses, regulates, and disciplines certified public accountants (CPAs) and public accounting firms and corporations. The Board also regulates existing members of an additional classification of licensees called public accountants (PAs). The PA license was granted only during a short period after World War II; the last PA license was issued in 1968. CBA currently regulates over 60,000 individual licensees and 5,000 corporations and partnerships. It establishes and maintains standards of qualification and conduct within the accounting profession, primarily through its power to license. CBA's enabling act, the Accountancy Act, is found at Business and Professions Code section 5000 *et seq.*; its regulations appear in Division 1, Title 16 of the California Code of Regulations (CCR).

CBA is a consumer protection agency located within the Department of Consumer Affairs (DCA). The Board consists of ten members: six CBA licensees (five CPAs and one PA) and four public members. Each Board member serves a four-year term.

The Board's staff administers and processes the nationally standardized Uniform CPA Examination, currently a four-part exam encompassing the subjects of business law and professional responsibilities, auditing, accounting and reporting (taxation, managerial and governmental and not-for-profit organizations), and financial accounting and reporting (business enterprises). Generally, in order to be licensed, applicants must successfully pass all parts of the exam and complete three or four years of qualifying accounting experience; one year of the experience requirement may be waived if an applicant has a college degree.

The operations of the Board are conducted through various advisory committees and, for specific projects, task forces which are sunsetted at project completion. The Board's major advisory committees include the following:

- The Qualifications Committee (QC), authorized in Business and Professions Code section 5023, consists of non-Board member CPAs who review applicants' experience to determine whether it complies with the requirements in Business and Professions Code section 5083 and Board Rule 11.5.

- The Administrative Committee (AC), authorized in Business and Professions Code section 5020, consists of non-Board member CPAs who are authorized to conduct investigations or hearings against licensees, with or without the filing of any complaint, relating to "any matter involving any violation or alleged violation" of the Accountancy Act.

- The Report Quality Monitoring Committee (RQMC), which also consists of non-Board member CPAs, surveys competence in the public practice area. On the basis of a random statistical sampling, the RQMC reviews selected reports on financial statements prepared and issued by licensees; the purpose of the review is to determine compliance with technical accounting principles and established professional accounting standards.

Other advisory committees consist solely of Board members. The Legislative Committee reviews legislation and recommends a position to the Board, reviews proposed statutory and regulatory language developed by other committees before it is presented to the Board, and serves as an arena for various accountant trade associations to air their concerns on issues. The Committee on Professional Conduct considers all issues related to the professional and ethical conduct of CPAs and PAs. The Enforcement Program Oversight Committee was created in 1996 to establish policy and procedures for the Board's complex enforcement program.

On March 6, 2001, Governor Davis appointed Joseph Tseng, CPA, to the Board. Tseng has more than 20 years of experience in both public and private accounting. He is the managing partner of Tseng, Lee & Huang, LLP, which provides accounting, auditing, and tax consultation services in South Pasadena.

On April 13, 2001, Governor Davis appointed Wendy S. Perez, CPA, and Ian B. Thomas to the Board. Perez is a partner of Ernst & Young, LLP, where she has worked since 1983.

She serves as Director of the firm's Pacific Northwest entrepreneurial services; her practice focuses on high-tech and start-up companies in Silicon Valley. Thomas, a public member of the Board, is a partner at the Thomas Consulting Group, a public affairs firm specializing in institutional investors. He provides strategic

counseling and advises clients on a variety of land use, urban planning, transportation, and environmental issues.

**During its 2000-01 "sunset review" by the Joint Legislative Sunset Review Committee, the Board and part of a divided CPA profession pushed ahead with their proposal to apply the licensure requirements of the Uniform Accountancy Act in California—a proposal that has generated considerable opposition and controversy.**

## MAJOR PROJECTS

### CBA's Sunset Review Proposals

#### Attract Controversy

During its 2000-01 "sunset review" by the Joint Legislative Sunset Review Committee (JLSRC), the Board and part of a divided CPA profession pushed ahead with their proposal to apply the licensure requirements of the Uniform Accountancy Act (UAA) in California—a proposal that has generated considerable opposition and controversy.

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◆ **CBA's Sunset Review Report and Proposals.** During 1999 and 2000, the Board—acting through a “Sunset Review Committee” (SRC), a “Uniform Accountancy Act Task Force” (UAATF), and a “Peer Review/Attest Firm Task Force” (PRAFTF), and prodded consistently by the California Society of Certified Public Accountants (CalCPA) and the so-called “Big Five” (the five largest accounting firms)—formulated positions on numerous issues of interest to the Board and the profession. These positions—which were adopted at various meetings over a yearlong period upon the recommendation of the SRC, UAATF, and PRAFTF—were included in the Board's final sunset review report submitted to the JLSRC on October 1, 2000. The report also included substantial licensing and enforcement data and answers to 28 specific questions posed by the staff of the JLSRC. The most significant issues addressed in CBA's sunset report are as follows.

• **Significant Changes to Licensure Requirements.** As it did during its 1995–96 sunset review, the Board proposed enactment of the UAA's licensing requirements in California. The UAA is a model bill and set of regulations drafted by the American Institute of Certified Public Accountants (AICPA), a major national trade association of CPAs, and the National Association of State Boards of Accountancy (NASBA), a coalition of all CPA regulatory boards in the United States. Enactment of the UAA would significantly change California law affecting the so-called “three Es” of CPA licensure—education, experience, and examination. In a nutshell, the Board agreed at its January 21, 2000 meeting to seek legislation vastly increasing the amount of education necessary for CPA licensure, decreasing its existing accounting experience requirement and wholly eliminating the current requirement that applicants for CPA licensure have experience in the “attest” function (the preparation of a certified financial audit), and adopting the UAA's exam passage standards which will make it more difficult for examinees to pass the Uniform CPA Examination that is controlled by the AICPA.

As noted, the Board sought some of these changes during its first sunset review in 1995–96. However, the JLSRC was not persuaded that the changes were necessary or justified, and instructed the Board to conduct a study on its licensure requirements in SB 1077 (Greene) (Chapter 1137, Statutes of 1996). To satisfy that directive, the Board contracted with Dr. Oriol Julie Strickland, a professor of industrial organizational psychology at CSU Sacramento, who conducted a study using a variety of methods aimed at “thoroughly assessing the impact of potential changes to the current education and experience requirements” for CPA licensure. Dr. Strickland released her report to the Board at its July 1999 meeting [17:1 CRLR 192–95; 16:2 CRLR 158–64], and the Board used parts of her study throughout its sunset report to justify the proposed enactment of the UAA.

**Educational Requirements.** Business and Professions Code section 5081.1 sets forth three educational options or “pathways” to qualify for licensure as a CPA: (a) a bachelor's degree with a major in “accounting or related subjects” re-

quiring a minimum of 45 semester units of instruction in those subjects; (b) completion of a two-year (associate of arts) course of study at an accredited institution, including the study of “accounting and related business administration subject, for a period of four years”; or (c) “the equivalent of the educational qualifications” in (b) above, including completion of ten college-level semester units (or the equivalent) in accounting subjects. In other words, current California law does not require a bachelor's degree for CPA licensure. In its so-called “150-hour rule,” the UAA requires 150 hours of education for CPA licensure—the equivalent of a master's degree—including a bachelor's degree from an approved college or university. The UAA contains no “equivalency” loophole allowing those who have not completed formal education to sit for the exam. The UAA does not set forth a specific curriculum for the 150 units.

At its January 2000 meeting, the Board opted for a slight variation on the UAA. Under CBA's proposal, completion of 120 units and a bachelor's degree would be required in order to sit for the examination; thereafter, a candidate must acquire another 30 units in order to become eligible for licensure. Further, the Board agreed to amend its regulations to require—as part of the 150 units—completion of at least 24 hours of accounting at the upper division or graduate level and at least 24 hours in business courses (other than accounting) at the undergraduate or graduate level. The Board cited Dr. Strickland's survey of 1,700 California licensees, in which a majority of those surveyed stated that 150 hours of education would better prepare applicants for the exam and for employment, would improve job performance, and would increase respect for CPAs.

**Experience Requirements.** Business and Professions Code section 5083 sets forth the two types of accounting experience required for CPA licensure—“general accounting experience” and “attest experience.” The number of years of general accounting experience required is intertwined with the level of education an applicant has achieved under section 5081.1 (see above). If an applicant has a bachelor's degree under section 5081.1(a), he/she must have three years of accounting experience. Under section 5084, if an applicant has graduated from a college with 45 or more semester units in accounting or related business administration subjects and has completed at least 20 units in accounting, only two years of accounting experience is required. To qualify for licensure with less than a bachelor's degree, an applicant must have four years of accounting experience. Of critical importance section 5083 also requires applicants to have “satisfactory experience in the attest function as it relates to financial statements. For purposes of this subdivision, the attest function includes audit and review of financial statements.” The “attest” function is the preparation of a certified audit of a company's financial statements—the only task performed by a CPA which actually requires licensure as a CPA. Board policy generally requires at least 500 hours of qualifying attest experience prior to licensure.

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In contrast to California's requirements, the UAA requires only one year of accounting experience. Further, the UAA broadens the types of settings in which qualifying experience may be earned. Under the UAA, "this experience may include providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax or consulting skills all of which meets requirements prescribed by board regulation." Finally, and most important, the UAA eliminates the attest experience currently required by California law.

In its sunset report, the Board conceded that Dr. Strickland's report does not support any reduction in the general experience requirement; however, the Board believes the "UAA package"—with its more rigorous education requirements and examination standards—will make up for reduced experience and will, most importantly, achieve consistency with other states. As for elimination of the attest experience requirement for licensure, the Board cited Dr. Strickland's survey of exam candidates who believe the attest experience requirement is a major barrier to licensure. Thus, the Board recommended that the UAA's reduced experience requirements be enacted.

