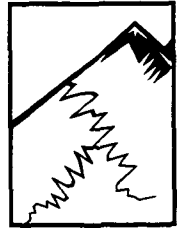


# Board of Registration for Geologists and Geophysicists

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The Board of Registration for Geologists and Geophysicists (BRGG) is mandated by the Geologist and Geophysicist Act, Business and Professions Code section 7800 *et seq.* The Board was created by AB 600 (Ketchum) in 1969; its jurisdiction was extended to include geophysicists in 1972. The Board, whose regulations are found in Division 29, Title 16 of the California Code of Regulations (CCR), is a consumer protection agency within the Department of Consumer Affairs (DCA).

BRGG registers geologists and geophysicists, and certifies engineering geologists and hydrogeologists. In addition to successfully passing the Board's written examination, an applicant must fulfill specified undergraduate educational requirements and have the equivalent of seven years of relevant professional experience. The experience requirement may be satisfied by a combination of academic work at a school with a Board-approved program in geology and geophysics, and qualifying professional experience. However, credit for undergraduate study, graduate study, and teaching—whether taken individually or in combination—may not exceed a total of four years toward the requirement of seven years of professional geological or geophysical work.

BRGG is authorized to investigate and discipline registrants who act in violation of its statutes or regulations. The Board may issue a citation to registrants or unlicensed persons for violations of Board rules; an administrative fine of up to \$2,500 may accompany such a citation.

The eight-member Board is composed of five public members, two geologists, and one geophysicist. BRGG's staff consists of five full-time employees and two part-time employees. BRGG is funded by the fees it generates.

## MAJOR PROJECTS

### Implementation of SB 1984

At its April 23 meeting, BRGG adopted several regulatory changes to implement SB 1984 (Greene) (Chapter 992, Statutes of 1998). Among other things, SB 1984 requires BRGG to cease administering its own written examination to candidates for geologist registration. Instead, the Board must administer—on or before June 30, 2000—"a national examination created by a nationally recognized entity approved by the Board, supplemented by a California-specific examination which tests the applicant's knowledge of state laws,

regulations, and of seismicity and geology unique to practice within California."

BRGG intends to administer the written examination of the National Association of State Boards of Geology (ASBOG) to geologist candidates in California. To implement SB 1984, BRGG must enter into an agreement with ASBOG enabling it to utilize ASBOG's written geologist examination, develop the California-specific examination for geologist registration, and amend its regulations to phase out use of the old exam and phase in use of ASBOG's exam. [16:1 CRLR 118, 121]

To implement SB 1984, BRGG adopted amendments to sections 3005, 3021, 3023, 3024, 3031, 3036.1, 3037.1, 3041, and 3042; repealed sections 3036 and 3037; and adopted new sections 3026, 3036.2, and 3037.2, Title 16 of the CCR. At this writing, Board staff is currently preparing the rulemaking file on these changes for submission to DCA and the Office of Administrative Law (OAL).

Of import, the Board's amendments to section 3031 would require that: (1) prior to December 30, 1999, an applicant for registration as a geologist must obtain a passing score determined by a recognized criterion-referenced method of establishing the pass point on the existing California examination; and (2) on and after January 1, 2000, an applicant for registration as a geologist must obtain a passing score on the Fundamentals of Geology and Practice of Geology examinations created by ASBOG on or after November 1, 1996, and obtain a passing score as determined by a recognized criterion-referenced method of establishing the pass point on a California-specific examination. The proposed amendments would also specify that credit toward the Board's education/experience requirement will be given for part-time graduate study or research and part-time professional geological and geophysical experience gained at the same time, as appropriate.

