



Edmund G. Brown Jr.
GOVERNOR

CALIFORNIA ARCHITECTS BOARD

PUBLIC PROTECTION THROUGH EXAMINATION, LICENSURE, AND REGULATION

NOTICE OF MEETING

REGULATORY AND ENFORCEMENT COMMITTEE

April 25, 2013

10:00 a.m. to 2:00 p.m.

California Architects Board, Sequoia Room

2420 Del Paso Road, Suite 109A, Sacramento, CA 95834

The California Architects Board (CAB) will hold a Regulatory and Enforcement Committee (REC) meeting as noted above and via telephone conference at the following location:

Robert De Pietro

Frank De Pietro and Sons

825 Colorado Boulevard, Suite 114, Los Angeles, CA 90041-1714

(323) 257-4253

AGENDA

A. Welcome and Introductions

B. Roll Call

C. Public Comments

D. Consent Agenda (Review and Approve October 11, 2012 REC Summary Report)

E. Enforcement Program Update

F. 2013 Strategic Plan Objectives

- 1) Discuss and Possible Action on Strategic Plan Objective to Examine Definition of the Practice of Architecture and Potentially Consider Creating a Definition of "Instruments of Service" for a Regulatory Proposal
- 2) Discuss and Possible Action on Strategic Plan Objective to Review and Consider Adding Mediation to Reporting Requirements [Business and Professions Code (BPC) Section 5588]
- 3) Discuss and Possible Action on Strategic Plan Objective to Review and Update CAB's Disciplinary Guidelines
- 4) Discuss and Possible Action on Strategic Plan Objective to Review and Consider Adding a Provision Regarding "Scope of Work" to the Written Contract Requirements (BPC Section 5536.22)

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SUITE 105
SACRAMENTO,
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916-574-7220 T
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cab@dca.ca.gov
www.cab.ca.gov

G. Adjournment

Continued

A quorum of Board members may be present during all or portions of the meeting, and if so, such members will only observe the REC meeting. Agenda items may not be addressed in the order noted above and the meeting will be adjourned upon completion of the agenda, which may be at a time earlier than that posted in this Notice.

The meeting is open to the public and accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Hattie Johnson at (916) 575-7203, emailing Hattie.Johnson@dca.ca.gov, or sending a written request to the California Architects Board, 2420 Del Paso Road, Suite 105, Sacramento, CA 95834. Providing your request at least five business days before the meeting will help to ensure availability of the requested accommodation.

The notice and agenda for this meeting and other meetings of the CAB can be found on the Board's Web site: cab.ca.gov. For further information regarding this agenda, please contact Hattie Johnson at (916) 575-7203.

WELCOME AND INTRODUCTIONS

Michael Merino, Chair of the Board's Regulatory and Enforcement Committee, will open the meeting with introductions and remarks.

ROLL CALL

Roll is called by the REC Vice Chair or, in his/her absence, by a member designated by the Chair.

MEMBER ROSTER

Fred Cullum
Robert De Pietro
Robert Ho
Gary L. McGavin
Michael Merino
Phyllis Newton
Fermin Villegas
Sheran Voigt

PUBLIC COMMENTS

Members of the public may address the REC at this time. The REC Chair may allow public participation during other agenda items at his/her discretion.

CONSENT AGENDA

The Committee is asked to review and approve the October 11, 2012 REC Summary Report.



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SUMMARY REPORT

REGULATORY & ENFORCEMENT COMMITTEE MEETING

October 11, 2012

Sacramento, California

Committee Members Present

Sheran Voigt, Chair
Robert De Pietro – joined meeting at 10:10 a.m.
Robert George – joined meeting at 10:27 a.m.
Michael Merino
Phyllis A. Newton, Esq.
Fermin Villegas

Committee Members Excused

Fred Cullum
Larry Segrue

Board Staff Present

Doug McCauley, Executive Officer
Vickie Mayer, Assistant Executive Officer
Hattie Johnson, Enforcement Officer
Bob Carter, Architect Consultant
Don Chang, Assistant Chief Counsel, Department of Consumer Affairs

Guests

Yeaphana LaMar, Department of Consumer Affairs' Legislative and Policy Review
Richard Conrad, past Regulatory and Enforcement Committee (REC) Member
Kurt Cooknick, Director of Regulation and Practice, The American Institute of Architects, California Council (AIACC)

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Call to Order

REC Chair Sheran Voigt called the meeting to order at 10:05 a.m. Since there was not quorum, the REC met as a subcommittee to review minutes.

Members, staff, and guests introduced themselves.

Robert De Pietro joined the meeting at 10:10 a.m., resulting in a quorum.

A. Review and Approve May 10, 2012 REC Summary Report

Ms. Voigt asked if there were any comments, corrections, or questions regarding the May 10, 2012 REC Summary Report. There were none.

A motion was made by Michael Merino and seconded by Fermin Villegas to approve the May 10, 2012 REC Summary Report. The motion passed 5-0.

B. Update, Discuss, and Possible Action on Strategic Plan Objective to Define “Instruments of Service” for a Potential Regulatory Proposal

Ms. Voigt asked Bob Carter to present this agenda item. Mr. Carter explained to the REC that this issue is a result of a question previously raised by the Certified Access Specialist Institute (CASI), which represents approximately 150 certified access specialists (CASp) in California. He noted that CASI asked whether CASp services performed by a California licensed architect are considered instruments of architectural services; and, therefore, subject to the requirements of the Architects Practice Act (Act).

Mr. Carter indicated that CASI had obtained an opinion from the Legislative Counsel, who opined that CASp reports by architects do not constitute instruments of service. He stated that the Board did not agree with this opinion and sent a response to CASI opining that services provided by CASp’s who are also licensed architects in California, are required to follow the requirements of the Act.

Mr. Carter indicated that REC member Phyllis Newton researched case law concerning “instruments of service” and was able to find two cases. Mr. Carter noted that one was dated in 1950 and the other 1955. He added that the latter of the two opinions was based on a statute that no longer exists. Mr. Carter indicated that the practice of architecture has changed immensely since that time. Doug McCauley asked if the National Council of Architectural Registration Boards might have a model law concerning instruments of service.

Mr. Villegas stated he was concerned that if the definition was too broad, it could be applied to other sections of law, i.e., requiring sketches to be stamped and signed by licensees pursuant to Business and Professions Code (BPC) section 5536.1.

Kurt Cooknick stated that he felt the Board, possibly working with AIACC, should first review the definition of the practice of architecture, contained in BPC section 5500.1. Mr. Cooknick indicated that the practice of architecture had evolved since this section was written and architects do much more than the definition contained in BPC section 5500.1. He stated that if the definition of practice were updated, possibly then the definition of instruments of service could be more easily determined.

Don Chang stated that he agreed with Mr. Cooknick. He noted that the definition of practice should be assessed and updated to today's contemporary practice of architecture. He indicated that Legislative Counsel based its opinion on the current definition of the practice of architecture, which may explain its view.

Mr. Chang noted that the assessment and updating of the definition of architectural practice should be completed before the Board considers a definition of instruments of service.

A motion was made by Michael Merino and seconded by Fermin Villegas to recommend to the Board that an analysis of the contemporary practice of architecture be made to determine whether BPC section 5500.1 definition should be amended, followed by a further review of the definition of "instruments of service." The motion passed 6-0.

C. Update, Discuss, and Possible Action on Strategic Plan Objective to Initiate a Conversation with The American Institute of Architects, California Council to Explore the Feasibility of a Qualifications-Based Selection Enforcement Process (Senate Bill 1424)

Ms. Voigt requested that Doug McCauley present this agenda item. Mr. McCauley stated that the Board's 2012 Strategic Plan directed the REC to meet with AIACC to explore the possibility of a qualifications-based selection (QBS) enforcement process. He indicated that Government Code (GC) section 4526, also known as the "Mini-Brooks Act," requires that contracts with state and local agencies for professional services of private architectural, engineering, environmental, land surveying, or construction project management firms, be awarded on demonstrated competence and professional qualifications rather than competitive bidding.