**Examination Requirements.** All applicants must pass the Uniform CPA Examination, which is drafted, graded, and controlled by the AICPA. All 50 states use this exam, which consists of four parts; each part must be passed. Exam passage rules vary from state to state, and California maintains fairly lenient rules compared to other states which have adopted the UAA's standards. Under the UAA, a first-time applicant must (1) take all four parts of the exam, (2) pass at least two parts, and (3) score at least 50% on the parts not passed in order to be granted "conditional credit" for passing the passed parts. If an applicant has received "conditional credit" for part of the test, the applicant does not have to retake that part again; he/she needs only to retake and pass the flunked parts. California's rules are more lenient; to receive conditional credit for passing a section of the exam, an applicant simply needs to pass it. The applicant is not required to sit for all four parts and/or obtain a minimum "flunking score" on flunked parts in order to obtain conditional credit for passed parts. However, the Board agreed in January 2000 to recommend the enactment of the UAA's exam passage standards, noting that Dr. Strickland's study indicates that 43 states and the District of Columbia have embraced them.

In support of the UAA, several Board members affiliated with Big Five firms and lobbyists for CalCPA and the Big Five argued that numerous states—45, by their count—have enacted the UAA and, as such, California has lower licensing standards than most other states and is attracting candidates who cannot meet the "higher" standards of the UAA. Supporters also contended that California needs to adopt the UAA so the state's CPAs will have "reciprocity" with other UAA states in order to provide uninterrupted service to their clients—some of whom are multistate and even multinational. This will allow California CPAs, on behalf of their clients, to

more easily practice across state lines, and grant both CPAs and their clients "full participation in the global economy in the Internet age."

Not everyone agreed. The Board's vote to pursue the UAA proposal came over the objection of the Center for Public Interest Law (CPIL). At the November 18, 1999 meeting of the SRC/UAATF, CPIL's Julie D'Angelo Fellmeth announced that CPIL would again—as it did during CBA's 1995–96 sunset review—oppose enactment of the UAA in California. Fellmeth called CBA's proposal to move from a licensing scheme that does not even require a baccalaureate degree to one that requires the equivalent of a master's degree "a quantum leap." She argued that the proposal is not supported by Dr. Strickland's study, which measured the relationship between the Board's current and the proposed 150-hour educational requirement and passage of the May 1998 Uniform CPA exam and specifically found "no relationship between the number of semester units taken and performance on any section of the CPA examination." Further, Dr. Strickland found that most candidates taking that particular exam had earned only 120 units. As such, Fellmeth contended, the imposition of an additional 30 units which may be completely unrelated to accounting is an arbitrary and artificial barrier into the CPA profession.

Fellmeth argued that Dr. Strickland's study also fails to support CBA's proposal to reduce the amount of general accounting experience and eliminate all attest experience for licensure. Dr. Strickland conducted a survey and found that 70% of the licensee respondents believe that the attest experience requirement is "an assurance of entry-level competence, provides valuable discipline in terms of objectivity and independence, provides critical skills in areas other than attest, and provides a common basis of applying knowledge to a situation." The majority of licensees responding to the survey opposed replacing the attest experience requirement with either additional coursework in auditing or more general experience. Fellmeth acknowledged that the majority of licensure applicants surveyed found the attest experience requirement burdensome, but added, "What do you expect them to say? And how much perspective on their professional needs can they really be expected to have at that point in their careers?"

Fellmeth stated that the justifications advanced for enactment of the UAA—namely, to conform to "uniform nationwide standards" that "enable CPAs to more easily practice in any state"—apply only to the large accounting firms. According to Fellmeth, "the reason we license in California is to protect our citizens from CPAs who are incompetent or negligent or dishonest. The Board's primary purpose is to ensure that people who are practicing here can do so safely and without harm to the public, not to enable CPAs to more easily practice in other states. If the large firms want to be able to transfer their CPAs all over the world, then they should hire people who have 150 hours or pay for them to complete 150 hours while they are in the firm's employ. But the needs

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of a few large firms to be able to transport their CPAs all over the world is not a sufficient justification to make every single CPA licensed in California complete 150 hours of education—when you currently don't even require 120 hours for licensure. The needs of the big firms should not drive regulation here in California."

• *Mandatory Peer Review.* As noted above, the licensing provisions of the UAA reduce the general experience requirement to only one year and require no attest experience for licensure—thus offering little assurance that CPAs performing audits of the financial statements of companies are competent to perform those audits. As such, CBA decided to explore the adoption of another provision of the UAA which requires mandatory triennial "peer review" of firms, partnerships, and sole practitioners that perform attest services. AICPA members that perform attest services are required, as a condition of AICPA membership, to undergo peer review every three years. AICPA has developed a complex set of rules governing the actual conduct of peer reviews; under those rules, the large firms actually review each other's quality control system for the conduct of financial audits, and smaller firms and sole practitioners are reviewed by representatives of state CPA societies administering the AICPA peer review system. However, numerous CPAs and firms that perform attest services are not members of AICPA, and—if the UAA is enacted—prospective CPAs will not be required to have exposure to the attest function at point of licensure. Thus, in September 1999 the Board created a "Peer Review/Attest Firm Task Force" (PRAFTF) to explore the issues and make a recommendation to the Board on whether peer review should become mandatory in California for CPAs and firms that engage in the attest function.

The PRAFTF met three times between November 1999 and February 2000, and emerged with a recommendation that the Board support an "attest firm licensure" concept and mandatory triennial peer review for firms providing attest services. Under PRAFTF's proposal, firms and CPAs wishing to perform "attest services" (including audits, reviews, and examinations of prospective financial information) must be licensed as "attest firms" by the Board, and one condition of renewal of attest firm licensure is successful completion of a peer review conducted in accordance with professional standards. As a transition mechanism, all existing firms that perform attest services would be "grandfathered in" and licensed as "attest firms"—without any assurance that they are competent; to retain "attest firm" status, however, a grandfathered firm would have to perform an audit and undergo peer review within three years. Any

new CPA or CPA firm that wants to perform audits must apply for licensure as an "attest firm." To be licensed, the firm must hire a "qualified person" who has attest experience; then the firm must obtain an audit engagement, perform the audit, and undergo peer review within one year. Licensees whose highest level of service involves the issuance of compilations need not undergo peer review; these licensees will continue to be subject to the Board's Report Quality Monitoring (RQM) Program.

The PRAFTF's proposal provides no information about how peer reviews will be conducted, or by whom; nor does it describe the consequences of a substandard or failed peer review. Instead of spelling out these details, the PRAFTF proposes the creation of a Peer Review Oversight Committee (PROC) consisting of 10–15 non-Board member licensees. The PROC would establish procedures and develop implementing regulations for the

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peer review program and for the approval of peer review providers—regulations that would be developed by the PROC and adopted by the Board. The PROC would also establish and maintain procedures related to the confidentiality of peer review results; make policy recommendations to CBA related to peer review; review applications and renewals for peer review providers and make recommendations to the Board; review provider controls and a representative sample of peer reviews to check the work of approved providers; and address problems and complaints related to peer reviewers, peer review providers, and the peer review program.

At its July 21, 2000 meeting, CBA approved the PRAFTF's proposal. The Board believes that mandatory peer review will "significantly enhance consumer protection in California" because it provides a more complete assessment and more meaningful feedback than is possible through the RQM Program, and will reach many more licensees who perform attest services than the RQM Program can possibly reach.

**The pass rate on the CPA exam is extremely low; CBA's October 2000 sunset report states that only 9.9% of candidates nationally passed all four parts in one sitting (California candidates performed slightly better—13.1% of California candidates passed all four parts in one sitting).**

• *Ownership and Control of the Uniform CPA Examination.* As noted above, CBA administers the Uniform CPA Examination, which is owned and controlled by the AICPA. The AICPA is one of the last national trade associations to insist on retaining control over a licensing exam used as a barrier to entry into a profession; most other national trade associations which ever developed and/or controlled a widely-used licensing exam have now divested themselves of such exams due to the obvious conflict of interest when a trade association controls the barrier to entry into its own ranks. As might be expected, the pass rate on the CPA exam is extremely low; CBA's October 2000 sunset report states that only 9.9% of candidates nationally passed all four parts in one sitting (Cal-

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ornia candidates performed slightly better—13.1% of California candidates passed all four parts in one sitting). Most candidates must take the exam three times before passing all four parts. Finally, although state boards are legally liable for the contents and validity of the exam, they have no meaningful role in developing it or ensuring its validity because they have little or no representation on the AICPA committees that control all aspects of the exam. AICPA is responsible for ensuring the validity of the exam, but has not completed a full occupational analysis since 1991. Following the Board's 1996 sunset review, the JLSRC recommended that CBA "actively advocate for a national examination developed and administered by a non-trade association."

The need to transition control of the exam away from AICPA has been heightened by several recent incidents, including AICPA's commission of a serious grading error on one portion of the November 1999 exam, which AICPA initially failed to communicate to regulators while communicating it to state CPA societies; its decision to computerize the exam without meaningfully consulting state boards about the details of implementing such a change and the time it would take state boards to secure the necessary legislative and regulatory amendments to accommodate such a change; and a series of subsequent decisions related to contracts for the administration of the computerized exam—contracts that may obligate regulatory boards and candidates to large unexplained costs for a minimum of ten years, and that are apparently being negotiated without review or approval by any regulatory board.

In addition, because of AICPA's delay in completing a full occupational analysis necessary to revalidate the exam, the Department of Consumer Affairs and CBA dispatched Norman Hertz, Ph.D., chief of DCA's Office of Examination Resources, to AICPA with orders to audit the exam in February 2000. Dr. Hertz reported to the Board at its June 2000 meeting that, from a psychometric perspective, the exam meets legal and professional requirements and is a valid measurement of what entry-level CPAs need to know in order to practice. However, Dr. Hertz had eight recommendations for AICPA, only four of which had been acceptably resolved by the time of the Board's December 2000 sunset hearing.