BRGG's proposed amendments to section 3005 would (1) increase (from \$100 to \$250) its application fee for registration as a geologist or geophysicist and for certification as a specialty geologist or specialty geophysicist; (2) establish an \$80 temporary registration fee for geophysicists and specialty geologists; (3) establish a \$300 examination fee for geologist candidates taking both the ASBOG exam and the California-specific exam; (4) establish a \$100 examination fee for the California-specific geologist exam only; (5) establish a \$100 examination fee for geophysicists, specialty geologists, and specialty geophysicists; (6) delete a provision authorizing waiver or refund of the initial fee for registration and/or

certification in a specialty when the license is issued less than 45 days before the date on which it will expire; (7) establish an additional fee for geologist applicants who apply for an examination administered on or before December 31, 1999 and then postpone the examination to the next scheduled examination; and (8) specify that applicants who fail an examination are required to pay only the examination fee to be re-examined within four years of the failed examination.

The Board's proposed amendments to section 3021 would (1) require that an application for registration as a geologist or geophysicist or certification as a specialty geologist or geophysicist must be accompanied by the required examination fee; (2) increase the number of days (from 90 to 100) prior to a scheduled examination that an application for registration must be filed; and (3) require that all documentation supporting an application must be received by the Board within 70 days prior to the scheduled examination.

Existing law requires an applicant for registration as a geologist or geophysicist or certification as a specialty geologist or geophysicist to meet education and experience requirements. Section 3023 of the Board's regulations requires that the education and experience include the time period required for processing and acceptance of the application prior to the examination, and requires that the applicant notify the Board if that education or experience is not completed. Consistent with the proposed amendments to section 3021 (see above), BRGG's amendments to section 3023 would increase the number of days prior to the examination for registration as a geologist or geophysicist or certification as a specialty geologist or specialty geophysicist that may be included as qualifying education and experience from 90 to 100 days. The proposed amendments would also require that an applicant give written notice to the Board if the education and experience included in the 100 days prior to the examination are not performed.

The Board's proposed amendments to section 3024 would (1) establish a cutoff date prior to the date of the examination by which an applicant must request a postponement of the examination; (2) change the period allowed for the granting of postponements from after two postponements to within one year of the date of the scheduled examination; (3) permit the Board to grant postponement after the cutoff date for good cause; and (4) allow the Board to retain the examination fee when an application is declared abandoned.

BRGG's proposed adoption of section 3026 would provide for the refund of the examination fee if an applicant lacks the qualifications for admission to the examination for registration as a geologist or geophysicist or certification as a specialty geologist or geophysicist.

Sections 3036.1 and 3037.1 currently allow all applicants to inspect their examination papers and appeal to the Board for a review of their score under certain conditions. BRGG's proposed amendments to these sections would clarify that only applicants for registration as a geophysicist or certification as a specialty geologist or geophysicist may inspect their

examination papers and/or appeal their scores. The Board's proposed adoption of sections 3036.2 and 3037.2 would establish the requirements for inspection of geologist examination papers and appeal of the geologist examination score under certain conditions until December 31, 1999, after which the ASBOG examination will be used for the registration of geologists.

Section 3036 establishes the requirements for inspection of examination papers prior to December 1, 1998, and section 3037 establishes the requirements for appeal of examination results prior to December 1, 1998. BRGG proposes to delete these obsolete sections.

The Board's proposed amendments to section 3041 would clarify that the experience in engineering geology an applicant used to qualify for registration as a geologist may also be used to qualify for certification as an engineering geologist. BRGG's proposed amendments to section 3042 would clarify that the experience in hydrogeology an applicant used to qualify for registration as a geologist may also be used to qualify for certification as a hydrogeologist.

Also related to its implementation of SB 1984, BRGG is developing comity agreements with 19 other states that administer the ASBOG examination. The comity agreements will allow California geologists to be licensed in other states based on their passage of the ASBOG examination and their ability to meet requirements of those states. California licensure of out-of-state geologists based on comity will be based on the applicant's ability to pass the ASBOG examination on or after fall 1996, pass the California-specific supplemental examination, and meet the Board's education and experience requirements.

The Board is also developing the California-specific supplemental examination, a one-hour, multiple-choice examination designed to test an applicant's knowledge of California-specific regulatory, seismic, and structural issues. The exam will test active tectonics, California geology, and California regulations related to the practice of geology. At this writing, the first California-specific supplemental examination is scheduled for September 28, 1999 for out-of-state comity applicants only. The first supplemental examination required for geologist licensure in California will be offered in spring 2000, along with the first administration of the ASBOG examination.