Mr. McCauley explained that Senate Bill (SB) 1424 was sponsored by AIACC. He noted that it would have required architects, engineers, and land surveyors to comply with GC section 4526 when competing for contracts with state or local agencies. He indicated that this bill failed to pass; however, AIACC had indicated it will re-introduce the bill next year. Mr. McCauley reported that staff had met with Mr. Cooknick to discuss its concerns with the bill; specifically, this appears to be an issue with local agencies who do not follow QBS when contracting for professional services. He added that GC section 4526 mandates that State agencies adopt by regulation procedures that assure these services are engaged on the basis of demonstrated competence and qualifications. He noted that the law provides local agencies discretionary authority of adopt procedures by ordinance. Mr. Cooknick added that he would take the Board's concerns to the AIACC Board meeting in November.

A motion was made by Michael Merino and seconded by Robert De Pietro to recommend to the Board that its position on this bill be that AIACC's legislation should be re-focused on the violators of the QBS process rather than licensees.

Mr. Cooknick explained the objective of AIACC's proposed legislation concerning QBS. He stated that it was intended to give licensees a tool, such as the written contract law provides. He noted that the written contract law protects both the consumer/client and the architect, by ensuring clarity on expectations for the project, and provides the architect the ability to inform a client that: "While they would like to proceed without a signed agreement, doing so would be a violation of the Architects Practice Act and, that they would be subject to enforcement action by the CAB."

Mr. Cooknick stated that in this regard the AIACC's proposed legislation is similar in that it provides architects with the ability to state that: "Providing a fee would be a violation of the Architects Practice Act and that they would be subject to enforcement action by the CAB."

Mr. Merino questioned if this would be the appropriate way to address the issue.

The motion passed 6-0.

D. Discuss and Possible Action on Regulatory Proposal Regarding Board Delegation to Executive Officer Regarding Stipulated Settlements to Revoke or Surrender License

Ms. Voigt asked Hattie Johnson to present this agenda item. Ms. Johnson advised Committee members that this agenda item was informational. She reminded the REC that the Board had voted last year to delegate authority to the Executive Officer (EO) to approve stipulated settlements to revoke or surrender a license. She noted that this would require an amendment to California Code of Regulations (CCR) section 103. She explained that this section currently describes the authorities the Board had delegated to the EO for various disciplinary functions.

Ms. Johnson noted that the Board approved proposed language to amend CCR section 103, which adds the Board's delegation to the EO to approve stipulated settlements to revoke or surrender a license, and directed staff to proceed with the rulemaking file. She directed the REC to the attachment to this agenda item, which contained the approved proposed regulatory language.

A motion was made by Michael Merino and seconded by Fermin Villegas that this agenda item is received and filed. The motion passed 6-0.

The meeting adjourned at 11:10 a.m.

ENFORCEMENT PROGRAM UPDATE

Attached is the Enforcement Program Update. The report provides a synopsis of Board and Enforcement Unit activities and projects of interest to the Regulatory and Enforcement Committee.

Also included in this item is an overview of Citations Issued and Final and Administrative Actions through April 10, 2013.

ENFORCEMENT PROGRAM UPDATE

April 2012 through March 2013

Architect Consultants

Building Official Contact Program:

Between April 2012 and March 2013, the architect consultants responded to a total of 131 telephone and/or email contacts from building officials. These types of contacts generally include discussions regarding the California Architects Board's (Board) policies and interpretations of the Architects Practice Act (Act), stamp and signature requirements, and scope of architectural practice.

Architect consultant Bob Carter made a presentation on June 1, 2012, to the meeting of the Monterey, East Bay, and Peninsula Chapter (Tri-Chapter) of the International Code Council. He gave an update on the Board's current activities then responded to the members' questions. With 75 - 80 attendees, which represented 31 city agencies, two county agencies, three vendors, and 16 consultant groups, the questions centered on supplanting architects, release of documents, stamping documents and perceived unlicensed practice.

A Request for Proposal for the Board's architect consultant was released February 19, 2013. Submission of the proposal was due March 19, 2013. One proposal was received. The proposal was evaluated in the First Phase Evaluation on March 27, 2013, and the proposer received an overall technical score of 30 or more and will be proceeded on to the Second Phase Evaluation, an oral examination.

California Building Officials (CALBO):

The 2013 Annual Business Meeting of CALBO was held February 18-22, 2013. The Board sponsored a vendor table as part of the Exhibitor's Program, which was staffed by Board architect consultants Bob Carter and Barry Williams. Enforcement Officer Hattie Johnson and Doug McCauley attended as well. There were approximately 200 people representing various building departments throughout the State. The Board had 25 documented direct contacts. The Board received compliments on the Board's *Consumer's Guide to Hiring an Architect* and the *Consumer Tips for Design Projects*, resulting in requests for additional copies. At least two Building Officials specifically thanked the Board for the "Planning Department" letter jointly issued last year with the Board for Professional Engineers, Land Surveyors, and Geologists.

Education/Information Program:

The architect consultants are the primary sources for responses to technical and/or practice related questions from the public and licensees. Between April 2012 and March 2013, there were a total of 157 telephone and/or email contacts requesting information, advice and/or direction. Licensees requesting clarification of business name requirements or advice on business organization accounted for 86 of the contacts, and other inquiries focused on written contract requirements, stamp and signature requirements, out-of-state licensees seeking to do business in California, and clarification regarding the scope of practice relative to engineering disciplines.

Board Meetings

Since April 2012, the Board met on June 14, 2012, in Sacramento, September 13, 2012, in Walnut at Mt. San Antonio College, December 5-6, 2012, in Ontario and March 7, 2013 at the University of California, Berkeley. The second day of the December meeting included a strategic planning session facilitated by staff from Department of Consumer Affairs' (DCA) Strategic Organization, Leadership & Individual Development Training Solutions. Meetings for the remainder of 2013 are tentatively scheduled for June 13 in Sacramento, September 12 in Southern California, and December 11-12.

Budget

The Board was given a Department of Finance (DOF) directive (Budget Letter 12-05) related to out-of-state travel (OST). Requests for OST were to be divided into two categories (mission critical and discretionary). Mission critical was defined as travel related to enforcement, auditing, revenue generation/collection, requirement by statute, litigation, or requests by the Federal Government. Staff prepared and submitted the fiscal year 12/13 requests to DCA on May 15, 2012. On June 7, 2012 the Board was advised that the Governor's Office completed its review and approved the OST Blanket for DCA; however, the Board's requests were denied.

On July 18, 2012, the Board was directed by the DCA Office of Human Resources to implement the new Personal Leave Program (PLP) 2012. The directive was the result of a side letter to labor agreements with state employee unions. Effective July 1, 2012, through June 30, 2013, the State Controller's Office is reducing employees' monthly gross salary by 4.62 percent to cover the cost of eight hours of PLP leave credits to be used by the employees in the same pay period.

California Supplemental Examination (CSE) Administration

Since its launch on February 1, 2011, the new computer-delivered, multiple-choice format of the CSE has been administered to 1,935 candidates through February 23, 2013. Of those candidates, 1,141 (59%) passed and 794 (41%) failed.

CSE Development

The CSE development is a continual ongoing process. The current cycle of development workshops is expected to conclude in April with the launch of the latest examination form. A new Inter-Agency Contract Agreement (IAC) with Office of Professional Examination Services for CSE development is planned to commence on July 1, 2013. The IAC will be presented to the Board for approval at the June 13, 2013 meeting.

Board staff is also planning for the next Occupational Analysis (OA). The Board typically conducts an OA every five to seven years by surveying practitioners in order to determine the necessary knowledge, skills, and abilities to competently perform architectural services. The previous OA was conducted in 2007. It is planned that the next OA will be conducted in the 2013/14 fiscal year.

Communications Committee

The Communications Committee met on June 20, 2012, in Sacramento. During this meeting the Committee: 1) reviewed and approved the July 28, 2011, meeting summary report; 2) approved

articles for the fall and winter 2012 newsletter issues; and 3) reviewed and approved recommendations for the Board’s consideration to achieve the 2012 Strategic Plan objectives assigned to the Committee.