CBA Executive Officer Carol Sigmann has taken an active role in urging fellow state boards to confront both AICPA and NASBA about the need for AICPA to divest itself of control of the exam and transfer it to the state boards—either through direct (and preferably majority) state board representation on AICPA committees that control the exam, or through NASBA, the national coalition of state boards of accountancy. [17:1 CRLR 195; 16:2 CRLR 159] In February 2000, Sigmann organized a "Regulatory Coalition of Boards of Accountancy," whose objectives are to (1) ensure that AICPA's Examinations Division is audited relative to the November 1999 grading error, in order to identify all factors contributing to the error, discover corrective actions taken, determine outstanding issues, and make recommendations to

eliminate future such errors; (2) ensure that within six months comprehensive security protocols, formalized in a handbook format, are in place for the consistent administration of the exam in all jurisdictions; and (3) specific to the proposed restructuring of AICPA's Board of Examiners and its related committees, ensure that (at minimum) the AICPA and NASBA share equal representation, control, and decisionmaking powers, annually rotate the Board of Examiners' chair positions between AICPA and NASBA, and ensure the regulatory boards' ability to actively participate and have equal voice in all aspects of decisionmaking relative to both the restructuring process and the final direction, form, composition, and function of the Board of Examiners.

However, continuing intransigence and delay by AICPA in addressing exam-related issues resulted in the Board's reiteration of its commitment to ensuring that ownership and control of the Uniform CPA Examination should be assumed by an independent non-trade association in its October 2000 sunset report. CBA also expressed concerns about past legislative threats to abandon use of the Uniform CPA Exam in the interim: "If California administered a separate exam, its licensees would not be allowed to practice in other jurisdictions, nor would licensees of other states be allowed to practice in California. Therefore, California's development of its own CPA Examination would be counter to the direction it has taken toward implementing the provisions of the Uniform Accountancy Act."

• *Continuing Education.* In compliance with the UAA, CBA requires completion of 80 units of continuing education (CE) during each biennial renewal cycle—roughly twice as much CE as is required by most other occupational licensing agencies. Following the Board's 1996 sunset review, the legislature passed SB 1077 (Greene) (Chapter 1137, Statutes of 1996), which directed CBA to "study and include in its [next sunset] report to the Legislature...the minimum standards for annual continuing education required by the Board." To comply with this mandate, CBA staff undertook an extensive two-year study of its CE program, and released a report on its study at the Board's September 1998 meeting. Staff's report stated that "the 80-hour requirement could be significantly reduced without negatively impacting consumer protection." [16:1 CRLR 183] At its November 1998 meeting, however, the Board's Committee on Professional Conduct (CPC) passed a motion recommending that the 80-hour requirement be retained, but that limits should be placed on the number of CE hours that may be satisfied through courses in basic computer skills, office administration, and/or personal development; further, CPC recommended that CBA ban certain types of courses from qualifying for CE credit. At its January 1999 meeting, the full Board approved the CPC's recommendations. The Board is already implementing its decision through the rulemaking process (see below).

• *Enforcement Issues.* A number of enforcement-related issues have surfaced for discussion during the Board's 2000–01 sunset review.

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*Restructuring of the Administrative Committee.* CBA's Administrative Committee (AC) is a 13-member committee of non-Board member CPAs with sweeping authority to investigate complaints, hold private hearings to obtain information and evidence, and make recommendations to Board staff regarding disciplinary cases. During the Board's 1995–96 sunset review, CPIL called for abolition of the AC because it had exceeded its advisory role and was actually making decisions to close cases, forward cases for formal investigation, issue citations and/or fines, and require continuing education. CPIL argued that this conduct was unconstitutional as an unlawful delegation of state police power decisionmaking authority to private parties, unlawful as violative of federal and state antitrust law (in that private parties were being permitted to restrain competition, and were not exempt under the "state action" exemption to antitrust scrutiny because the state had neither "clearly articulated" the authority of the AC to make decisions nor was it "actively supervising" the activities of the AC), and unlawful as violative of Business and Professions Code section 5020 (which limits the AC to "making recommendations"). [15:4 CRLR 47–50; 15:1 CRLR 36–38; 13:4 CRLR 5–8] Although the JLSRC and DCA agreed that the AC should be abolished and that the Board should instead hire more investigative CPAs and delegate to Board staff all investigative responsibilities, the full legislature simply cut the AC's membership in half and added subsection (c) to section 5020 reminding the AC that it is advisory.

Although the AC has complied with the legislature's directive and has scaled back its activities, CPIL remains concerned that the intimate participation of private parties in Board disciplinary investigations will continue to unnecessarily subject the Board to lawsuits like *KPMG Peat Marwick v. Board of Accountancy* (see LITIGATION). In March 1999, the SRC rejected CPIL's concerns. [16:2 CRLR 161–62]

At the request of public member Baxter Rice, the SRC/UAATF revisited the issue of the structure of the AC at its March 2000 meeting. CPIL's Julie D'Angelo Fellmeth reiterated her view that the Board's use of a committee of private parties to investigate complaints and hold hearings gives "a strong appearance of a conflict—the appearance of the fox guarding the henhouse." She compared CBA's enforcement program to the Medical Board of California's (MBC) enforcement program, and noted that MBC uses individual subject matter experts who are chosen specifically for a particular case and whose biases and/or conflicts can be screened before they are selected. CBA, on the other hand, convenes a committee of subject matter experts and exposes an entire committee of private parties to unredacted complaints about their colleagues or competitors. She objected to the committee structure as an inappropriate "filter" that is used to screen every single serious disciplinary case at CBA. Once again, the SRC/UAATF rejected CPIL's concerns and decided to recommend to the Board that the AC continue in its current form as an "advisory committee of experts." The Board

adopted the SRC/UAATF's recommendation at its June 12, 2000 meeting.

At its July 20, 2000 meeting, the SRC/UAATF slightly shifted course. Enforcement Chief Greg Newington proposed a change in the AC's "file review" policy to reduce the number of mandatory AC reviews. According to Newington, since 1995 the AC has been reviewing every case where an investigation has concluded with evidence of a conduct violation (for example, gross negligence); all such cases require AC review and concurrence by two AC members before they are forwarded for the filing of an accusation. Newington proposed that the AC discontinue its mandatory file review of all conduct-related violations. Instead, staff will review all such investigations on a case-by-case basis and make a discretionary determination whether to refer any given case to the AC for pre-filing review. AC Chair Olaf Falkenhagen stated that although some AC members believe there is still a need for AC review of all cases, the Committee agreed to try Newington's proposal; "if staff is not doing the expected quality of work, we can change it." Without much discussion, the SRC/UAATF adopted Newington's proposal and agreed to recommend it to the Board. The following day, the full Board unanimously approved the SRC/UAATF's recommendation.

*Board Liaison.* Also in its October 2000 sunset report, the Board addressed its controversial use of a Board member as a "liaison" to the administrative investigation and prosecution of so-called "major cases." [17:1 CRLR 196; 16:2 CRLR 163; 14:4 CRLR 32–34] Because Board members serve as the final judges in CBA disciplinary matters, and because the Administrative Procedure Act (APA) requires those decisions to be based on the evidence admitted by the administrative law judge at an evidentiary hearing, insertion of a Board member into the investigative process prior to the filing of the accusation results in the automatic recusal of that Board member from the final decision.

At the SRC/UAATF's January 2000 meeting, public member Baxter Rice moved that the liaison practice—which has endured for 11 years at CBA—be discontinued. Rice argued that the use of a Board member in the investigative process creates the appearance of impropriety. He further noted that, in addition to the liaison Board member, other board members frequently must recuse themselves in a "major case" (which is usually against one of the Big Five), and argued that the Board's shrinking size calls for conservation of all possible Board members to participate in final disciplinary decisionmaking. Rice concluded by saying there may have been good reasons for the Board member liaison position in the past, but those reasons no longer exist. Public member Joe Tambe urged the panel to support Rice's motion. On a 5–2 vote (with one abstention), the SRC/UAATF adopted Rice's recommendation to discontinue the practice.

However, at its March 2000 meeting, the full Board reversed that decision. Both Joe Tambe and PA Walter Finch reversed their votes from the January meeting, with Finch arguing that Board member opinion is important to the AC

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members involved in the investigation and to the Executive Officer, who must sign the accusation and commit the Board's resources to a major case. CPA member Bob Shackleton agreed, stating that Board member involvement early on can "prevent the Board from having to spend a lot of money on outside counsel and outside investigators." Over the objections of Baxter Rice (who reminded the Board that its "major cases" are its most important disciplinary matters), CPA member Diane Rubin (who noted that one historical reason for the liaison position was to remind investigators of "cost considerations" for the Board if a decision is made to move forward against a Big Five firm, and argued there is no need to use a Board member for that role), public member Navid Sharafatian, and CPIL (which urged the Board not to abdicate its enforcement responsibility in the event of multiple recusals and Board member vacancies), a 6-3 majority of the Board voted to retain the Board member liaison position.

**EPOC Review of Closed Enforcement Cases.** During the Board's 1995-96 sunset review, CPIL expressed concern that Board members knew very little about their own enforcement program—so little that they had permitted the AC to exceed the law and make enforcement decisions rather than recommendations (see above). In response, CBA created an "Enforcement Program Oversight Committee" (EPOC) to oversee and establish policy for the Board's enforcement program. One of the first things EPOC decided to do to familiarize itself with the enforcement process and ensure that staff is adhering to the Board's enforcement priorities was to review closed enforcement cases. To be able to discuss the cases fully and free from the constraints of a public meeting, EPOC decided at its May 1998 meeting to seek an amendment to the Bagley-Keene Open Meeting Act to permit it to review closed cases in closed session. Twice at that meeting, CPIL objected to the idea of Board members reviewing closed cases, on grounds that (as noted above) Board members are the ultimate decisionmakers in APA disciplinary proceedings, and their decision must be based solely on the record of a given proceeding and not on the member's other knowledge of the respondent (which may not be part of the disciplinary matter). CPIL also noted the possibility that a Board member might review a series of closed cases against employees of a particular firm, which might taint that member's view of the firm in a subsequent case and thus impact the due process rights of Board licensees. CPIL suggested that EPOC members review redacted files (with the identity of the complained-of licensee redacted). EPOC rejected that idea, and the Board proceeded to Senator John Burton with its proposal. Senator Burton requested input from the JLSRC, which issued a detailed memorandum substantially in agreement with CPIL. As a result of the JLSRC's input, Senator Burton declined to carry the proposal.