## Update on Other Board Rulemaking

The following is an update on recent BRGG rulemaking proceedings described in detail in Volume 16, No. 1 (Winter 1999) of the *California Regulatory Law Reporter*:

◆ **Professional Standards.** Since August 1998, BRGG has been considering the adoption of section 3065, Title 16 of the CCR, which would establish professional standards in the areas of competence, misrepresentation, conflict of interest, and confidential information. [16:1 CRLR 120] The language of proposed section 3065 has undergone two published modifications, and the Board finally approved the rule for submission to OAL at its April 23 meeting.

In the area of competence, section 3065 would provide that a geologist or geophysicist may undertake to perform professional services only when he/she, together with those whom the registrant may engage as consultants, is qualified by education, training, and experience in the specific technical and scientific areas involved. When practicing geology or geophysics, a registrant must act with competence and reasonable care, and must apply the technical knowledge and skill which is ordinarily applied by registrants of good standing, practicing in California under similar circumstances and conditions.

With regard to misrepresentation, section 3065(b) states that a registrant may not misrepresent nor permit the misrepresentation of his/her professional qualifications, affiliations, or purposes, or those of the institutions, organizations, or other businesses with which he/she is associated. A registrant must accurately represent to a prospective or existing client or employer his/her qualifications and the scope of his/her responsibility in connection with projects or services for which he/she is receiving or will receive compensation. A registrant may only express professional opinions that have a basis in fact or experience. Further, the proposed rule would prohibit a registrant from plagiarizing the professional work of others, and require proper attribution to others for their work or contribution. The rule would also prohibit a registrant from knowingly permitting the publication or use of his/her data, reports, or maps for unlawful purposes; falsely or maliciously attempting to injure (or in fact injuring) the reputation or business of others; and misrepresenting data and their relative significance in any geologic or geophysical report.

In the area of conflict of interest, subsection 3065(c) would prohibit a BRGG registrant from concurrently engaging in any other business or occupation which impairs the registrant's independence or objectivity, or creates a conflict of interest in rendering professional services; and from accepting compensation for services from more than one party on a project unless the circumstances are fully disclosed and agreed to by all such parties (such disclosure and agreement must be in writing). If a registrant has any business association or financial interest which is substantial enough to influence his/her judgment in connection with the performance of professional services, the registrant must fully disclose in writing to his/her client(s) or employer(s) the nature of the business association or financial interest. If the client(s) or employer(s) object(s) to such association or financial interest, the registrant shall either terminate such association or interest or offer to give up the project or employment. Further, a registrant may not solicit or accept payments, rebates, refunds or commissions—whether in the form of money or otherwise—from material or equipment suppliers in return

for specifying their projects or services to a client or employer of the registrant.

In the area of confidentiality, subsection 3065(d) would define "confidential information" as information obtained in confidence by a registrant from his/her employer, prospective client, client, or former client by reason of or in the course of his/her employment or other professional capacity. The subsection would prohibit a registrant from disclosing confidential information obtained in his/her professional capacity concerning an employer or client without the permission of the employer or client, except for the following: (1) disclosures made in response to a subpoena or summons enforceable by an order of a court; (2) disclosures made

in response to an official inquiry from a government regulatory agency; (3) disclosures made by a registrant to another registrant to the extent necessary for purposes of professional consultation; (4) disclosures made when required by law; and (5) disclosures made upon discovering an imminent geologic hazard which may threaten the health, safety,

and welfare of the public. Subsection 3065(d)(5), which authorizes disclosure of an "imminent geologic hazard," replaces an earlier version of the regulation which would have affirmatively required BRGG licensees to warn the client and appropriate governmental authorities of any "imminent geologic hazard which may threaten the health, safety, and welfare of the public." In adopting subsection 3065(d)(5), BRGG rejected the comments of former Board member Howard "Buzz" Spellman and former BRGG Executive Officer John Wolfe, who argued that the phrase "imminent geologic hazard" is undefined. In its final statement of reasons, the Board stated that "individual registered geologists are in the best position with their expertise to determine if a hazard exists in a particular situation. Because the Board is not requiring any affirmative disclosure, it is not necessary to provide greater definition to the term 'imminent geologic hazard.' That decision is best left with the professional registered geologist."

