



STATE & CONSUMER SERVICES AGENCY (Department of Consumer Affairs)

BOARD OF ACCOUNTANCY

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

The Board consists of twelve members: eight BOA licensees (seven CPAs and one PA), and four public members. Each Board member serves a four-year term and receives no compensation other than expenses incurred for Board activities.

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

-The Qualifications Committee, among other things, reviews all applications for licensure, reviews workpapers to determine qualifications if it is unable to do so based on a file review, and considers all policy and/or procedural issues related to licensure.

-The Legislative Committee reviews legislation and recommends a position to the Board; reviews and/or edits proposed statutory language and regulatory language developed by other committees before it is presented to the Board; and serves as an arena for the various trade associa-

tions to express their concerns on issues.

-The Committee on Professional Conduct considers all issues related to the professional and ethical conduct of CPAs and PAs.

-The Administrative Committee is responsible for handling disciplinary matters concerning licensees.

The Board's staff administers and processes the nationally standardized CPA examination, a four-part exam encompassing the categories of Audit, Law, Theory, and combined sections Practice I and II. Applicants must successfully complete all four parts of the exam and 500 hours of qualifying auditing work experience in order to be licensed. Approximately 20,000 examination applications are processed each year. Under certain circumstances, an applicant may repeat only the failed sections of the exam rather than the entire exam. BOA receives approximately 4,000 applications for licensure per year.

MAJOR PROJECTS

Board Approves Request for Proposals to Conduct Fee Study. At its November 13-14 meeting, the Board agreed to release a request for proposals seeking a contractor to conduct a fee study in order to comply with Business and Professions Code section 5134. That statute requires BOA to set fee levels in amounts necessary to recover the actual costs of providing the service for which the fee is assessed, as projected for the fiscal year commencing on the date the fees become effective, and requires that the actual and estimated costs referred to in section 5134 shall be calculated every two years using a survey of all costs attributable to the applicable fee category. The purpose of the study will be to survey BOA's existing fee structure to determine the amount for each fee; establish an ongoing mechanism to track and validate BOA program operation fees and other revenue and expenditure allocations, and identify methods by which BOA can ensure compliance with section 5134(j); and identify methods of enhancing BOA's efficiencies when performing functions specific to section 5134.

BOA voted to allocate up to \$175,000 to cover the projected costs of the fee study; four BOA members agreed to serve on an evaluation committee to review the proposals, which were due by January 30. The Board expected to announce the winning bidder and award the contract on February 16; the contract termination date is scheduled for October 16.

Board Adopts "Reasonable Accommodation" Procedures for Candidates With Disabilities. At its November 13-14 meeting, BOA adopted procedures for handling requests for reasonable accommodations from disabled candidates who, because of special circumstances, believe they need additional time to complete the CPA examination and/or special arrangements for taking the examination; the Board took this action in order to comply with the federal Americans with Disabilities Act (ADA). BOA's policy requires a candidate seeking special accommodations to submit with his/her application a written request for specific accommodations, no less than sixty days prior to the test date. The Board may confer with its consultants on the appropriateness of the request, and may request that the candidate submit a second opinion. Candidates basing their request on learning disabilities must submit a licensed psychologist's written description of the learning disability, including a description of the disability in behavioral and clinical terminology based on a neuropsychological examination, and a qualified physician's report indicating that there are no corrected or uncorrected sensory or motor impairments in addition to the learning disability; if more than one additional hour per section is requested, a second opinion from an expert selected by the Board may be requested. Candidates basing their request on physical disabilities must supply a qualified physician's report diagnosing the physical impairment and including a precise statement of needs; if more than one additional hour is requested, a second opinion from an expert selected by the Board may be requested.

According to the policy, the Board will respond to all requests detailing in writing what, if any, accommodations will be provided; the candidate must sign and return the letter to the Board indicating the candidate's acceptance of the specified accommodations. The candidate must pay for any statements required to be submitted to the Board; costs associated with the Board's consultants and any second opinions will be paid by the Board.

Board Rulemaking. At its November 13-14 meeting, the Board conducted a public hearing on its proposed amend-



ments to sections 11.5, 89, and 95.2, Title 16 of the CCR. [12:4 CRLR 50] Section 11.5 currently specifies how candidates for CPA licensure may meet the experience requirement in Business and Professions Code section 5083; the Board's proposed amendments would clarify how the experience of out-of-state licensees shall be evaluated for purposes of qualifying experience for California licensure. After making one technical revision to the proposed language, the Board unanimously adopted the proposed amendments to section 11.5.