Enforcement Program Statistics

<u>Statistics</u>	<u>Current Month</u> March 2013	<u>Prior Month</u> February 2013	<u>Prior Year</u> March 2012
Total Cases Received and Opened*:	15	16	26
Complaints to Outside Expert:	0	0	0
Complaints to DOI:	2	0	1
Complaints Pending DOI:	4	2	2
Complaints Pending AG:	2	2	6
Complaints Pending DA:	4	3	2
Total Cases Closed*:	27	13	30
Total Cases Pending*:	83	87	83
Settlement Cases (§5588) Opened:	3	2	1
Settlement Cases (§5588) Pending:	15	13	14
Settlement Cases (§5588) Closed:	1	3	3
Citations Final:	2	0	0

*Total Cases categories include both complaint and settlement cases

Legislation

Assembly Bill (AB) 186 (Maienschein) was introduced on January 28, 2013, and would authorize the Board to issue a provisional license to a spouse, domestic partner or other legal companion of an active duty member of the Armed Forces of the United States. The legislation was amended to include a requirement that candidates meet specified preconditions of a disciplinary nature for licensure. It is scheduled to be heard by the Assembly Business, Professions, and Consumer Protection Committee (BPCP) on April 23, 2013.

AB 630 (Holden) was introduced on February 20, 2013, and would prohibit the use of an architect’s instruments of service without written contract or written assignment authorization. It is scheduled to be heard by the BPCP on April 23, 2013.

Senate Bill 308 (Price) was introduced on February 15, 2013, and is the sunset bill for the California Council of Interior Design Certification. The legislation is scheduled to be heard by the Senate Business, Professions, and Economic Development Committee on April 29, 2013.

Newsletter

The next issue of the Board’s newsletter is scheduled for publication in April 2013.

Outreach

On February 13, 2013, Bob Carter, Board’s architect consultant, and Tim Rodda, Examination/Licensing Analyst, provided a presentation at The American Institute of Architects, Central Valley chapter office to candidates explaining the enforcement process, licensing

requirements, and the upcoming ARE blackout. Approximately 20 individuals attended the presentation.

Regulatory Changes

California Code of Regulations (CCR) section 103, Delegation of Certain Functions – The Board’s 2011 Strategic Plan directed the Regulatory and Enforcement Committee (REC) to review and make recommendations regarding Senate Bill (SB) 1111 proposals. This legislation failed to pass, but DCA encouraged boards and bureaus to review nine provisions included in SB 1111 to determine whether they might be utilized to improve their enforcement processes. After reviewing the provisions, the REC recommended to the Board it amend CCR section 103 to allow the Board to delegate authority to the Board’s Executive Officer to approve stipulated settlements to revoke or surrender a license. The Board approved the recommendation on September 15, 2011, and on December 7, 2011, directed staff to proceed with the regulatory change. Staff prepared the required notice and documentation, and filed the rulemaking package with the Office of Administrative Law. The public hearing was held on April 3, 2013, in Sacramento and there were no comments.

Sunset Review

The Sunset Review hearings for DCA boards were on March 11 and 18, 2013. The California Council for Interior Design Certification was reviewed on the 18th and is of interest to the Board. Staff is gathering more information on the hearing to share with the Board.

The Board’s next Sunset Review report is due in the Fall of 2014; preparations are now underway.

CITATIONS ISSUED AND FINAL

May 2, 2012 through April 10, 2013

Jaime Canez
Out as (Los Angeles)

BPC section 5536(a) – Practice Without License or Holding Self Architect

The Board issued a one-count administrative citation that included a \$2,500 civil penalty to Jaime Canez, dba Permit Expediting Architect, an unlicensed individual, for alleged violations of Business and Professions Code (BPC) section 5536(a) (Practice Without License or Holding Self Out as Architect). The action alleged that Canez executed a written “PROPOSAL AND CONTRACT” with a letterhead that stated “Permit Expeditings (sic) Architcet (sic).” On or about September 6, 2011, Canez presented the client with a document entitled “CONTRACT PER PROPOSAL.” The proposal contained a letterhead stating, “PERMIT EXPEDITING/ARCHITECT.” Under the heading “Work Description” it stated that “Permit Expediting/Architect will design a new 1,650 sq. ft. two story...” The citation became final on July 19, 2012.

Jae Chung
(Buena Park)

BPC section 5536(a) – Practice Without License or Holding Self Out as Architect

The Board issued a one-count modified administrative citation that included a \$5,000 civil penalty to Jae Chung, an unlicensed individual, for alleged violations of BPC section 5536(a) (Practice Without License or Holding Self Out as Architect). The action alleged that Chung executed an Architectural Services Agreement for a tenant improvement project located in Torrance, California. Chung’s agreement included “Architectural” services. In the agreement, Chung offered to provide plans for a storefront interior alteration which required seismic design expertise. Chung paid the civil penalty, satisfying the citation. The citation became final on August 27, 2012.

David Allen Dent, Jr.
(San Diego)

BPC section 5536(a) – Practice Without License or Holding Self Out as Architect

The Board issued a three-count administrative citation that included a \$7,500 civil penalty to David Allen Dent, Jr., an unlicensed individual, for alleged violations of BPC section 5536(a) (Practice Without License

or Holding Self Out as Architect). The action alleged that Dent offered to prepare an interior remodel for a kitchen upgrade with new grease trap on a commercial project located in La Mesa, California. On or about June 13, 2011, Dent affixed a fraudulent architect's stamp to the drawings, which read: "Licensed Architect," "David A. Dent," "C-57557," "Ren. "6/12," and the legend "State of California." Dent submitted drawings for the project to the City of La Mesa Community Development Department/Building Division, for a building permit. On the Permit Application, Dent identified himself as an "Architect." Dent affixed a fraudulent architect's stamp to another set of drawings for a commercial property located in San Diego, California, which read: "Licensed Architect," "David A. Dent," "C-57557," "Ren. "____," and the legend "State of California." The citation became final on August 1, 2012.

Steve Eide
(Covina)

BPC section 5536(a) – Practice Without License or Holding Self Out as Architect

The Board issued a one-count administrative citation that included a \$750 civil penalty to Steve Eide, dba Drafting & Design, LTD., an unlicensed individual, for an alleged violation of BPC section 5536(a) (Practice Without License or Holding Self Out as Architect). The action alleged that Eide executed a contract offering to provide conceptual design of a new facade on an existing commercial building (gas station) that leaves existing gas pumps, tanks and building in same location, for a project located in San Dimas, California. The design concept evolved into a new commercial building covering 2,561 square feet. Eide prepared architectural drawings for the evolved commercial building. Eide paid the civil penalty, satisfying the citation. The citation became final on January 23, 2013.

Kathryn Guillot
(North Hollywood)

BPC section 5536(a) – Practice Without License or Holding Self Out as Architect

The Board issued a one-count administrative citation that included a \$2,000 civil penalty to Kathryn Guillot, an unlicensed individual, for an alleged violation of BPC section 5536(a) (Practice Without License or Holding Self Out as Architect). The action alleged that Guillot's company website, guillotdesigns.com, described her services as "Architecture" and career as "Architectural." Guillot's company was also listed on the website www.yelp.com under the "Architects" category. The citation became final on August 20, 2012.

Edward V. Gulian
(Long Beach)

BPC section 5536(a) – Practice Without License or Holding Self Out as Architect

The Board issued a one-count citation that included a \$2,500 civil penalty to Edward V. Gulian, an unlicensed individual, for an alleged violation of BPC section 5536(a) (Practice Without License or Holding Self Out as Architect). The action alleged that during the investigation, a search of the Internet revealed Gulian’s company website offered “Architectural” as one of the services they provide. Gulian paid the civil penalty, satisfying the citation. The citation became final on May 15, 2012.

David Pierce Hohmann
(Costa Mesa)

BPC section 5536.22(a) – Written Contract

The Board issued a one-count citation that included a \$500 civil penalty to David Pierce Hohmann, architect license number C-20379, for an alleged violation of BPC section 5536.22(a) (Written Contract). The action alleged that Hohmann provided clients with a written contract for architectural services for an addition and remodel of their existing two-story single-family residence. Hohmann failed to have the clients execute a written contract, prior to commencing work. The citation became final on May 21, 2012.