At this writing, Board staff is preparing the rulemaking file on section 3065 for submission to DCA and OAL.

◆ **Disciplinary Guidelines Update.** On April 6, BRGG staff submitted the Board's amendments to section 3064, Title 16 of the CCR, to OAL. The amendments require the Board—in deciding disciplinary cases—to consider the 1998 version of its disciplinary guidelines. [16:1 CRLR 119] Because staff later discovered that BRGG had never formally voted to approve the amendments, BRGG approved them at its April 23 meeting. At this writing, the proposed amendments are still pending at OAL.

◆ **Criteria for Sentencing or Rehabilitation Update.** Also on April 6, BRGG staff submitted amendments to section 3061, Title 16 of the CCR, to OAL. Section 3061 sets forth

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criteria the Board must consider when evaluating an individual's rehabilitation for purposes of a license denial, revocation, or suspension. Among other things, BRGG's proposed amendments to section 3061 would require it to consider the same criteria when determining an appropriate sanction in disciplinary proceedings. The amendments would also add actual or potential harm to the public, client, or employee, prior disciplinary record, and number and/or variety of current violations to the list of criteria which must be considered by an administrative law judge and the Board when deciding whether to revoke or suspend a license. [16:1 CRLR 119] Because staff later discovered that BRGG had never formally voted to approve the amendments, BRGG approved them at its April 23 meeting. At this writing, the proposed amendments are still pending at OAL.

## **"Fields of Expertise" Document Challenged as "Underground Rulemaking"**

In 1989, BRGG and the Board for Professional Engineers and Land Surveyors (PELS) developed a document entitled *Fields of Expertise for Geologists and Civil Engineers*. The document is intended to differentiate between the responsibilities and duties of registered civil engineers and geologists. It identifies activities within the scope of practice of engineering and geology, reviews the "gray areas" where civil engineering and geology overlap, and lists activities that are normally performed by both professions. Recently, the two boards have been at odds with each other about the document, and a task force consisting of representatives from both boards has been meeting to try to iron out the disagreements over the content and format of the document. [16:1 CRLR 120]

A recent development which could substantially impact this matter is former BRGG member Howard "Buzz" Spellman's submission of a request for determination to OAL. Spellman contends that the 1996 version of *Fields of Expertise*, which was approved by PELS but rejected by BRGG, constitutes a "regulation" as defined in Government Code section 11342(g), and is thus subject to the rulemaking requirements of the Administrative Procedure Act. Neither board has ever adopted *Fields of Expertise* as a regulation. On January 15, OAL published a summary of Spellman's petition in the *California Regulatory Notice Register*. Section 126, Title 1 of the CCR, requires that OAL's written determination be issued within 75 days of that publication; however, at this writing, OAL has not yet issued its determination.

## **Board Prepares for "Sunset II"**

Pursuant to SB 2036 (McCorquodale) (Chapter 908, Statutes of 1994), the necessity and performance of each DCA licensing board is comprehensively reviewed by the Joint

Legislative Sunset Review Committee (JLSRC) and the executive branch on a periodic basis. The frequency of review is dictated by a "sunset date" (a date on which the board will cease to exist) which is legislatively inserted into the enabling act creating each board. If, after review, the legislature determines that a particular board should continue to exist, it will pass a bill extending the date by several more years—which triggers subsequent review. If the legislature believes a board should cease to exist, it simply lets the sunset date pass. BRGG was first reviewed in 1995–96 [15:4 CRLR 80–82], and its sunset date was extended to July 1, 2001; thus, if the Board is to continue, it must be reviewed during the fall of 1999 and legislation extending the sunset date must be passed during 2000.