Existing section 89, Title 16 of the CCR, requires licensees to maintain records confirming attendance at continuing education (CE) courses. Among other things, BOA's proposed amendments to section 89 would require that for a licensee to receive credit for attending a CE course, the licensee must obtain and retain for four years after renewal a certificate of completion signed by the course provider disclosing the school or organization conducting the course, the location, course title or description of the content, dates of attendance, and the number of hours of actual attendance; provide that, in order to receive credit as an instructor, discussion leader, or speaker, a licensee would be required to retain for four years after renewal the name of the school or organization providing the course, course location, course title or description of the content, course outline, dates of presentation, and the number of hours of actual preparation and presentation time; and provide that, in order to receive credit for published articles or books, a licensee would be required to maintain for four years after renewal the name and address of the publisher, the title of the publication, a brief description, date(s) of publication, a copy of the publication, and the hours claimed. The Board adopted the amendments subject to modifications made in response to comments submitted by the California Society of Certified Public Accountants; BOA released the modified text for an additional 15-day public comment period commencing December 30.

Existing section 95.2, Title 16 of the CCR, provides a schedule of citations and a range of minimum and maximum fines applicable to various violations of the Board's statutes and regulations. BOA's proposed amendments to section 95.2 would make a number of modifications, including changing the minimum fine applicable to a violation of section 55 of the CCR from \$100 to \$200, and changing the maximum fine applicable to a violation of section 56 of the CCR from \$2,000 to \$2,500. The Board unanimously adopted

the proposed amendments to section 95.2.

At this writing, all of the proposed amendments await review and approval by the Office of Administrative Law.

Future Board Rulemaking. At its November 13-14 meeting, BOA agreed to commence the rulemaking process to amend sections 87, 89.1, and 90, Title 16 of the CCR. BOA's proposed amendments to section 87 would clarify that licensees must complete at least 80 hours of qualifying CE during each two-year license renewal period, unless he/she is granted an exception or extension pursuant to the provisions of section 90, Title 16 of the CCR. The Board would also delete section 87(e), which currently provides that the basic CE requirement described in section 87 does not apply to licensees not engaged in public practice (such as licensees in private industry, government organizations, educational institutions, or similar activities), unless those individuals engage in public practice as defined in Business and Professions Code section 5051. Among other things, the proposed amendments to section 89.1 would delete a reference to the Continuing Education Program, so that BOA's CE program may be administered by its Positive Enforcement Committee or by any other committee the Board deems appropriate, and change an existing reference to a "continuing education form" to read "renewal application form." Proposed amendments to section 90 would describe in detail those licensees who are deemed to be engaged in public practice for purposes of the mandatory CE requirement and not eligible for an exception.

■ LEGISLATION

Future Legislation. The following is a description of legislation the Board may support or sponsor during the 1993-94 legislative session:

-BOA may sponsor legislation requiring CPA auditors to report all contacts concerning employment with an audit client to their CPA firm; alternatively, this change may be proposed as a Board regulation.

-BOA may pursue legislation which would establish a "Retired Public Accountant" or "Retired Certified Public Accountant" category; this category would be different from inactive license status. The proposed legislation would place limits on retirees' ability to reenter the profession as an active practitioner, and would strictly limit the professional activities in which a retired licensee may engage. The objective of the proposed legislation is to enable retired licensees to keep their status as professionals without having to continue

to pay high licensing fees. This proposal may be included in DCA's 1993 omnibus bill.

-BOA may support DCA's legislative proposal which would provide that BOA or an administrative law judge of the Office of Administrative Hearings, sitting alone, upon a petition filed by BOA, may issue an interim order suspending a license or imposing drug screening, supervision of practice, continuing education, or other practice restrictions. Such interim orders would be issued only if affidavits in support of the petition show that the licensee has engaged in, or is about to engage in, acts or omissions constituting a violation of the Business and Professions Code, or has been convicted of a crime substantially related to the practice of the licensee's profession or occupation, and that permitting the licensee to continue to engage in practice will endanger the public health, safety, or welfare. DCA plans to propose this legislation to address the problem of lengthy investigations and administrative proceedings which take from two to four years to complete, during which time the accused licensee continues in unrestricted practice.