Michael Myungsoo Ko
(Los Angeles)

BPC section 5536.22(a) – Written Contract
BPC section 5558 – Business Entity

The Board issued a two-count administrative citation that included a \$1,500 civil penalty to Michael Myungsoo Ko, architect license number C-22356, for alleged violations of BPC sections 5536.22(a) (Written Contract) and 5558 (Business Entity). The action alleged that Ko verbally agreed to provide the client with permit processing services and plans for remodeling a duplex into a child care center for a project located in Los Angeles, California. Ko prepared plans and was paid for his services. However, Ko failed to execute a written contract prior to commencing work. Ko did not file with the Board the proper and current name and address of the entity through which he provides architectural services as mandated by BPC section 5558. Ko paid the civil penalty, satisfying the citation. The citation became final on July 3, 2012.

Ricardo Alberto Magana (Hayward) CCR section 104 – Filing of Addresses
CCR section 160(b)(2) – Rules of Professional Conduct
BPC section 5536.22(a)(3) and (5) – Written Contract

The Board issued a three-count modified citation that included a \$2,000 civil penalty to Ricardo Alberto Magana, architect license number C-23788, for alleged violations of CCR sections 104 (Filing of Addresses) and 160(b)(2) (Rules of Professional Conduct) and BPC section 5536.22(a)(3) and (5) (Written Contract). The action alleged that Magana failed to notify the Board of his proper and current business name and of a change of address in a timely manner, failed to respond to the Board’s request for additional information, and failed to include the name and the license number of the architect, and a description of the procedure to be used by either party to terminate the contract in his proposal for professional services. Magana paid the civil penalty, satisfying the citation. The citation became final on May 31, 2012.

Sonny Leroy Mascarenas (Murrieta) BPC section 5536.22(a) – Written Contract

The Board issued a one-count administrative citation that included a \$1,000 civil penalty to Sonny Leroy Mascarenas, architect license number C-15691, for an alleged violation of BPC section 5536.22(a) (Written Contract). The action alleged that Mascarenas agreed to provide an estimate for construction cost to add one window to the living room and family room; upgrade the kitchen and bathrooms; make the entry foyer more private from the adjacent living room; replace all sliding doors with French doors; and, upgrade flooring, paint, and outside landscaping and stonework, on a residence located in Huntington Beach, California. Mascarenas prepared as-built plans and preliminary architectural plans for the project and was paid for his services. Mascarenas failed to execute a written contract prior to commencing professional services. The citation became final on June 19, 2012.

Richard Stephen Minert (Los Gatos) BPC section 5536.22(a)(3)(4) – Written Contract
BPC section 5584 – Willful Misconduct

The Board issued a two-count administrative citation that included a \$750 civil penalty to Richard Stephen Minert, architect license number C-17511, for alleged violations of BPC sections 5536.22(a)(3) and (4) (Written Contract) and 5584 (Willful Misconduct). The action alleged that Minert’s written contract failed to include the client’s address, Minert’s correct license number and a description of the procedure that the architect and the client will use to accommodate additional services. Minert also failed to meet the standard of care by not providing

disciplined direction and leadership in this project. The citation became final on April 4, 2013.

Michael Mueller
(Los Angeles)

BPC section 5536(a) – Practice Without License or Holding Self Out as Architect

The Board issued a one-count administrative citation that included a \$2,500 civil penalty to Michael Mueller, an unlicensed individual, for alleged violations of BPC section 5536(a) (Practice Without License or Holding Self Out as Architect). The action alleged that Mueller’s website, muellerdesigninc.com, revealed that his firm, Mueller Design, Inc. offered to provide “residential and commercial architectural services, interior design...” The website stated “Established in 1994, Mueller Design Incorporated is a full-service architecture and multi-faceted interior design firm; serving both residential and commercial clients; offices are located in Los Angeles and New York.” The website further stated “Principal architect and interior designer, Michael R. Mueller...” and that he provided “the firm with senior leadership and design talent specializing in residential architecture and interior design.” The citation became final on October 16, 2012.

A. Tuan Nguyen
(Fountain Valley)

BPC section 5536(a) – Practice Without License or Holding Self Out as Architect

The Board issued a one-count administrative citation that included a \$2,500 civil penalty to A. Tuan Nguyen, an unlicensed individual, for an alleged violation of BPC section 5536(a) (Practice Without License or Holding Self Out As Architect). The action alleged that Nguyen’s website, located at www.atngroup.org, revealed that his firm, ATN International Group, has “Architects, Technologists and Research Team.” The website also listed the name of a California licensed architect who has no affiliation with the firm. The citation became final on September 18, 2012.

Lilan Pan
(Grenoble, France)

BPC section 5536(a) – Practice Without License or Holding Self Out as Architect
BPC section 5536.1(c) – Unauthorized Practice

The Board issued a one-count modified administrative citation that included a \$1,000 civil penalty to Lilan Pan, an unlicensed individual, for alleged violations of BPC sections 5536(a) (Practice Without License or Holding Self Out as Architect) and 5536.1(c) (Unauthorized Practice). The action alleged that Pan provided an agreement offering to provide

professional design services for a project located in Pasadena, California. Pan prepared design plans for a multi-family residential condominium consisting of six units built over a subterranean parking facility. A residential condominium of six units is not a building described in BPC section 5537(a) as an exempt building. Pan paid the civil penalty, satisfying the citation. The citation became final on September 12, 2012.

Christopher W. Raker
(Mill Valley)

BPC section 5536.22(a) – Written Contract

The Board issued a three-count modified citation that included a \$1,500 civil penalty to Christopher W. Raker, architect license number C-9590, for alleged violations of BPC section 5536.22(a) (Written Contract). The action alleged that Raker failed to obtain executed written contracts when providing professional services to a client for one commercial and two residential projects. Raker paid the civil penalty, satisfying the citation. The citation became effective on June 27, 2012.

Deryl L. Redden
(Fullerton)

BPC section 5536.22(a) – Written Contract

The Board issued a one-count modified administrative citation that included a \$500 civil penalty to Deryl L. Redden, architect license number C-18293, for an alleged violation of BPC section 5536.22(a) (Written Contract). The action alleged that Redden provided consulting management services for a client located in Los Angeles, California. Redden invoiced the client \$1,620.00 for consulting management services. The client sent a letter to Redden stating that an agreement was never reached for Redden's services. Redden failed to execute a written contract prior to commencing work as required by BPC section 5536.22(a). Redden paid the civil penalty, satisfying the citation. The citation became final on January 30, 2013.

David E. Rozier
(Buena Park)

BPC section 5536(a) – Practice Without License or Holding Self Out as Architect

BPC section 5536.1(c) – Unauthorized Practice

The Board issued a two-count administrative citation that included a \$5,000 civil penalty to David E. Rozier, an unlicensed individual, for alleged violations of BPC sections 5536(a) (Practice Without License or Holding Self Out as Architect) and 5536.1(c) (Unauthorized Practice). The action alleged that Rozier's firm, Othello Enterprises Corporation was listed in the Los Angeles Times Newspaper under the heading

entitled “Architecture.” The advertisement stated that the firm provides “Architecture Plan and Permits.” The website for Othello Enterprises Corporation stated that “We are architects and engineers committed to providing quality solutions at affordable prices,” and stated that David E. Rozier is the President. Rozier also prepared plans for a multi-unit apartment building. The title block on the plans stated “Othello Enterprises Corporation” and “Drawn By: DER.” The citation became final on October 18, 2012.

Karen M. Rozier
(Buena Park)

BPC section 5536(a) – Practice Without License or Holding Self Out as Architect

The Board issued a three-count modified administrative citation that included a \$7,500 civil penalty to Karen M. Rozier an unlicensed individual, for alleged violations of BPC section 5536(a) (Practice Without License or Holding Self Out as Architect). The action alleged that Rozier provided a client with Design Services Contracts to provide professional design services for a multi-unit apartment building in Los Angeles, California. The contracts contained the words “Architect” and “Architectural” throughout. The citation became final on September 12, 2012.