EPOC decided to go ahead with its plan anyway, and reviewed closed enforcement cases in closed session on two occasions in 1997 and 1998. CPIL again objected to the procedure in December 1999, on grounds that (1) the closed ses-

sions violated the Bagley-Keene Open Meeting Act, and (2) review of unredacted cases by Board members may ultimately cause a Board member to have to recuse him/herself from a disciplinary matter under the APA. The Board subsequently changed its procedure so that closed session reviews by EPOC members are not conducted in conjunction with a committee meeting and are instead performed in groups of two at the Board's office—which arguably does not violate the Bagley-Keene Act. [16:2 CRLR 163]

At their March 2000 meetings, the SRC/UAATF and the full Board revisited this issue. Apparently unconcerned that the JLSRC staff had objected to the process in its 1998 response to Senator Burton, CBA noted that its process for EPOC's review of closed cases is a "useful function" that does not violate the Bagley-Keene Act, and dismissed CPIL's APA concern as "remote."

• **Board Composition.** Based on an SRC vote in January 1999 and a full Board vote in May 2000 [17:1 CRLR 197], CBA's October 2000 sunset report recommends continuation of its current composition, except that it would prefer to eliminate the reserved PA slot as the PA population is rapidly diminishing. The SRC declined to support a public member majority "because public members lack the expertise to understand technical accounting and auditing issues and may be unwilling to devote the time needed to fully consider the complex cases that come before them"; the Board's sunset report declined to support a public member majority because section 5000 of the Business and Professions Code requires the Board's CPA members to represent a cross-section of the profession and "it would be difficult to represent a cross-section of the profession with fewer licensee members of the Board." Thus, CBA seeks legislation to compose the Board of six "licensees" and four public members.

◆ **CBA's December 5, 2000 Sunset Review Hearing.** At its sunset review hearing on December 5, 2000, CBA was represented by SRC Chair Navid Sharafatian, incoming Board president Donna McCluskey, immediate past president Baxter Rice, and Executive Officer Carol Sigmann. Assisting the Board in its presentation were Oriel Julie Strickland, Ph.D. (who conducted the study of the potential impact of the UAA's licensure requirements in California required by SB 1077 (Greene) (see above)), Norman Hertz, Ph.D., chief of DCA's Office of Examination Resources, and Craig Mills, Ph.D., of the AICPA's Examinations Division.

Sharafatian made an opening statement summarizing CBA's accomplishments since its last sunset review. He stated that CBA is constantly attempting program improvements, and described two such improvements to the Board's enforcement program: (1) since 1996, the role of the AC has been significantly modified and it now functions in a "strictly advisory capacity"; and (2) at the staff level, the enforcement program has undergone business process reengineering and has succeeded in reducing the time it takes to process complaints, the time it takes to file accusations, and the number of pending investigations. Sharafatian noted that CBA's licensing division

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had undergone similar reengineering and those efforts have resulted in reduced application processing time.

Sharafatian stated that CBA has taken an active role in raising the level of national debate about AICPA's control over the Uniform CPA Examination, and inserted Dr. Hertz into the exam validation process at DCA's request. Further, CBA administers the Uniform CPA Exam locally, and has implemented enhanced security measures and sponsored legislation improving its remedies to combat exam cheating (see 2000 LEGISLATION).

Sharafatian also noted that CBA completed a comprehensive study of its continuing education program and has strengthened that program by instituting regulatory caps on the number of nontechnical courses that may be accepted for CE credit. Finally, Sharafatian expressed pride about the Board's Web site, which now has a "licensee look-up" feature and online examination application capability. Over 70% of the CPA exam candidates for the May 2000 exam utilized the online application, saving the Board \$33,000 in postage.

JLSRC Chair Senator Liz Figueroa then led a discussion of most of the 28 issues posed by JLSRC staff to the Board, and Board representatives responded consistently with the contents of their report. CBA representatives stated support for the UAA and urged the importance of conforming California law and standards to those of other states that have enacted the UAA.

CPIL's Julie D'Angelo Fellmeth presented testimony on two issues—the UAA and the Board's composition. She reiterated CPIL's longstanding opposition to the UAA's changes to CBA's examination, education, and experience statutes, and noted that the study performed by Dr. Strickland—who was chosen and paid by the Board itself—provides no empirical support for any of the UAA's changes, especially the 150-hour rule. Fellmeth also noted that the JLSRC's review of licensing boards is guided by eleven criteria in Business and Professions Code section 473.4, including subsection (a)(4): "if regulation of the profession or practice is necessary, whether existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest...." According to Fellmeth, "the 150-hour rule—which the Board's own study found has 'no relationship' to performance on the CPA exam (much less competence as a CPA) and which includes no specified curriculum for the extra 30 hours (such that any benefit to a CPA's performance as a CPA will certainly be marginal)—is not the 'least restrictive form of regulation.' It's an artificial barrier to entry into this profession." Fellmeth also noted that the Colorado Department of Regulatory Agencies concluded in 1999 that "the 150 credit-hour educational requirement is an overly restrictive entry barrier into the accounting profession with no demonstrable public

protection function. Adoption of the 150 credit-hour requirement is likely to raise consumer costs, entrench market power in those accountants who attain the CPA designation, and restrict competition." Based on that finding, the Colorado legislature repealed the 150-hour rule before it ever took effect.

Fellmeth also opposed elimination of the attest experience requirement for licensure, and questioned whether mandatory peer review would be an adequate substitute to ensure auditor competence. Although the "attest firm licensure" concept was initially intriguing to CPIL, Fellmeth argued that the PRAFTF had not fully developed the concepts of attest firm licensure or peer review, and noted that the Board's proposed language leaves many of those unanswered questions to the Board to resolve. She contended that the peer review requirement would further limit the supply of auditors to those working in firms that can afford the cost of peer review, and urged the Committee to defer action on the attest firm/peer review concepts until CBA has more fully addressed standards for the conduct of peer review and identified who would conduct it, how much it would cost licensees, and whether the requirement would price small firms and sole practitioners out of the audit market. Fellmeth summarized CPIL's opposition to the UAA: "The UAA dramatically increases the number of hours of education (but not the relevance of that education) required for CPA licensure; it dramatically decreases the amount and quality of relevant experience required for licensure; it makes passage of the Uniform CPA Exam much more difficult; and the 'attest firm' concept—which is intended to ensure competence in auditors—does not. None of these proposals has been justified. None of these enhances CPA competence, and none of these benefits the consumer of CPA services. CPIL opposes the UAA."

On the Board composition issue, Fellmeth noted that CBA's professional member majority "contrasts with the composition of almost every other non-health care occupational licensing board within DCA—which routinely have public member majorities," and urged the JLSRC to recommend conversion of CBA to a public member majority. Fellmeth noted that "at every committee and full Board meeting, the CPA profession

and related non-CPA accounting professionals are well-represented before the Board by numerous advocates. Further, the Board is staffed with CPAs who investigate and analyze enforcement cases; and the Board cannot make a disciplinary decision in an unprofessional conduct case without receiving and considering expert testimony from a CPA. In short, the

Accountancy Board is generally overwhelmed with testimony and input from the CPA profession; there is simply no reason to require that CPAs be the decisionmakers as well."

James Lee, representing the Society of California Accountants (SCA), testified next. SCA is a statewide profes-

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sional organization representing about 9,000 small CPA firms and sole practitioners, almost all of whom are in public practice. Lee stated that SCA opposes the 150-hour rule and the proposed reduction of the experience requirements; he noted that "Dr. Strickland's report demonstrates that experience is among the most important qualifications for licensure." SCA also opposes mandatory peer review, which would expose small firms to additional costs and potentially expose their clients' records to review by other accounting firms or regulatory agencies. According to Lee, "there is no reliable evidence that this practice protects the consumer. Mandatory peer review initially was an educational program and one in which mentoring would be available. However, mandatory peer review has instead become a restraint of trade. If I don't participate in peer review, then I can't practice in areas requiring mandatory peer review."

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Next, Mike Ueltzen testified on behalf of CalCPA, a state-wide professional association representing 28,000 CPAs in California. Ueltzen, a CPA who chairs CalCPA's Governmental Relations Committee, offered what he characterized as "brief, short comments" in support of the Board and the UAA. According to Ueltzen, "the scope of services provided by CPAs has fundamentally changed over the last 100 years. What we do, how we do it, and who we do it for has fundamentally changed. The business model that we practice in has fundamentally changed—we've gone from an industrial era to a knowledge and information era, and the profession has tried to adapt to those changes. The new world transacts business across state and national lines—daily, hourly, on a real-time basis. The demands in the profession have fundamentally changed. CPAs now also transact business across state lines and national borders due to client demands and needs. Being a CPA means more than it did 100 years ago. CPAs now practice before the U.S. Securities and Exchange Commission, the state Department of Corporations, the Internal Revenue Service, and state taxing authorities. CPAs testify and represent clients before federal and state regulatory bodies. All of that practice goes on under the purview of the California Board of Accountancy."