-BOA also plans to examine possible statutory changes affecting accountancy corporations. Presently, BOA is unable to cancel the license of an accountancy corporation after five years of nonpayment of fees; it is also unable to charge late fees. In addition to closing these loopholes, the Board would like to stagger renewals of accountancy corporations throughout the year to prevent a backlog.

Legislation may be introduced in an attempt to reverse the California Supreme Court's decision in *Bily v. Arthur Young & Company*, 3 Cal. 4th 370 (1992), which held that a CPA's duty of care in the preparation of an independent audit of a client's financial statements does not extend to persons other than the CPA's client. [12:4 CRLR 51] Conversely, legislation may also be introduced to codify in statute the court's decision.

■ LITIGATION

In *Clare v. State Board of Accountancy*, 10 Cal. App. 4th 294 (Sept. 22, 1992), the Fourth District Court of Appeal—in a case of first impression—upheld the constitutionality of Business and Professions Code section 5100(g) against an array of challenges lodged by Kenneth Clare, whose California CPA license was disciplined because he stipulated to a seven-year suspension from accountancy practice by the Federal Home Loan Bank Board (FHLBB).

During 1983-84, Clare was the audit



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partner of Arthur Young and Company, and was in charge of the independent audit of Sun Savings and Loan. In late 1983, Sun's president and chief executive officer Daniel Dierdorff observed Clare filling out a football pool sheet for placing bets with Clare's acquaintance, Andy Cylke. Dierdorff asked to participate in the pool; Clare agreed to serve as Dierdorff's conduit in placing bets with Cylke, and did so from time to time. When Dierdorff won, Cylke would deliver a check made payable to Clare. Clare would deposit the check in his account and deliver a check to Dierdorff drawn upon his account. When Dierdorff lost, Dierdorff would give Clare a cashier's check drawn upon a savings account, and Clare would deposit the check into his account and then pay Cylke with a check drawn upon his account. In particular, Dierdorff gave Clare a check dated December 16, 1983, for \$1,300 representing losses over two to three weeks and also a check dated December 29, 1983, for \$700.

In the course of his audit, Clare learned Dierdorff had a secret savings account with Sun under the fictitious name "Daniel Danzer" with about \$150,000 in it; this account was the one from which Dierdorff's two December 1983 betting loss checks were drawn. Clare informed his partners at Arthur Young and also Sun's in-house and outside counsel of the existence of the Danzer account, and asked Dierdorff to produce documentation supporting deposits to and withdrawals from the account. However, Dierdorff repeatedly delayed providing such documentation to Clare on about twelve occasions, typically explaining he was too busy. In part due to Clare's acquiescence in Dierdorff's delays, Sun's board of directors did not learn of the Danzer account until four or five months after Clare discovered its existence. Dierdorff was terminated soon thereafter by Sun's board of directors.

In a 1986 notice, the FHLBB informed Clare that it intended to institute disciplinary action because of improprieties perceived in his audit performance at Sun. The notice alleged that Clare had engaged in "improper professional conduct and/or has willfully violated provisions" of FHLBB-administered laws or rules. It also described the actions of Clare as a conduit for Dierdorff's betting activities, as well as Clare's discovery of the Danzer account in March 1984, but subsequent delay resulting in Sun's board of directors not learning of the Danzer account until August 1984. Clare specifically denied the allegations of misconduct contained in the notice, but later stipulated to a seven-year suspension from performing accounting

services for financial institutions having savings accounts insured by the Federal Savings and Loan Insurance Corporation. By agreeing to the suspension, Clare avoided having the FHLBB examiner make specific findings on the misconduct allegations.

In December 1988, BOA filed an accusation seeking to suspend or revoke Clare's license to practice accountancy in California pursuant to section 5100, which permits such action for unprofessional conduct, including the "[s]uspension or revocation of the right to practice before any governmental body or agency." At a hearing before an administrative law judge (ALJ), BOA relied solely upon the fact that Clare's right to practice before the FHLBB had been suspended by the disciplinary order. In defense, Clare testified in mitigation of the charges, but was not permitted to relitigate the facts upon which the disciplinary order was founded. Following the hearing, BOA agreed to revoke Clare's CPA license, but stayed the revocation for two years upon the conditions that Clare's license be suspended for ninety days, he complete certain professional education courses, and obey all laws and all California rules governing the practice of accounting. Clare's petition to the trial court for a writ of mandate to set aside BOA's decision was denied. The court held that section 5100(g) was constitutional as applied, and implicitly found a substantial relationship between the conduct underlying the FHLBB suspension and Clare's fitness to practice certified public accounting.