Rogelio Sanchez
(Riverside)

BPC section 5536(a) – Practice Without License or Holding Self Out as Architect

BPC section 5536.2(c) – Unauthorized Practice

The Board issued a three-count administrative citation that included a \$6,000 civil penalty to Rogelio Sanchez, an unlicensed individual, for alleged violations of BPC sections 5536(a) (Practice Without License or Holding Self Out as Architect) and 5536.1(c) (Unauthorized Practice). The action alleged that Sanchez gave a client his company (Prisma Plans) business card which contained the words “Architectural & Engineering” as services he provides. Sanchez offered “Architect Plans” in a Proposal to the client. On an invoice, Sanchez’ company letterhead contained the words “Architecture Design.” Sanchez executed a Proposal with a client offering to provide site plan, floor plan, electrical plan sections, and roof plan elevations (architect plans) for a “Hair Salon” project located in Riverside, California. The project adds approximately 362 square feet of new salon area to the existing structure. New construction includes shear walls, braced wall panels and seismic anchors, all of which affect the structural characteristics of the building including the seismic design and the structural impacts of the addition on the overall building. A commercial hair salon is not a building described in BPC sections 5537(a) and 5538 as an exempt building. Sanchez prepared plans for the

project mentioned above. The citation became final on December 3, 2012.

Eddy Zhong Shen
(Sunnyvale)

BPC Section 5558 – Business Entity

The Board issued a one-count administrative citation that included a \$1,000 civil penalty to Eddy Zhong Shen, architect license number C-12717, for an alleged violation of BPC section 5558 (Business Entity). The action alleged that Shen provided architectural services through his company, LRS Associates Inc., Architecture and Planning since May 17, 1982. As of January 7, 2013, Shen had not filed with the Board the proper and current name and address of the entity through which he provides architecture services, as mandated by BPC section 5558. In 2010, Shen was issued a citation for failure to file the proper and current name and address of the entity through which he provides architecture services. The citation became final on March 4, 2013.

Anthony Paul Spann
(Santa Barbara)

BPC section 5584 – Negligence
CCR section 160(f)(1) – Rules of Professional Conduct

The Board issued a two-count modified administrative citation that included a \$1,000 civil penalty to Anthony Paul Spann, architect license number C-17602, for alleged violations of BPC section 5584 (Negligence) and CCR section 160(f)(1) (Rules of Professional Conduct). The action alleged that Spann failed to properly coordinate the architectural documents with the structural engineer's drawings and he failed to obtain the clients' consent for changes in writing which resulted in construction changes that the clients had not anticipated or wanted. Spann paid the civil penalty, satisfying the citation. The citation became final on December 19, 2012.

Richard Alan Stupin
(Whittier)

BPC section 5536.22(a) – Written Contract
BPC section 5558 – Business Entity

The Board issued a three-count administrative citation that included a \$1,500 civil penalty to Richard Alan Stupin, architect license number C-6018, for alleged violations of BPC sections 5536.22(a) (Written Contract) and 5558 (Business Entity). The action alleged that Stupin failed to execute a written contract prior to commencing professional services. Stupin did not file with the Board the proper and current name and address of the entity through which he provides architectural services as mandated by BPC section 5558. Stupin paid the civil penalty, satisfying the citation. The citation became final on November 7, 2012.

Mark Thene
(Long Beach)

BPC section 5536(a) – Practice Without License or Holding Self Out as Architect

The Board issued a one-count citation that included a \$2,000 civil penalty to Mark Thene, an unlicensed individual, for an alleged violation of BPC section 5536(a) (Practice Without License or Holding Self Out as Architect). The action alleged that during the investigation, a search of the Internet revealed Thene’s company website advertised/offered “Architectural” services. The citation became final on April 30, 2012.

Russell Ernest Tsuchida
(La Mesa)

BPC section 5536.22(a)(4) and (5) – Written Contract

The Board issued a two-count administrative citation that included a \$1,000 civil penalty to Russell Ernest Tsuchida, architect license number C-17644, for alleged violations of BPC section 5536.22(a)(4) and (5) (Written Contract). The action alleged that Tsuchida’s written proposal for architectural services failed to include the procedure that the architect will use to accommodate additional services and it did not contain the procedure to be used by either party to terminate the contract. Tsuchida paid the civil penalty, satisfying the citation. The citation became final on March 18, 2013.

Administrative Actions

May 2, 2012 through April 10, 2013

HAROLD CRAIG HUDSON (San Francisco) Effective October 18, 2012, Harold Craig Hudson's architect license number C-14487 was revoked; however, revocation was stayed and he was placed on probation for six years with specific terms and conditions, including reimbursing the Board \$2,125 for its investigative and prosecution costs and reimbursing the client \$2,2167.10. The action came after a Proposed Decision was adopted by the Board.

An Accusation was filed against Hudson for alleged violations of Business and Profession Code sections 5536(a) (Practice Without License or Holding Self Out as Architect), 5536.22 (Written Contract), 5584 (Negligence or Willful Misconduct) and California Code of Regulations section 160(b)(2) (Willful Misconduct). The Accusation alleged that on or about June 12, 2007, Hudson executed a written contract with a client to provide architectural services for a residence in San Francisco, California. He received money for architectural services; however, he failed to perform the services. Hudson also failed to respond to requests for information regarding the Board's investigation.

On or about June 12, 2012, Hudson issued an invoice to clients for architectural services for a residence located in Los Altos, California. He did not provide a written contract for the project, he performed architectural work, and held himself out as an architect while his architect's license was expired.

DISCUSS AND POSSIBLE ACTION ON STRATEGIC PLAN OBJECTIVE TO EXAMINE DEFINITION OF THE PRACTICE OF ARCHITECTURE AND POTENTIALLY CONSIDER CREATING A DEFINITION OF “INSTRUMENTS OF SERVICE” FOR A REGULATORY PROPOSAL

The California Architects Board’s (Board) 2013 Strategic Plan directs the Regulatory and Enforcement Committee (REC) to examine the definition of the practice of architecture and potentially consider creating a definition of “instruments of service” for a regulatory proposal.

History

The Board’s 2012 Strategic Plan directed the REC to define “instruments of service” and determine whether there should be a regulation defining such.

This issue arose based upon a question by the Certified Access Specialist Institute (CASI), which represents approximately 150 certified access specialists (CASp) in California. CASI inquired whether CASp services performed by a California licensed architect are considered instruments of architectural services and covered under the requirements of the Architects Practice Act (Act). The Board advised CASI that CASp services performed by California licensed architects are considered to be instruments of service, covered by the Act.

There are numerous terms used in the Act to describe the documents an architect may prepare or exercise responsible control over, which demonstrate that the term “instruments of service” includes more than just final documents for construction. Below are the various references to documents found in the Act:

- Business and Professions Code section (BPC) 5535.1: uses “...*architectural instruments of service...*” in definition of responsible control;
- BPC 5536.1 (a) and (c): uses “...*plans, specifications, and instruments of service...*” in defining documents to be signed and stamped;
- BPC 5536.22: uses “...*plans and specifications for the construction, alteration, improvement, or repair of a building or structure...*” in clarifying statement of licensure and signing and stamping;
- BPC 5536.25: uses “...*plans, specifications reports, or documents...*” and “...*or other contract documents...*” in defining types of documents an architect would sign and stamp for which they are not responsible for damages due to unauthorized changes;
- BPC 5537 (a): uses “...*plans, drawings, or specifications...*” in description of documents for exempt project types;

- BPC 5537 (b): uses “...plans, drawings, specifications, or calculations...” to describe documents to be signed and stamped by an architect or engineer to mitigate non-conventional framing issues;
- BPC 5538: uses “...plans, drawings, specifications, instruments of service, or other data...” in definition of exempt non-structural or non-seismic projects; and
- California Code of Regulations section (CCR) 151: uses “...any instrument of service...” and “...all stages of the design documents...” in aiding and abetting definition.

The Landscape Architects Practice Act, CCR 2602(f) defines instruments of service as:

“Instruments of service” means finalized working drawings, contract proposals, site analyses, environmental review documents, inspection reports, cost estimates, planning studies, and specifications which have been prepared by a person who holds a valid license to practice landscape architecture in this State or which have been prepared under his or her immediate and responsible direction.”

The American Institute of Architects defines instruments of service in Volume 1 of their *Architect’s Handbook of Professional Practice* as:

“Instruments of service: drawings, specifications, and other documents prepared by the architect as part of the design process. In addition to drawings and specifications comprising the construction documents, instruments of service may be in any medium and include sketches, preliminary drawings, outline specifications, calculations, studies, analyses, models, and renderings.”