To facilitate legislative review of the Board's activities, BRGG is required to submit a detailed sunset report to the JLSRC by October 1, 1999. In December 1998, the Board hired Hesse-Stobbe and Associates, a consulting firm, to prepare its "Sunset II" report. At its April 23 meeting, the Board reviewed and amended a draft of the report, which notes that the JLSRC made recommendations for twelve substantial changes in the Board's operations in 1995–96 and documents progress made by the Board in studying and implementing those recommendations.

For example, in 1995–96 the JLSRC noted that BRGG had never adopted any code of ethics for the profession. BRGG is now in the process of adoption section 3065, Title 16 of the CCR, which would establish rules of professional conduct in several areas (see above). The JLSRC further cited

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the low pass rate on the Board's geologist examination and noted that "there is basically no comity or reciprocity for out-of-state geologists or geophysicists." With the passage of SB 1984 and its requirement that BRGG use ASBOG's licensing examination, the Board will no longer be using the complained-of exam and comity licensure of out-of-state geologists will be facilitated. The JLSRC also noted that the Board's existing seven-year experience requirement is "somewhat excessive and arbitrary when compared with other states, and does not seem necessary to assure that geologists and geophysicists are competent," and recommended that the requirement be abolished and replaced with a more appropriate experience requirement, if it is determined necessary. In response, BRGG states that its experience requirement is "in line with" the experience requirements in other states. The JLSRC also recommended that the Board begin to use its cite and fine authority immediately. In response, BRGG states that it "has fulfilled this requirement and has invoked its 'cite and fine' authority five times since January 1998."

In addition to its recommendations, the JLSRC made several findings with regard to BRGG, and the Board attempts

to respond to those findings in its draft Sunset II report. For example, the JLSRC found that "[t]here does not appear to be any significant public demand for the regulation and licensing of geologists and geophysicists, and there are those within the profession who have opposed licensure." In response, BRGG's draft report states that such a finding is overcome "by the number of cases currently on the Board's enforcement docket and the number (and percentage) of responses to the Board's recent survey of complainants." The Board also states that "those professionals who are opposed to licensure favor 'peer certification' in lieu of licensure. The Board does not support 'peer' certification."

The JLSRC also found that "[c]omponents of the current regulatory program do not appear to provide protections to the consumer and preclude consumer harm." In response, the Board's report states that its program "has developed new enforcement policies, practices, and capabilities. Together with licensing, these capabilities will ensure practice by competent individuals."

At this writing, BRGG's Executive Committee is expected to review the draft report again at a May 13 meeting in San Diego, and to submit it for full Board approval prior to its submission to the JLSRC on October 1.

## RECENT MEETINGS

At its February 5-6 meeting, the Board amended the complaint disclosure policy it adopted in August 1998. [16:1 CRLR

120] The 1998 version required BRGG staff to disclose to inquiring consumers all disciplinary actions taken against a licensee, as well as closed actionable complaints (*i.e.*, a violation has been determined and a nondisciplinary action has been taken) and complaints closed for no violation or insufficient evidence within the preceding three-year period. Executive Officer Paul Sweeney recommended that the policy be amended to preclude disclosure of complaints closed for no violation or insufficient evidence. The Board agreed to amend its policy to provide that it will disclose, upon request, information regarding closed actionable complaints resulting in nondisciplinary action within the preceding three years, and all closed actionable complaints which resulted in disciplinary action. Mediated cases are included in the definition of "closed actionable complaints."

At its April 23 meeting, BRGG unanimously adopted changes to its strategic plan which, among other things, sets forth its mission and vision statements and establishes numerous goals in the areas of examination, licensure, enforcement, public awareness, and Board administration.

## FUTURE MEETINGS

- June 4-5, 1999 in Berkeley.
- August 13, 1999 in Los Angeles.
- October 22, 1999 in Fresno.
- December 3, 1999 in San Francisco.