According to Ueltzen, "we endorse the continuation of the Board. We concur with the development of an enhanced practice monitoring program, coupled with a peer review program for CPAs that provide attest services. We also endorse the proposed changes to the licensing requirements. Uniformity of the entry requirements to those that are substantially equivalent to the UAA, a national model, is critical to multistate and multinational practice. First, it recognizes that the California CPA certificate may become irrelevant and no longer competitive if changes are not made to the entry requirements. Second, it recognizes that service to multistate and multinational clients requires entry requirements that are

substantially equivalent to those in other states. Third, it recognizes the need for a broad education coupled with increased core requirements that are included in the proposal by the Board. Most importantly, the proposed changes respond to the need to modernize the regulation of this national and international profession by ensuring consumer protection across state lines." Ueltzen also reminded the JLSRC that the UAA was not developed solely by the AICPA; he stated that it is a joint effort of the AICPA and NASBA, the coalition of state regulators. In response to questioning by Senator Maurice Johannessen, Ueltzen noted agreement with the proposed changes to the Board's examination credit rules: "Why

should we let students cherry-pick portions of the exam if they can't demonstrate a minimum competence level [by passing at least two sections of the exam at once]?"

Next, Lillian Lea and Al Shifberg-Mencher testified on behalf of the California Society of Enrolled Agents (CSEA). According to Shifberg-Mencher, "we are here to support the Board of Accountancy and its continuation, and to support the UAA. Most particularly, we are here to support the inclusion of a small firm CPA as a replacement for the PA on the Board." According to Shifberg-Mencher, CSEA initially had two concerns with the UAA: "(1) the potential inclusion of compilations in the definition of 'attest services,' which would have severely impacted our membership, and (2) the development of a transmittal letter for financial reports provided by our members that is termed a 'safe harbor' letter. We brought these issues to the attention of the Board and we reached accommodation with the Board that is acceptable to both sides. For that we're grateful." Under questioning by JLSRC Chief Consultant Bill Gage, Shifberg-Mencher and Lea admitted that the National Association for Enrolled Agents has opposed the UAA.

Karen Bare, an enrolled agent from Fresno who is president of the California Society of Accounting and Tax Professionals (CSATP), the state affiliate of the National Society of Accountants, testified in opposition to the 150-hour requirement. She stated that CSATP agrees with Colorado's findings that setting entry requirements at unnecessarily high levels, ostensibly to protect the public, limits the number of individuals who can qualify for licensure and reduces the supply of services. "To make matters worse, the extra 30 hours are not mandated to be in accounting or business or even related to accounting or business, so the benefit would seem to be marginal." According to Bare, Colorado found that "while the benefits of the 150-hour requirement are small, the costs are significant." Colorado estimated the costs of completing the additional 30 units at approximately \$25,000. Bare also stated that several other states are now reconsidering their decisions to accept the 150-hour requirement. Bare concluded by saying that "the 150-hour rule is an overly restrictive bar-

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rier into the accounting profession with no demonstrable public protection function. It is likely to raise consumer costs and to restrict competition.”

Bobbie Jarvis, an enrolled agent from Fremont who represents the California Coalition for Affordable Accounting (CCAA), also expressed opposition to the 150-hour requirement. According to Jarvis, “our difficulty is that it disenfranchises those who are not able to afford the extra year of education. We believe hands-on experience is more valuable than sitting in a classroom taking courses that may or may not have anything to do with accounting. Having those students work in a work environment enables them to get paid while they learn, instead of giving dollars to an educational institution that may or may not be providing an education in a qualified field of study. While the Board’s goal of creating uniformity is noble, we believe it creates a barrier to entry into the CPA profession. Colorado revoked the 150-hour rule for these very reasons. California should be a trendsetter and reject the 150-hour rule.”

◆ **April 4, 2001 Sunset Follow-up Hearing.** On April 4, 2001, the JLSRC met to receive and review recommendations from DCA and from its staff on various issues related to CBA.

Speaking for the Department, Director Kathleen Hamilton recommended that CPAs continue to be licensed by the Board, and suggested that CBA be restructured to contain eleven members—six CPAs (of which two should be from small firms) and five public members.

Significantly, the Department rejected adoption of the UAA in California. Specifically, DCA expressed concern over the proposed 150-hour rule because “increasing the number of hours could increase barriers to entry and limit access to qualified CPAs.” DCA also noted the recent action of the Colorado Legislature to eliminate the 150-hour rule because “the requirement was overly restrictive and served as a barrier to entry into the accounting profession.

Additionally, the Colorado study found that the additional 30 hours of education would cost approximately \$25,000, creating a substantial financial burden on potential licensees.” The Department stated: “California should not increase its educational standards simply because other states have done so. Rather, the state should determine what is in the best interest of California consumers. The current combination of experience (two years) and education requirements have served California consumers well. Since there is no evidence of harm, California should not accept a national standard that appears to be in the interest of the profession rather than consumers. In fact, a recent Board-funded study found that there was no relationship between the number of semester units candidates completed and their performance on any section of the Uniform CPA Examination.”

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DCA also rejected the idea of eliminating attest experience for licensure: “The Department agrees that the attest experience requirement should be restructured; however, the requirement should not be completely eliminated since auditing services are of value to consumers....When consumers need to have an audit performed, they must hire a CPA. Consumers assume that licensees have the necessary experience to perform this function.”

As to the exam, the Department recommended that its Office of Examination Resources report to the JLSRC by September 1, 2001 on whether the AICPA has addressed its concerns and recommendations for administration of the Uniform CPA Examination.

Finally, DCA recommended that “the number of continuing education units be reduced to a more manageable and economical level that is consistent with other non-healing arts professions.” The Department noted that other non-health care agencies require 20–30 hours of CE during each two-year renewal period; the State Bar requires 25 hours every three years. CBA’s 40-hour-per-year requirement—at a cost of \$5,600 per licensee each two-year renewal cycle—“seems excessive,” according to DCA.

The recommendations of JLSRC staff were also unveiled on April 4, 2001. Staff agreed with the Department’s UAA recommendations concerning education and experience. In addition, JLSRC reiterated its 1996 recommendation that CBA immediately clarify both its general accounting experience requirement and its attest experience requirement; JLSRC staff also flatly rejected adoption of the UAA’s examination passage standards. As to the continued use of AICPA’s Uniform CPA Examination, JLSRC staff stated that “the Board should continue with its active role in dealing with issues involving the control, ownership, development, and administration of the Uniform CPA Examination by the AICPA, and report back to the JLSRC by September 1, 2001 on recommendations of the Regulatory Coalition of State Boards of Accountancy that

have been implemented by the AICPA. The Board should also report on the costs to provide a California CPA examination if these recommendations are not adopted by the AICPA.”

In addition to its UAA-related recommendations, JLSRC

staff also proposed that (1) the Joint Committee seek an opinion from Legislative Counsel to clarify whether there are conflicts between Business and Professions Code section 5058 and section 2, Title 16 of the CCR, concerning the use of the terms “accountant” and “accounting” by non-CPA accountants [15:1 CRLR 36–37; 12:4 CRLR 52–53]; (2) the Board should report to the JLSRC on its efforts to ensure that its licensees are fully aware of which courses are acceptable towards its specialized CE requirements; and (3) CBA should “review any recent changes in laws in other states to improve jurisdictional authority of the Board over those providing ac-

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counting services by electronic or other means from other states, and seek any changes in the law that both the Board and the Attorney General believe are necessary to provide the Board with appropriate authority within this area.”

In the enforcement arena, JLSRC staff recommended that (4) CBA “take a more proactive and aggressive approach in initiating investigations into known audit failures and toward allegations of wrongdoing by small, medium, and large firms” (emphasis original); (5) Business and Professions Code section 5020 should be amended to codify the Board’s July 2000 decision to limit use of the Administrative Committee to enforcement matters delegated to the Committee by the executive officer; (6) EPOC should cease reviewing closed enforcement cases in closed session; and (7) “the practice of the Board to provide one of its members as a liaison between the Board and staff as it involves the investigation and prosecution of a major disciplinary case should be discontinued...once and for all.”

At the conclusion of the hearing, JLSRC Chair Liz Figueroa announced that the Joint Committee would vote on final recommendations at a vote-only hearing on April 25, 2001.

◆ **April 25, 2001 Final Recommendations of the JLSRC.** On April 25, 2001, the JLSRC adopted all of the draft recommendations unveiled on April 4 except one (DCA’s recommendation that CBA reduce its CE requirements). In particular, the JLSRC agreed that the UAA should be rejected for now and that CBA’s existence should be extended for only three years “because of major unresolved issues dealing with future licensing requirements for CPAs. In the meantime, a more comprehensive analysis should be completed on the impact of new licensing requirements as recommended by the Board. The Board should contract with an independent consulting firm chosen by the Department and funded by the Board to perform the study. This study should be completed by September 1, 2003.”

◆ **Competing Proposals Collide in the Legislature.** The legislature’s implementation of the JLSRC’s recommendations, which is usually relatively *pro forma*, is proving complex and adversarial. The recommendations of the JLSRC that require statutory change were amended into CBA’s sunset bill, SB 133 (Figueroa) (see 2001 LEGISLATION). However, in an unusual move that appears to disregard the sunset review process, CalCPA has introduced AB 585 (Nation), its own “sunset bill” which—contrary to the recommendations of DCA and the JLSRC—would enact the UAA in California. AB 585 was the subject of a tense hearing before the Assembly Business and Professions Committee on April 24, 2001—the day before the JLSRC issued its

final recommendations, and a week before SB 133 was scheduled for hearing in the Senate Business and Professions Committee. The Assembly hearing was preceded by the issuance of committee staff’s analysis of the bill, which stated that bill conflicts with the sunset review process, noted DCA’s opposition to the 150-hour requirement, and carefully analyzed each element of the bill. At the hearing, CalCPA representative Mike Ueltzen urged the Committee to pass the bill, stating that 45 other states have enacted the 150-hour requirement and arguing that Dr. Strickland’s study supports the increased educational standards and decreased experience requirements.

Testifying in opposition to the bill were Art Kroeger of SCA and Julie D’Angelo Fellmeth of CPIL; representatives of CSATP, CCAA, and Consumers First (headed by former Wilson administration DCA Director Jim

Conran) also submitted letters in opposition to AB 585. Kroeger reiterated SCA’s longstanding opposition to the 150-hour requirement and to reducing the experience requirements. Fellmeth argued that the bill would “limit the supply of CPAs (nationwide, the number of people taking the CPA exam for the first time fell 40% between 1992 and 1998, as the 150-hour rule began to take effect across the country), limit entrance into the CPA profession by low-income people (especially minorities who may not be able to afford the added costs of an extra year of possibly irrelevant education), restrict competition, and artificially enhance the rates that can be charged for accountancy services by those already licensed—which we as consumers of CPA services must bear.”