At the REC’s May 10, 2012 meeting, member Phyllis Newton volunteered to assist in researching case law for this issue. The two relevant cases are from 1950 and 1955, and the latter of the two was based on a statute that no longer exists.

At the REC’s October 11, 2012 meeting, the REC voted to recommend to the Board that an analysis of the contemporary practice of architecture be made to determine whether the definition contained in BPC section 5500.1 should be amended, followed by a further review of the definition of “instruments of service.” The Board approved the REC’s recommendation at its December 5, 2012 meeting.

Issue

The REC is asked to discuss and formulate a plan of action for defining the practice of architecture. This may include working with The American Institute of Architects, California Council and/or other entities.

Attachments:

1. Architects Practice Act, Business and Professions Code Section 5500.1 – Practice of Architecture Defined
2. California Architects Board – Supplemental Examination Test Plan
3. The American Institute of Architects – Defining the Architect’s Basic Services
4. National Council of Architectural Registration Boards’ Legislative Guidelines and Model Law



Edmund G. Brown Jr.
GOVERNOR

CALIFORNIA ARCHITECTS BOARD

PUBLIC PROTECTION THROUGH EXAMINATION, LICENSURE, AND REGULATION

Architects Practice Act Business and Professions Code

§ 5500.1 Practice of Architecture Defined

- (a) The practice of architecture within the meaning and intent of this chapter is defined as offering or performing, or being in responsible control of, professional services which require the skills of an architect in the planning of sites, and the design, in whole or in part, of buildings, or groups of buildings and structures.
- (b) Architects' professional services may include any or all of the following:
- (1) Investigation, evaluation, consultation, and advice.
 - (2) Planning, schematic and preliminary studies, designs, working drawings, and specifications.
 - (3) Coordination of the work of technical and special consultants.
 - (4) Compliance with generally applicable codes and regulations, and assistance in the governmental review process.
 - (5) Technical assistance in the preparation of bid documents and agreements between clients and contractors.
 - (6) Contract administration.
 - (7) Construction observation.
- (c) As a condition for licensure, architects shall demonstrate a basic level of competence in the professional services listed in subdivision (b) in examinations administered under this chapter.

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California Architects Board - Supplemental Examination Test Plan

The Board is mandated to protect the public health, safety, and welfare. The California Supplemental Examination (CSE) assesses whether applicants for licensure demonstrate minimum standards of competency necessary to meet the requirements of current architectural practice in California.

The CSE Test Plan was developed using the results of the statewide survey of architectural practice in California conducted in 2007. The intent of the CSE Test Plan is not to duplicate coverage of general areas of practice already addressed by the national test, the Architect Registration Examination (ARE). The intent of the CSE Test Plan is to focus on California-specific aspects of practice; it is therefore neither comprehensive nor representative of the full scope of architectural practice.

The CSE Test Plan covers important knowledge and ability areas that are tested using a computer-based, multiple-choice format.

The CSE Test Plan is organized into four primary knowledge categories as shown below. The “Weights” indicate the percentage of examination points that will be allocated to each category.

Categories and Subcategories	Weights
I. Context & Predesign	16%
II. Regulatory	42%
A. California State Laws, Code, Regulations, and Standards (24%)	
B. Other Laws, Codes, Regulations, Standards, Agencies and Entitlements (18%)	
III. Management & Design	27%
IV. Construction	<u>15%</u>
	100%

I. CONTEXT AND PREDESIGN (16%)

This category encompasses the knowledge required to evaluate and respond to the physical and social context in California. This requires an understanding of natural and built conditions and their impact on design, including potential mitigations. Additional knowledge and abilities are those required to develop and utilize program information that addresses user characteristics and activities and performance objectives.

Knowledge and Ability Statements

1. Knowledge of conditions of the natural environment regulated in California (e.g., wetlands, coastal regions, habitats of endangered species) as they relate to design and construction.
2. Knowledge of natural and human-caused hazardous conditions (e.g., seismic activity, fire, winds, flood zone, hazardous materials) and potential mitigations.
3. Knowledge of health issues related to buildings (e.g., offgassing, mold, adequate ventilation).
4. Knowledge of user characteristics (e.g., varying ages, cultures, abilities, activity requirements).
5. Knowledge of types of stakeholders (e.g., environmental groups, citizens' advisory committees, neighborhood and community organizations) concerned about design and construction.
6. Knowledge of project performance objectives (e.g., comfort control, safety and security, sustainability).
7. Ability to evaluate user activities to determine spatial requirements and adjacencies.
8. Ability to organize and evaluate relevant program information to prepare a final program document.

II. REGULATORY (42%) - This category includes knowledge of the state, local, regional, and federal regulatory environments specific to the practice of architecture in California, and includes knowledge of agencies and entitlement processes.

A. California State Laws, Codes, Regulations, and Standards (24%)

This subcategory encompasses the knowledge required to practice within the regulatory environment specific to California. This requires an understanding of the California-specific legal constraints upon design and construction, including a working knowledge of California building codes, environmental regulations, and lien laws. This also requires understanding of the requirements of the California Architects Practice Act, including but not limited to those regarding contracts, responsible control, standard of care, licensing, and instruments of service.

Knowledge Statements

9. Knowledge of California Environmental Quality Act (CEQA) as it relates to design and construction.
10. Knowledge of Essential Services Buildings Seismic Safety Act as it relates to design and construction.
11. Knowledge of what is encompassed by the California Building Standards Code (e.g., Building, Electrical, Mechanical, Plumbing, Energy, Historical) and how the CBSC is distinct from the model codes.
12. Knowledge of structural provisions of the California Building Code.
13. Knowledge of provisions of the California Building Code for anchoring and bracing nonstructural elements.
14. Knowledge of accessibility provisions of the California Building Code.
15. Knowledge of fire and life safety provisions of the California Building Code.
16. Knowledge of provisions of the California Energy Code.
17. Knowledge of California Health and Safety Code as it relates to design and construction.
18. Knowledge of the Design Professionals and Mechanic's Lien Laws.
19. Knowledge of other California special regulations relevant to design and construction (e.g., water regulations, California Coastal Act, California Clean Air Act, California Public Contract Code, Field Act, Hospital Facilities Seismic Safety Act).
20. Knowledge of the architect's responsibilities and requirements for practicing in California in accordance with the Practice Act (e.g., responsible control, standard of care, licensing requirements, signing and sealing of documents).
21. Knowledge of the elements of a legal contract as required by the Practice Act.
22. Knowledge of administration of the Practice Act (e.g., examination, licensing, and enforcement).
23. Knowledge of business and professional requirements of the Practice Act (e.g., architectural corporations, firm naming, associations, professional conduct).

II. REGULATORY (42%) - Continued

B. Other Laws, Codes, Regulations, Standards, Agencies and Entitlements (18%) This subcategory encompasses the knowledge required to practice within the local, regional, and federal regulatory environments in California. This requires an understanding of the legal constraints upon design and construction, including a working knowledge of how General Plans inform planning and zoning issues and how the Americans with Disabilities Act may impact architectural practice. This subcategory also encompasses the knowledge required to interact with local, regional, and state governing agencies that may have jurisdiction. This requires an understanding of the jurisdictions, procedures, and approval processes of the agencies, as well as an awareness of the architect's responsibilities in obtaining approvals.

Knowledge Statements

24. Knowledge of local or regional laws, codes, regulations, and standards (e.g., General Plan; planning and zoning ordinances; local building ordinances; design guidelines; Codes, Covenants, and Restrictions [CC&Rs]) relevant to design and construction.
25. Knowledge of the Americans with Disabilities Act (ADA) with regard to how it impacts architectural practice (e.g., client and architect responsibilities, design and construction).
26. Knowledge of federal laws, codes, and regulations other than ADA (e.g., Environmental Protection Agency Regulations, Federal Aviation Administration regulations, US Army Corps of Engineers regulations) relevant to design and construction.
27. Knowledge of national standards (e.g., UL, ANSI, ASTM, Factory Mutual) relevant to design and construction.
28. Knowledge of local community development agencies and other authorities that normally have jurisdiction over design and construction (e.g., building, planning, public works, police and fire departments).
29. Knowledge of local or regional agencies and other authorities that may have jurisdiction over design and construction (e.g., Design Review Boards, Air Quality Management District, County Flood Control District, airport authorities, Environmental Health Department).
30. Knowledge of California state agencies that have jurisdiction over design and construction (e.g., Coastal Commission, Water Resources Control Board, Department of Fish and Game, Air Resources Board, California Department of Transportation).
31. Knowledge of procedures for obtaining approvals from regulatory agencies.
32. Knowledge of interrelationships among various regulatory agencies (e.g., sequence of approvals, hierarchy of jurisdictions).
33. Knowledge of process for resolving conflicts between agencies or between codes, regulations, and standards.