Clare made a number of contentions on appeal, including a claim that his suspension was invalid because section 5100(g) facially permits state discipline without regard to whether the federal suspension was related to his qualifications, functions, or duties as a certified public accountant. Despite the omission of an explicit requirement of a "substantial relationship" in section 5100(g), the Fourth District "conclude[d] the Legislature intended such a requirement.... Since we have concluded above that subdivision (g) requires a showing of a 'substantial relationship' between the conduct underlying the governmental agency suspension or revocation and an accountant's qualifications, functions, or duties, we have limited the possible application of the statute to only those circumstances which are constitutionally valid. Accordingly, Clare's contention that subdivision (g) is unconstitutional on its face is without merit."

Clare also argued that section 5100(g) is invalid because it results in reliance

upon different standards of proof and different accounting practice standards. He contended that the FHLBB disciplinary action was based upon a system under which that board needed only to show Clare's conduct was wrongful by a preponderance of the evidence, whereas disciplinary action under California law requires proof by clear and convincing evidence. The Fourth District found no merit in this contention, finding that the legislature presumably was cognizant of actual or potential differing standards of proof applied by various governmental agencies when it enacted section 5100(g). Further, the court found that this argument has no relevance to Clare's situation because his federal suspension was entered upon his stipulation, not upon any factual findings after submission of evidence; according to the court, "[t]he only fact-finding meaningful for our review is that in which the clear and convincing evidence standard of proof was applied, *i.e.*, in the state's determination whether there was an FHLBB suspension and the existence of the required 'substantial relationship.'"

Clare's next contention was that section 5100(g) is unconstitutionally vague. Citing *Cranston v. City of Richmond*, 40 Cal. 3d 755 (1985), the Fourth District noted that its function is to "determine not whether the rule is vague in the abstract but, rather, whether it is vague as applied to this appellant's conduct in light of the specific facts of this particular case." The court then rejected Clare's argument, stating that it found no vagueness in the application of section 5100(g) to Clare's situation. The court noted that every accountant is charged with knowing rules applicable to his/her accounting practice. "Although Clare asserts he did not know he could have been disciplined by [BOA] as a result of the FHLBB suspension, any subjective unawareness could not have been based on ambiguity in the statute."

Clare's next contention was that the Board's use of his compromise agreement with the FHLBB to impose California discipline was improper and unconstitutional. The Fourth District held that this contention is also without merit, noting that Clare incorrectly contended the discipline was based on that agreement in which he denied any specific wrongdoing. However, Clare's suspension was not based upon admissions of wrongful conduct, but rather upon his actual suspension by the governmental agency.

Clare also argued that the application of section 5100(g) was an improper application of collateral estoppel. According to the Fourth District, Clare's discipline imposed under section 5100(g) did not rely



on collateral estoppel; BOA did not rely on factual findings by FHLBB. Rather, Clare's section 5100(g) discipline was a direct result of the disciplinary order of the FHLBB pursuant to which Clare's right to practice before the FHLBB was suspended for seven years. The court concluded that "it was the formal suspension by the FHLBB that led to Clare's subsequent discipline by [BOA] under subdivision (g). Collateral estoppel was not involved."

Finally, the Fourth District held that substantial evidence supported the trial court's implicit adoption of BOA's finding that the FHLBB suspension is substantially related to Clare's practice of accounting. The court noted that Clare admitted he acted as a conduit for placing Dierdorff's bets with Cylke, and he intentionally refrained from informing Sun's board of directors of the Danzer account, which Dierdorff had wrongfully established, for over five months after he learned of it. Although Clare contended that BOA and the court may not use evidence submitted by him for purposes of mitigation for other purposes, such as support in finding conduct resulting in his FHLBB suspension, the Fourth District concluded that Clare's evidence need not be so limited and may serve as support for their respective findings of conduct relating to Clare's practice of accounting; the court held that such conduct on behalf of Clare clearly is related to his functions or duties as an accountant, as the conduct occurred in the performance of his duties as an accountant for Sun.