Under questioning by Committee members, Ueltzen urged the Committee to focus on Florida’s experience with the 150-hour requirement, where “the pass rate on the exam is now twice as high as it was before, and a study indicates that the number of minorities in the profession is increasing.”

When asked to respond to this contention, Fellmeth produced an August 1999 article by the Florida Institute of CPAs and read it to the Committee: “With fewer students becoming accounting majors, far fewer minorities are entering the profes-

sion than ever before....[O]ne side effect of [the 150-hour requirement] was the financial burden placed on students seeking to become CPAs. In particular, minority students were hit the hardest....In [Ohio and Texas, other states that have adopted the 150-hour rule], the 150-hour requirement created discernible and measurable consequences for minority students.”

After listening to the testimony, Committee Chair Lou Correa chided the accountants for bypassing the JLSRC process and for mischaracterizing the results of the Strickland study and the number of states which have in fact implemented

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the UAA. He noted that some states have adopted it but not yet implemented it, while others have less than one year of experience with it; further, Colorado did away with it before it ever became effective. Over the vociferous objections of Assemblymembers Joe Nation and John Campbell, Correa stated that he was unwilling to interfere with the JLSRC's pending consideration of both the UAA and the continuation of the Board's existence, and postponed deliberation of AB 585 until May 8, 2001.

At an April 30, 2001 hearing on SB 133 (Figuroa) before the Senate Business and Professions Committee, Big Five lobbyist Richard Robinson blasted the bill and its proposal to postpone enactment of the UAA for at least two more years while another study is conducted. In oral testimony and in an April 27, 2001 letter he circulated widely throughout the Capitol, he roundly condemned the bill, the JLSRC process which produced the bill, the Joint Committee's "deeply flawed" recommendations, and the JLSRC's apparent reliance on CPIL's testimony and its refusal to side with CalCPA and the Board on the UAA issue. Clearly irritated that the Assembly Business and Professions Committee had held up AB 585 a week earlier, Robinson criticized Senator Figuroa and the JLSRC for "fail[ing] to implement modernized CPA licensing standards and the enhanced consumer protections that are supported by the California Board of Accountancy and the profession." After Robinson concluded his remarks, Senator Mike Machado questioned why the UAA had to be voted "up or down," and wondered whether a "two-track licensure system" would solve the problem. Under such a system, candidates would have the option of being licensed under standards similar to those in place today, or—if they so desire—could qualify for licensure by meeting the UAA's standards. Robinson expressed interest in the "two-track" proposal and agreed to work with Committee staff to flesh out the idea. At this writing, SB 133 is scheduled for another hearing before the Senate Business and Professions Committee on May 7, 2001.

### **CBA Rulemaking Relating to Fees, Permit Processing Times, License Renewals, and Disciplinary Guidelines**

On January 28, 2000, CBA published notice of its intent to amend section 70, Title 16 of the CCR, which contains the Board's fees for licenses and various services. The proposed amendments would have (a) amended section 70(a) to add a \$60 processing fee for CPA applicants who sit for the examination in another state; (b) amended section 70(b) to increase the fee to be charged for each applicant for the issuance of the CPA certificate from \$200 to \$250, commencing July 1, 2000; (c) amended section 70(d)(1) to increase the fee for the initial permit to practice from \$50 to \$140 effective July 1, 2000, and amended section 70(d)(2) to further increase that fee to \$200 effective July 1, 2004; and (d) amended section 70(e)(1) to increase biennial license renewal fees from \$50 to \$140 effective July 1, 2000, and amended section 70(e)(2)

to further increase renewal fees to \$200 effective July 1, 2004. The Board's purpose in proposing these fee increases was to maintain its reserve fund at approximately three months' worth of operating expenses. At a public hearing on March, 25, 2000, no comments were received. However, the Board voted not to increase biennial renewal fees, and decided instead to increase the license issuance fee to \$250. The Board directed staff to redraft the amendments to section 70 to reflect the proposed change.

On September 29, 2000, the Board again published notice of its intent to amend section 70 to incorporate the fee change and to make other unrelated regulatory changes. These changes, which were adopted by CBA following a public hearing at its November 17, 2000 meeting, are as follows:

- Section 70(a)(1) was amended to require California applicants for the CPA examination—commencing July 1, 2001—to pay an application fee of \$60 and a fee of \$31 for each part of the exam being taken by the candidate; new section 70(a)(2) would increase the per-part fee to \$45 per part effective July 1, 2002. New subsection 70(a)(3) establishes a \$75 fee to be charged each applicant from another state who sits for the CPA examination in California. Finally, CBA amended section 70(b) to increase the fee for initial issuance of a CPA certificate from \$200 to \$250.

- Section 5.1 specifies CBA permit processing times. Amended section 5.1 would include timeframes relating to Board approval of credential evaluation services, as provided for in section 9.1 (see below).

- Section 93 provides for the renewal of individual permits to practice, but not the firm permit. The Board added new subsection 93(b) to state that CBA permits issued to accountancy partnerships or corporations shall expire during the second year of a two-year renewal cycle at midnight on the last day of the month in which the permit was initially issued. To renew an unexpired permit, the firm must, before the time at which the permit will otherwise expire, apply for renewal on a form prescribed by the Board, pay the renewal fee, and give evidence that each partner of the partnership or shareholder of the corporation holds a valid license to practice or is a nonlicensee owner pursuant to Business and Professions Code section 5079.

- The Board amended section 98 to provide that it will utilize the 2000 version of its disciplinary guidelines in reaching a decision in a disciplinary action.

At this writing, the rulemaking package is at the Office of Administrative Law (OAL) awaiting approval.

### **Update on Other Board Rulemaking Proceedings**

The following is an update on CBA rulemaking proceedings that were described in detail in Volume 17, No. 1 (Winter 2000) of the *California Regulatory Law Reporter*:

- ◆ **Continuing Education Regulations.** Following a public hearing at its November 1999 meeting, CBA adopted new sections 88.1 and 88.2 and amended sections 87, 87.1, 87.7, 88, and 89, Title 16 of the CCR, relating to its continuing

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education (CE) requirements. OAL approved the regulatory package on May 9, 2000 and the regulations became effective on June 8, 2000. According to the Board, the changes are designed to more clearly specify CE requirements, increase the internal consistency of the regulations, and make the regulations more consistent with the AICPA's Statement on Standards for Continuing Professional Education Programs. The Board also tried to conform its CE regulations to decisions about its CE program that it made in the course of preparing for sunset review. [17:1 CRLR 199-200] The substantive changes to the Board's regulations are as follows.

Section 88 describes programs that qualify for CE credit. Amended section 88 requires licensees to complete "a minimum of 50% of the required CE hours in the following subject areas: accounting, auditing, taxation, consulting, financial planning, professional conduct as defined in section 87.7, computer and information technology (except for word processing), and specialized industry or government practices that focus primarily upon the maintenance and/or enhancement of the public accounting skills and knowledge needed to competently practice public accounting." Further, amended section 88 prohibits licensees

from claiming more than 50% of the required number of CE hours in the following subject areas: communication skills, word processing, sales, marketing, motivational techniques, negotiation skills, office management, practice management, and personnel management. Finally, amended section 88 states that "programs in the following subject areas are not acceptable continuing education: personal growth, self-realization, spirituality, personal health and/or fitness, sports and recreation, foreign languages and cultures, and other subjects which will not contribute directly to the professional competence of the licensee."

CBA also amended section 88(c) to require licensees fulfilling their CE requirement through "formal correspondence or other individual study programs" to receive a "passing score" in order for the course to qualify as CE. Finally, the Board amended section 88(d), which permits licensees who teach CE courses to claim CE credit for preparing and teaching those courses, to specify that for repeat presentations, an instructor shall receive no credit unless the instructor can demonstrate that the program content was substantially changed and that such change required significant additional study or research.

New section 88.1 specifies requirements for CE providers. For live presentations, subsection 88.1(a) requires the provider to take attendance and maintain for a period of six years a record of attendance that accurately assigns the appropriate number of contact hours for participants who arrive late or leave early; retain for six years written educational goals and specific learning objectives, as well as a syllabus,

which provides a general outline, instructional objectives, and a summary of topics for the course; and issue a certificate of completion to each licensee upon satisfactory completion of the course (and retain records of licensees receiving certificates for six years). For self-study courses, subsection 88.1(b) requires the provider to retain for six years written educational goals and specific learning objectives, as well as a syllabus, which provides a general outline, instructional objectives, and a summary of topics for the course; and to issue a certificate of completion to each licensee upon satisfactory completion of the course (and retain records of licensees receiving certificates for six years).

New subsection 88.2(a) requires a live presentation CE course to be measured in 50-minute class hours. For programs in which individual segments are less than 50 minutes, the sum of the segments, in increments not less than 25 minutes, may be added together to equal a full class hour. New subsection 88.2(b) requires a self-study CE course to grant CE credit equal to the average completion time if the course is interactive; grant CE credit equal to one-half of the average completion time if the self-study course is non-interactive; and require a passing score on a test given at the conclusion of the course.

Under amended section 89, licensees—when renewing their licenses—are required to disclose the following information concerning courses or programs claimed as qualifying CE: course title or description; date of

completion; name of school, firm, or organization providing the course or program; method of study; and number of hours claimed. To receive credit for the eight-hour professional conduct and ethics course required in section 87.7, a licensee must obtain and retain for six years after renewal of his/her license a certificate of completion of such a course disclosing the following information: name of licensee; course title; Board-issued approval number for the course; school, firm, or organization providing the course; and date of completion.