III. MANAGEMENT & DESIGN (27%)

This category encompasses the knowledge required to plan and manage project teams, including consultants, and to implement procedures for risk management and quality assurance. This requires an understanding of the architect's role and responsibilities for coordinating project teams, an understanding of consultants' services as they relate to systems and building design, obtaining agency approvals, and an understanding of how to limit professional liability exposure. This category also encompasses the knowledge and abilities required to develop design solutions and prepare design and construction drawings and documents. This requires an understanding of methods for developing design solutions collaboratively with clients, users, and stakeholders; an understanding of the drawings and documents needed for agency approvals; and an awareness of specific design concerns in California (e.g., nonstructural elements, special structural loading conditions, environmental control systems, material performance and testing standards). This category also encompasses knowledge of the bidding process.

Knowledge and Ability Statements

34. Knowledge of consultants' (e.g., civil, structural, mechanical, electrical, landscaping, acoustical, traffic) services.
35. Knowledge of architect's role and responsibilities in coordinating an entire project team.
36. Knowledge of architect's role and responsibilities in managing project teams to obtain necessary agency approvals at the appropriate time.
37. Knowledge of document checking and review procedures for quality assurance (in-house and external).
38. Knowledge of how practicing within the standard of care limits professional liability exposure.
39. Knowledge of methods for developing design solutions with involvement of client, users, consultants, and stakeholders.
40. Knowledge of contents of design drawings and related documents required for agency approvals.
41. Knowledge of nonstructural elements as defined by the California Building Code (e.g., fixtures and equipment items, nonbearing partitions, suspended ceilings).
42. Ability to identify implications of special structural loading conditions (e.g., heavy equipment, snow, library shelving).
43. Knowledge of environmental control systems (e.g., energy management, occupant comfort and control).
44. Knowledge of material characteristics, performance, and testing standards.
45. Ability to prepare construction documents appropriate to project type.
46. Knowledge of construction bidding and negotiation processes.

IV. CONSTRUCTION (15%)

This category encompasses the knowledge and abilities required to perform construction contract administration services. This requires an understanding of the architect's role and responsibilities during construction, including knowledge of procedures for resolving conflicts, implementing changes, managing construction costs and schedules, and including California-specific special inspections and testing. Also requires knowledge of performing project close-out procedures, including understanding of lien laws.

Knowledge and Ability Statements

47. Knowledge of interrelationships among owner, architect, and contractor during construction.
48. Knowledge of the limits of the architect's role and responsibilities during construction (e.g., directing subcontractors, means and methods).
49. Knowledge of construction conflict resolution strategies (e.g., mediation, arbitration, litigation).
50. Knowledge of procedures for implementing changes during construction (e.g., directives, supplemental instructions, change orders).
51. Knowledge of procedures for monitoring construction costs and schedules (e.g., reviewing and certifying payments to contractor, reviewing lien releases).
52. Knowledge of procedures for performing project close-out (e.g., Certificate of Substantial Completion, Notice of Completion, final lien releases).
53. Knowledge of elements of California construction laws (e.g., lien requirements, minimum warranty periods).
54. Knowledge of code-required special inspections and testing (e.g., field welding, high strength concrete).
55. Ability to provide construction contract administration services appropriate to project type.

Defining the Architect's Basic Services

Contributed by the AIA Knowledge Resources Staff

July 2007

The AIA collects and disseminates Best Practices as a service to AIA members without endorsement or recommendation. Appropriate use of the information provided is the responsibility of the reader.

SUMMARY

A client's unfamiliarity with the process of architectural design should not hinder that client's comprehension of the phases of design services. This Best Practice introduces first-time clients to the common services of architectural design and the process of design-bid-build.

Note: The deliverables listed below are examples of common architectural deliverables for each phase but are not required of AIA members.

SCHEMATIC DESIGN PHASE SERVICES

During the first phase—schematic design—an architect consults with the owner to determine project goals and requirements. Often this determines the program for the project.

The program, or architectural program, is the term used to define the required functions of the project. It should include estimated square footage of each usage type and any other elements that achieve the project goals.

During schematic design, an architect commonly develops study drawings, documents, or other media that illustrate the concepts of the design and include spatial relationships, scale, and form for the owner to review. Schematic design also is the research phase of the project, when zoning requirements or jurisdictional restrictions are discovered and addressed.

This phase produces a final schematic design, to which the owner agrees after consultation and discussions with the architect. Costs are estimated based on overall project volume. The design then moves forward to the design development phase.

Deliverables: Schematic design often produces a site plan, floor plan(s), sections, an elevation, and other illustrative materials; computer images, renderings, or models. Typically the drawings include overall dimensions, and a construction cost is estimated. Note: The contract may actually spell out what is to be delivered.

DESIGN DEVELOPMENT PHASE SERVICES

Design development (DD) services use the initial design documents from the schematic phase and take them one step further. This phase lays out mechanical, electrical, plumbing, structural, and architectural details.

Typically referred to as DD, this phase results in drawings that often specify design elements such as material types and location of windows and doors. The level of detail provided in the DD phase is determined by the owner's request and the project requirements. The DD phase often ends with a formal presentation to, and approval by, the owner.

Deliverables: Design development often produces floor plans, sections, and elevations with full dimensions. These drawings typically include door and window details and outline material specifications.

CONSTRUCTION DOCUMENT PHASE SERVICES

The next phase is construction documents (CDs). Once the owner and architect are satisfied with the documents produced during DD, the architect moves forward and produces drawings with greater detail. These drawings typically include specifications for construction details and materials.

Once CDs are satisfactorily produced, the architect sends them to contractors for pricing or bidding, if part of the contract. The level of detail in CDs may vary depending on the owner's preference. If the CD set is not 100-percent complete, this is noted on the CD set when it is sent out for bid. This phase results in the contractors' final estimate of project costs. To learn more about the most common ways owners select a contractor, see Best Practice 05.03.01, "Qualifications-Based vs. Low-Bid Contractor Selection."

Deliverables: The construction document phase produces a set of drawings that include all pertinent information required for the contractor to price and build the project.

BID OR NEGOTIATION PHASE SERVICES

The first step of this phase is preparation of the bid documents to go out to potential contractors for pricing. The bid document set often includes an advertisement for bids, instructions to bidders, the bid form, bid documents, the owner-contractor agreement, labor and material payment bond, and any other sections necessary for successful price bids. For some projects that have unique aspects or complex requirements, the architect and owner elect to have a prebid meeting for potential contractors.

After bid sets are distributed, both the owner and architect wait for bids to come in. The owner, with the help of the architect, evaluate the bids and select a winning bid. Any negotiation with the bidder of price or project scope, if necessary, should be done before the contract for construction is signed.

The final step is to award the contract to the selected bidder with a formal letter of intent to allow construction to begin.

Deliverables: The final deliverable is a construction contract. Once this document is signed, project construction can begin.

CONSTRUCTION PHASE SERVICES

Contract administration (CA) services are rendered at the owner's discretion and are outlined in the owner-architect construction agreement. Different owner-architect-contractor agreements require different levels of services on the architect's part. CA services begin with the initial contract for construction and terminate when the final certificate of payment is issued.

The architect's core responsibility during this phase is to help the contractor to build the project as specified in the CDs as approved by the owner. Questions may arise on site that require the architect to develop architectural sketches: drawings issued after construction documents have been released that offer additional clarification to finish the project properly. Different situations may require the architect to issue a Change in Services to complete the project.

Deliverables: A successfully built and contracted project.