In *Moore v. State Board of Accountancy*, 2 Cal. 4th 999 (1992), petitioner Bonnie Moore petitioned for a writ of certiorari to the U.S. Supreme Court in November. Moore seeks review of the recent California Supreme Court decision holding that California's nonlicensed accountants must accompany their use of the terms "accountant" or "accounting" with the disclaimer that they are not licensed by the state or that the services provided do not require a state license. [12:4 CRLR 52] Moore contends that such a prohibition violates the First Amendment's commercial speech protection, especially in light of California statutes authorizing nonlicensed accountants to perform basic accounting services in California.

RECENT MEETINGS

At its November 13-14 meeting in Sacramento, the Board elected Janice Wilson as Board President, Avedick Poladian as Vice-President, and Jeffery Martin as Secretary-Treasurer for 1993.

BOA's Committee on Professional Conduct announced that it will begin de-

termining appropriate ways for licensees to use specialist designations in a firm name; the use of specialist designations in firm names is expected to become increasingly important in the future. BOA wants to ensure that rules are in place so that the public will not be misled or harmed.

FUTURE MEETINGS

May 14-15 in Sacramento.

BOARD OF ARCHITECTURAL EXAMINERS

Executive Officer:
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The Board of Architectural Examiners (BAE) was established by the legislature in 1901. BAE establishes minimum professional qualifications and performance standards for admission to and practice of the profession of architecture through its administration of the Architects Practice Act, Business and Professions Code section 5500 *et seq.* The Board's regulations are found in Division 2, Title 16 of the California Code of Regulations (CCR). Duties of the Board include administration of the Architect Registration Examination (ARE) of the National Council of Architectural Registration Boards (NCARB), and enforcement of the Board's statutes and regulations. To become licensed as an architect, a candidate must successfully complete a written and oral examination, and provide evidence of at least eight years of relevant education and experience. BAE is a ten-member body evenly divided between architects and public members. Three public members and the five architects are appointed by the Governor. The Senate Rules Committee and the Speaker of the Assembly each appoint a public member.

At its October 2 meeting in Sacramento, BAE welcomed former television and motion picture actor Billy Barty as a new public member; Barty is the founder of Little People of America, Inc. and the Billy Barty Foundation, Inc. On December 18, Governor Wilson appointed Betsy Weisman to replace Merlyn Isaak as a public member on BAE; Weisman has been senior planner for the City of San Diego since 1987.

MAJOR PROJECTS

BAE Approves Increase in Examination Fees. Bowing to increasingly restrictive budget demands by the state, in-

creasing operating costs, and a statutory requirement to maintain at least three months' worth of operating expenses in its reserve fund, BAE voted at its October 2 meeting to increase examination fees for each division of its licensing exam. [12:4 CRLR 54]

Specifically, the Board adopted proposed amendments to section 144, Title 16 of the CCR, to reflect the fee increases; beginning January 1, 1993, the fee for each of the eight divisions of the written licensing exam increased \$5 per division; these increases boost the total written examination fee for an in-state candidate from \$450 to \$490. Additionally, the oral examination fee was increased from \$75 to \$100, and the application fee for reviewing a reciprocity candidate's eligibility to take the examination was increased from \$30 to \$35.

At an August 26 public hearing on the regulatory proposals and again at its October 2 meeting, BAE maintained that the increased fees more closely reflect the actual costs of administering the exam and conducting the numerous reviews of candidate eligibility to take any section of the exam. The current examination fee scale results in annual shortages of \$450,000 for administration of the written section and \$225,000 for administration of the oral section. Moreover, the state legislature has severely impaired the Board's ability to operate by requiring the transfer of 10% of BAE's operating expenses (approximately \$420,000) from the Board's fund into the state's general fund on June 30, 1993.

At its October 2 meeting, BAE heard testimony from concerned practitioners that the exam fee increases will reduce the ability of younger candidates to apply for the examination. They preferred to see the costs borne by increasing the annual fees of practicing architects who may be in a better position to pay. The Board countered these arguments by stating that the new fees reflect the cost of administering the exam, that BAE examination fees are still modest when compared with exam fees of other boards, that NCARB will probably raise its 1993 fees anyway, and that the Board is required by law to maintain a three-month reserve. Following discussion, BAE adopted the proposed amendments, which were approved by the Office of Administrative Law on December 17.

Oral Exam Saga Continues. Over the past year, BAE has considered the possible elimination of its oral examination, the articulated purpose of which is to ensure that the entry-level architect understands all phases of architectural practice and the