CBA also clarified section 87.1 to read that a licensee who has renewed his/her license in inactive status may convert to active status prior to the next license expiration date by (1) completing 80 hours of CE as described in section 88 (see above), including the professional conduct and ethics course described in section 87.7, in the 24-month period prior to converting to active status; (2) applying to the Board in writing to convert to active status, and (3) completing any CE that is required pursuant to section 89(g). The licensee may not practice public accounting until the application for conversion to active status has been approved by the Board.

CBA's amendments to section 87.7 add a subsection relating to "secondary providers" of CE courses. Under subsection 87.7(f), an approved CE course provider may allow a

**Amended section 88 states that "programs in the following subject areas are not acceptable continuing education: personal growth, self-realization, spirituality, personal health and/or fitness, sports and recreation, foreign languages and cultures, and other subjects which will not contribute directly to the professional competence of the licensee."**

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secondary provider to present its course through a site license, contractual arrangement, or other type of agreement. Under subsection 87.7(g), for every course presentation (including any made by a secondary provider), the original (primary) approved provider who entered into the approval agreement with the Board must (1) retain for eight years a written outline of the course and completion records to reflect the actual participant attendance, or—in the case of self-study courses—passing test scores of 90% or higher; (2) ensure that all participants who complete the course receive a certificate of completion (if a secondary provider presented the course, the certificate must identify both the primary and secondary providers); (3) be responsible for the quality and content of the course by requiring and ensuring that the course is presented only by qualified instructors and/or discussion leaders, and that presentations also include all components and content areas represented in the approval application; and (4) periodically update course content to reflect current laws, regulations, caselaw decisions, and standards of practice.

The Board also made changes to section 87 which are insignificant in nature and conform section 87 to the above-described amendments to the other CE regulations.

◆ **Exam Filing Deadlines.** On October 1, 1999, the Board published notice of its intent to adopt new section 8, Title 16 of the CCR, to establish in regulation the deadlines for filing an application to take the Uniform CPA Exam. [17:1 CRLR 199] Following a public hearing on November 19, 1999, CBA adopted section 8. OAL approved it on May 9, 2000, and it became effective on June 8, 2000.

Section 8 requires first-time exam applicants to file their applications to take the May administration of the exam by February 1; those wishing to take the November exam must file their applications by August 1. If the exam filing date falls on a Sunday or national holiday on which the U.S. Postal Service is not open, the filing date will be the next day. The application must be complete, including official transcripts and/or foreign evaluations and the appropriate fees, or it will be rejected by the Board and the applicant will not be scheduled to sit for the exam. Also under section 8, repeat applicants wishing to retake the exam during the May administration must file their application (with appropriate fees) by March 1; repeat applicants wishing to take the November exam must file their application by September 1.

◆ **CBA Rulemaking on Evidence of Educational Qualifications, Notice of State Licensure, Namestyles.** Following a public hearing in September 1999, CBA adopted new sections 9.1 and 50, amended sections 9 and 67, and repealed sections 66, 66.1, and 66.2, Title 16 of the CCR. [17:1 CRLR 198–99] OAL approved the proposed regulatory changes on May 10, 2000; they became effective on June 9, 2000.

Section 9 specifies the evidence of educational qualifications that a candidate for the examination must provide to the Board. CBA amended section 9 to specify that a candidate seeking to sit for the exam under section 5081.1(a) of the Business and Professions Code must have a baccalaure-

ate degree with 45 semester units (or the equivalent in quarter units), including ten semester units in auditing and accounting subjects. The remaining units may include additional accounting, auditing, or other business-related subjects such as economics, management, finance, business administration, marketing, computer science, law, business communications, mathematics, tax, and statistics. To qualify to sit for the exam under section 5081.1(b), an applicant must complete 120 semester units or the equivalent, including 45 semester units of accounting and related subjects as described above. To qualify to sit for the exam under section 5081.1(c), an applicant must demonstrate completion of foreign education that is equivalent to the education required to qualify under section 5081.1(b), or must pass a Board-approved preliminary written exam and complete ten semester units of auditing and accounting subjects.

AB 2771 (Committee on Consumer Protection) (Chapter 872, Statutes of 1998) amended Business and Professions Code section 5081.1 to clarify the requirements for candidates who have degrees from educational institutions located outside the United States, and to permit the Board to require such an applicant to submit his/her documentation of education to a credential evaluation service approved by the Board. AB 2771 also required the Board to adopt regulations specifying the criteria and procedures for approval of credential evaluation services. [16:1 CRLR 188] As amended, section 9.1 sets forth those specific criteria and requirements which must be demonstrated by a credential evaluation service in order to receive and maintain Board approval.

SB 2238 (Committee on Business and Professions) (Chapter 879, Statutes of 1998) requires CBA and other DC/ occupational licensing boards to adopt regulations requiring their licensees to provide notice to clients that they are licensed by the State of California. [16:1 CRLR 188] New section 50 implements SB 2238, and requires each Board licensee to inform clients that he/she is licensed by the Board by any of the following methods: (a) displaying his/her certificate of licensure issued by the Board in the office or the public area of the premises where the licensee provides the licensed service; (b) providing a statement to each client to be signed and dated by the client and retained in that person's records that states the client understands the person is licensed by the Board; (c) including a statement that the licensee is licensed by the Board either on letterhead or on a contract for services where the notice is placed immediately above the signature line for the client in at least 12-point type; (d) posting a notice in a public area of the premises where the licensee provides the licensed services, in at least 48-point type that states the named licensee is licensed by the Board; or (e) any other method of written notice, including a written notice that is electronically transmitted, or a written notice posted at an Internet Web site.

In 1998, SB 2239 (Committee on Business and Professions) significantly revised provisions of the Accountancy Act relating to the use of namestyles by Board licensees. [16:1

*CRLR 188*] In particular, SB 2239 amended Business and Professions Code section 5060 relating to firm names and repealed section 5075 related to partnership registrations. CBA repealed sections 66, 66.1, and 66.2, several of its former namestyle regulations, and amended section 67 (regarding use of fictitious names) to make it consistent with amended section 5060. As amended, section 67 states, "No sole proprietor may practice under a name other than the name set forth on his or her permit to practice unless such name has been registered with the Board. Any registration issued under this section shall expire five years from the date of issuance unless renewed prior to its expiration."

◆ **Use of Mediation in Disciplinary Proceedings.** On January 18, 2000, OAL approved CBA's adoption of new section 98.1, Title 16 of the CCR, regarding the use of mediation in Board disciplinary proceedings. The new regulation incorporates by reference CBA's *California Board of Accountancy Mediation Guidelines*, dated July 17, 1998. Under the guidelines, mediation is a voluntary process whereby the Board and a licensee of the Board attempt to resolve or narrow issues of dispute with the assistance of a neutral facilitator. A request for mediation should come from the licensee; however, mediation is not a right of the licensee—its use is up to the Board's Executive Officer. The guidelines also set out, among other things, the types of cases appropriate for mediation, types of agreements reached, and the authority and selection of the mediator. Under the guidelines, mediation sessions must be held in private, and opinions, suggestions, proposals, offers, or admissions obtained or disclosed during the mediation by any party or the mediator must be held in confidence except as authorized by all parties to the mediation or compelled by law. [17:1 *CRLR 201*; 16:2 *CRLR 165*; 16:1 *CRLR 186-87*] Section 98.1 became effective on February 17, 2000.

**Contrary to the Board's wishes, SB 133 does not incorporate the licensing provisions of the UAA into California law.**

## 2000 LEGISLATION

**SB 1863 (Committee on Business and Professions)**, as amended August 21, 2000, adds sections 5110–5113 to the Business and Professions Code, which authorize the Board to deny an application for licensure filed by an individual who is suspected of engaging in specified acts of cheating on a licensing examination. The bill was signed by the Governor on September 30, 2000 (Chapter 1054, Statutes of 2000).

**AB 2889 (Committee on Consumer Protection, Governmental Efficiency and Economic Development)**, as amended August 8, 2000, changes code references from "State Board of Accountancy" to "California Board of Accountancy." The bill was signed on September 30, 2000 (Chapter 1055, Statutes of 2000).

**AB 1016 (Briggs)**, as amended August 14, 2000, conforms California law with the federal Internal Revenue Service Restructuring and Reform Act of 1998 by expanding the attorney-client privilege to include specified communications

between a taxpayer and a tax practitioner to the extent that the communication would be considered privileged if it were between a lawyer and a client. The privilege only applies in non-criminal tax matters before the Franchise Tax Board, the State Board of Equalization, or the Employment Development Department, and sunsets on January 1, 2005. Governor Davis signed AB 1016 on September 13, 2000 (Chapter 438, Statutes of 2000).

**AB 1190 (Honda)**, a 1999 spot bill that would have changed the Board's name, died in committee.

## 2001 LEGISLATION

**SB 133 (Figueroa)**, as amended April 25, 2001, is CBA's sunset legislation, and reflects the final recommendations of the Joint Legislative Sunset Review Committee adopted on that date (see MAJOR PROJECTS). SB 133 would extend the existence of the Board to July 1, 2005. It would also increase the Board's membership to 11 members, including six CPAs (two of whom must be from a "small firm" as that term is defined in Business and Professions Code section 5000) and five public members. In so doing, the bill would eliminate the PA position on the Board and replace it with a CPA from a small firm. The bill would also amend Business and Professions Code section 5020 to limit the authority of the Administrative Committee to those duties delegated to it by the executive officer.

Contrary to the Board's wishes, SB 133 does not incorporate the licensing provisions of the UAA into California law. Instead, it would add section 5085 to the Business and Professions Code to require a "comprehensive analysis of the impact of new licensing requirements proposed by the board" to be conducted by "an independent consulting firm chosen by the Director of the Department of Consumer Affairs." The bill provides that the Board must fund the study, which must be submitted to the legislature by September 1, 2003. In the meantime, SB 133 would amend section 5083 to expand the types of accounting experience that meet the Board's experience requirements, but retain the existing attest experience requirement in section 5083(d). Finally, SB 133 would amend section 5134 to permit the Board to maintain approximately six months' worth of operating expenses in its reserve fund.

At an April 30, 2001 hearing on SB 133, Big Five lobbyist Richard Robinson attacked the bill, the JLSRC, and the sunset review process (see MAJOR PROJECTS). During the hearing, Senator Mike Machado suggested—and Robinson agreed to consider—a two-track licensure system wherein applicants could opt to qualify for licensure under standards similar to those in place today or under UAA standards. At this writing, Robinson and CalCPA are working with staff of the Senate Business and Professions Committee to draft language to flesh out Senator Machado's suggestion, and SB 133

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is scheduled for another hearing on May 7, 2001. [S. B&P]

**AB 585 (Nation)**, as amended April 16, 2001, is cosponsored by CalCPA and the State Board of Equalization. Although AB 585 is not the Board's sunset bill, it would extend the life of the Board to July 1, 2007 and require two of the Board's CPA members to come from small accounting firms.

Contrary to the final recommendation of both the JLSRC and the Department of Consumer Affairs, AB 585 would also require—effective January 1, 2005—all applicants for CPA licensure in California to meet the licensure requirements of the UAA. Specifically, all applicants would be required to have completed at least 120 college-level semester units and to have received a baccalaureate or higher degree in order to sit for the Uniform CPA exam; thereafter, all applicants would be required to complete an additional 30 college-level semester units—for a total of 150 units—before being eligible for licensure. AB 585 would also reduce CBA's existing general accounting experience requirement to one year, and eliminate its existing attest experience requirement in Business and Professions Code section 5083(d). The bill would also impose the UAA's exam passage standards on California examinees, making it more difficult to pass the exam. Finally, AB 585 would require all CPAs and CPA firms that perform attest services to undergo "peer review" at least once every three years, beginning on January 1, 2003.

On April 24, 2001, the Assembly Business and Professions Committee held a hearing on the bill but Committee Chair Lou Correa—noting that the JLSRC was scheduled to take a final vote on UAA-related matters the following day, and confronted with evidence that imposition of the UAA in other states has had a "discernible and measurable" impact on minority entrance into the CPA profession in at least three states in which the UAA has been enacted—postponed a vote on the bill until May 8, 2001 (see MAJOR PROJECTS). [A. B&P]

**AB 270 (Correa)**, as amended April 16, 2001, would increase the Board's membership to 11, including six CPAs (at least two of whom must be from a small firm) and five public members. [A. Appr]

**AB 269 (Correa)**, as amended April 5, 2001, would create the Division of Enforcement Oversight within DCA. Under the direction of the DCA Director, the Division would monitor and evaluate the consumer complaint and discipline systems of each DCA board (including CBA). Further, the bill would require the executive officer of each DCA board to be appointed by a three-member panel comprised of a representative of the board, the DCA Director, and the Governor's appointments secretary. [A. B&P]

### LITIGATION

In an unpublished decision released on May 2, 2000, the Third District Court of Appeal affirmed Sacramento County

Superior Court Judge Lloyd Connelly's dismissal of *KPMG Peat Marwick LLP, et al. v. State Board of Accountancy*, No. C033138, for failure to exhaust administrative remedies.

This matter arose after CBA filed an accusation in December 1998 against KPMG over its early 1990s audits of the financial statements of Orange County, which declared bankruptcy on December 6, 1994. The County later sued KPMG for failing to alert it to imprudent investments as part of its audits; the accounting firm eventually settled the law-

suit in June 1998, admitting to no negligence. In its December 1998 accusation, the Board charged KPMG with "unprofessional conduct, including gross negligence, in that the audit work contained extreme departures from applicable professional standards, in-

cluding the more stringent standards for governmental audits." Three days later, KPMG sued the Board, alleging that the investigation upon which the accusation was based was "irremediably tainted by prejudicial procedural irregularities" resulting in due process violations, including alleged conflicts of interest on the parts of two members of the Administrative Committee which assisted in the investigation and recommended that an accusation be filed.

The Board demurred, arguing that KPMG's due process arguments are inapplicable to the investigative stage of an administrative proceeding because no rights are determined during an investigation. Even assuming KPMG's rights were somehow implicated during the investigation, the Board noted that it had not yet taken (or decided to take) any disciplinary action against KPMG, such that KPMG had failed to exhaust its administrative remedies. Failure to pursue state law administrative remedies, during which a respondent has an opportunity to present evidence to support claims that an accusation is the result of a biased or flawed investigation, is a common bar to the institution of court litigation. CBA also contended that KPMG's complaint about conflicts of interest on the part of AC members is a "red herring" issue, because the AC serves in an advisory capacity only and has no decisionmaking authority. Judge Connelly sustained the Board's demurrer and dismissed KPMG's complaint based on its failure to exhaust administrative remedies. [17:1 CRLR 201-02; 16:2 CRLR 166-67; 16:1 CRLR 178-82] KPMG appealed.

The Third District affirmed, primarily on grounds that it found KPMG could assert its various claims of procedural irregularities and conflicts of interest as affirmative defenses in its notice of defense under Government Code section 11506 and during the ensuing administrative hearing. KPMG did not argue that the procedural violations it was advancing in court could not be tendered during the administrative hearing; further, the court found that the harm or expense of exhausting administrative remedies is not a defense to the exhaustion requirement. The court rejected KPMG's argument that exhaustion would be futile, holding that the actions of

Contrary to the final recommendation of both the JLSRC and the Department of Consumer Affairs, AB 585 would require—effective January 1, 2005—all applicants for CPA licensure in California to meet the licensure requirements of the UAA.



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the Board's agents (e.g., its investigators and AC members) should not be attributed to the Board acting in its capacity as a quasi-judicial body.

During the pendency of this judicial proceeding, the administrative hearing on CBA's accusation against KPMG commenced on March 15, 2000 before Administrative Law Judge Humberto Flores, and concluded on December 29, 2000. On behalf of the Board, the Attorney General's Office submitted its closing briefs on February 15, 2001, and—at this writing—KPMG is scheduled to submit its closing briefs on May 7, 2001.

### RECENT MEETINGS

At its November 19, 1999 meeting, CBA elected public member Baxter Rice as president, CPA Donna McCluskey as vice-president, and CPA Michael Schneider as secretary-treasurer for 2000.

At its November 2000 meeting, CBA elected Donna McCluskey as president and public member Navid Sharafatian as vice-president, and reelected Michael Schneider as secretary-treasurer for 2001.

### FUTURE MEETINGS

**2001:** May 18 in Sacramento; July 20 in San Francisco; September 21 in Los Angeles; November 16 in San Diego.

**2002:** January 24–25 in San Francisco; March 22–23 in Los Angeles; May 16–17 in San Diego; July 19 in San Francisco; September 20 in Sacramento; November 14–15 in San Diego.

**2003:** January 23–24 in Redwood City; March 21–22 in Santa Monica; May 15–16 in San Diego; July 25 in San Francisco; September 19 in Los Angeles; November 14 in Sacramento.

## State Bar of California

*Executive Officer: Judy Johnson ♦ (415) 538-2000 ♦ (213) 765-1000 ♦ Toll-Free Complaint Hotline: 1-800-843-9053 ♦ Ethics Hotline: 1-800-2ETHICS ♦ Internet: www.calbar.ca.gov*



The State Bar of California was created by legislative act in 1927 and codified in the California Constitution at Article VI, section 9. The State Bar was established as a public corporation within the judicial branch of government, and membership is a requirement for all attorneys practicing law in California. More than 175,000 lawyers are members of the State Bar.

The State Bar and its subdivisions perform a myriad of functions that fall into six major categories: (1) testing State Bar applicants, accrediting law schools, and promoting competence-based education; (2) enforcing the State Bar Act, Business and Professions Code section 6000 *et seq.*, and the Bar's Rules of Professional Conduct; (3) ensuring the delivery of and access to legal services; (4) educating the public; (5) improving the administration of justice; and (6) providing member services.

The State Bar maintains approximately 40 standing and special committees including over 200 appointees and addressing numerous issues. Sixteen subject-matter "sections" focus on specialized substantive areas of law—ranging from antitrust law to workers' compensation to criminal law. These sections, which are operated by volunteer committees, publish information about their respective subject areas and assist the Bar in administering its Minimum Continuing Legal Education (MCLE) program, which requires most Bar members to complete 25 hours of MCLE every three years. The Bar also operates the Conference of Delegates, which gives a representative voice to local, ethnic, and specialty bar associations statewide. Effective January 1, 2000, the Bar is prohibited from funding its sections and the Conference of Delegates with members' compulsory Bar licensing fees (see MAJOR PROJECTS).

The Bar grants "specialty certification" status to over 3,600 attorneys who practice in one of eight fields: appellate; criminal; estate planning, trust, and probate; family; immigration and nationality; personal and small business bankruptcy; taxation; and workers' compensation. In general, attorneys may practice in these fields without certification, but meeting the Bar's substantive standards allow them to advertise their "specialty certification" status.

The Bar also operates several service programs, including its Legal Services Trust Fund Program. Established by the legislature in the early 1980s, this program is funded by interest-bearing demand trust accounts held by attorneys for their clients; through a grant process, these funds are distributed to legal services programs serving the poor statewide. The Legal Services Trust Fund Program also distributes the Equal Access Fund, a \$10 million annual state fund for improving the administration of justice for low-income Californians.

The Bar is funded primarily by fees paid by attorneys and applicants to practice law. Over two-thirds of the Bar's annual budget is spent on its attorney discipline system, which includes a toll-free complaint hotline and in-house professional investigators and prosecutors housed in the Office of the Chief Trial Counsel. The California Bar's attorney discipline system also includes the nation's first full-time professional attorney discipline court which neither consists of nor is controlled by practicing lawyers. The State Bar Court consists of the Hearing Department (which includes five full-time judges who preside over individual disciplinary hearings) and a three-member Review Department which reviews appeals from hearing judge decisions. The State Bar Court recommends discipline to the California Supreme Court,