RESOURCES

More Best Practices

The following AIA Best Practices provide additional information related to this topic:

- 17.02.05 Qualifications-Based vs. Low-Bid Contractor Selection
- 12.03.02 How Roles Change in Design-Build
- 11.02.04 Terminology: As-Built Drawings, Record Drawings, Measured Drawings

The Knowledge Resources Staff based this Best Practice on definitions in the AIA Contract Documents as well as in the 12th, 13th, and the forthcoming 14th editions of *The Architect's Handbook of Professional Practice*.

For More Information on This Topic

See also "Defining Services" by Robin Ellerthorpe, FAIA, in *The Architect's Handbook of Professional Practice*, 13th edition, Chapter 16, page 515.

See also the 14th edition of the *Handbook*, which can be ordered from the AIA Bookstore by calling 800-242-3837 (option 4) or by email at bookstore@aia.org.



Feedback

The AIA welcomes member feedback on Best Practice articles. To provide feedback on this article, please contact bestpractices@aia.org.

Key Terms

- Design
- Preliminary design
- Schematic design
- Design development
- Construction documents
- Bidding or negotiation
- Construction contract administration



N C A R B



LEGISLATIVE
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AND
MODEL LAW

MODEL
REGULATIONS

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NCARB Mission

The National Council of Architectural Registration Boards protects the public health, safety, and welfare by leading the regulation of the practice of architecture through the development and application of standards for licensure and credentialing of architects.

Core Values

NCARB believes in:

- **Leadership** – Proactive, creative thinking, and decisive actions.
- **Accountability** – Consistent, equitable, and responsible performance.
- **Transparency** – Clear and accessible rules, policies, procedures, governance, and communication.
- **Integrity** – Honest, impartial, and well-reasoned action.
- **Collaboration** – Working together toward common goals.
- **Excellence** – Professional, expert, courteous, respectful, and responsive service.

NCARB is a nonprofit corporation comprising the legally constituted architectural registration boards of the 50 states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands as its members.

2012-2013 Legislative Guidelines and Model Law, Model Regulations

National Council of Architectural Registration Boards

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2012-2013

LEGISLATIVE GUIDELINES AND MODEL LAW

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2012-2013 LEGISLATIVE GUIDELINES

HISTORICAL NOTE

At the June 1970 Annual Meeting, NCARB adopted five guidelines for legislation governing the registration of architects. A minor amendment was adopted the following year, and the guidelines were further amended at the Annual Meetings in 1976 and 1977. At the 1982 Annual Meeting, substantial changes to Guideline III were adopted to permit states to use the new NCARB Architect Registration Examination format (i.e., a single examination for all candidates), and, in response to the requests of a number of NCARB Member Boards, the Council added Guideline VI: "Classes and Characteristics of Structures with Respect to Which Persons Performing Building Design May Be Exempt from Registration Requirements," following extensive study of the question by NCARB's Committee on Procedures and Documents. At the 1985 Annual Meeting, Guideline VIII respecting "Regulation of Unregistered Persons Practicing Architecture" was adopted with corresponding minor adjustments in Guideline II and Guideline VI.

At the 1988 Annual Meeting, the Council amended Guideline I to recognize the conditions under which a design/build practice could be carried on. Substantial changes were made at the Annual Meeting in 1989, including Guideline VII, which required that an architect be engaged to furnish construction contract administration services.

Over the ensuing years, the guidelines have been modified from time-to-time. In 1999, the Council added Guideline IX, which describes a way in which foreign architects whose national registration standards vary from those in the United States may participate in U.S. architectural commissions. Also in 1999, the Council amended Guideline II by making specific reference to the Rule of Conduct (5.2) which requires that an architect have responsible control over all technical submissions not otherwise exempt.

INTRODUCTION

The NCARB *Legislative Guidelines* sets forth provisions adopted by the Member Boards of NCARB on nine significant areas of state regulation. Early in its consideration of state laws regulating the practice of architecture, NCARB reached the conclusion that guidelines were appropriate, rather than draft statutory language.

Guidelines were recommended because each of the existing state laws contained unique language, organization, and ancillary provisions; it might be disruptive and confusing to

attempt to introduce, on a national basis, exact statutory language into existing state statutes. Nonetheless, in response to the requests of a number of state registration boards, NCARB has added to these guidelines a Model Law for the purpose of illustrating the way in which the guideline principles would fit into a statutory framework. The Model Law does not purport to cover all matters appropriate to a statute governing the registration of architects. Matters with respect to the appointment of board members, their relationship to umbrella state agencies, the compensation of board members, procedural issues, and the like are not included in the Model Law. In many states these largely administrative provisions are found in a section of the law preceding the laws specifically applicable to each registration board. In other states these administrative provisions are found in the architectural registration statute itself. The most important of the administrative provisions not found in the Model Law is the power to adopt rules and regulations. Once again it is typical to find that power in the general portions of the law applying to all registration boards. A draftsman who is revising the state law and using the Model Law should carefully examine the statutory framework to be sure that the power to adopt rules and regulations exists somewhere.

To round out the matter of legislative guidelines, NCARB has also added to this document Model Regulations to illustrate how the Model Law interfaces with a set of board Rules and Regulations. The Model Regulations build upon the Model Law, the *Rules of Conduct* recommended by the Council, and the standards adopted by the Council for certification. They recommend that states have analogous standards for registration and provide details on definitions, fees, applications, registration standards, examination, registration, rules of professional conduct, and practice by firms.

NCARB also reached the conclusion that the guidelines should be limited in scope; such subjects as the organization and incorporation of a regulatory board, procedures to be followed by the board, penalties for violation of the board rules, and the like are not treated in these *Legislative Guidelines*. Rather than attempt to provide guidelines to the states on matters which they are clearly better able to decide than any national organization, NCARB has limited its concern to nine major areas, all of which have implications beyond the boundaries of an individual state.

2012-2013 LEGISLATIVE GUIDELINES

In the development of these guidelines, NCARB has been concerned with the respective roles of statutory enactment on the one hand and board rules or regulations on the other. Through a statute granting the power to adopt rules and regulations, the legislature permits a regulatory agency to elucidate and define further its statutory authority by establishing regulations. Regulations cannot contradict the statute. Practically, statutory change requires time, the mobilization of professional bodies to seek legislative support, and often considerable frustration when for one reason or another, the legislature postpones enacting the proposed reform. Regulations, on the other hand, may typically be adopted by the state board after notice and appropriate hearings. Thus, insofar as the regulation of the profession involves likely future changes in professional practice, the rules should be found in the regulations rather than the statute. The decision entails a reasonable calculation as to what matters a state legislature will permit a regulatory board to decide and what matters, as a question of public policy, should be decided by the legislature.

The nature of sanctions which may be imposed (fines, probation, suspension, revocation, and the like) is a matter customarily left to the legislature itself, while the question of educational and experience qualifications, a matter subject to changing concepts, might well be left to the registration board.

A connected question is the degree to which boards may rely on national standards as the standards to be used in their states. These guidelines refer specifically to the National Council of Architectural Registration Boards at various points and suggest that these references to NCARB be found in the statute. This decision is based on a legal judgment made from a survey of a variety of cases in various states that a board's reliance on NCARB procedures may be put in doubt in a court challenge if there is no legislative expression on the board's right so to rely. On the other hand, the reliance on these standards is permissive but not mandatory and is, in all cases, to be decided by the board in the board's regulations. Here it was the view of NCARB that legislators would be reluctant to fix in a statute the mandatory requirement that a national organization set the standards for the state, subject only to legislative amendment.

In sum, the *Legislative Guidelines* leaves to the boards flexibility and discretion to bring their states in line with the developing national standards for architectural registration and regulation. Such flexibility is ensured by leaving much of the detail to regulations to be promulgated by the board, while the enabling statute contains the general policy of the legislature.

LEGISLATIVE GUIDELINES

I DEFINITION

A The practice of architecture, for purposes of the registration statute, should be defined as consisting of providing or offering to provide certain services hereafter described, in connection with the design and construction, enlargement or alteration of a building or group of buildings and the space within and the site surrounding such buildings, which have as their principal purpose human occupancy or habitation. The services referred to include pre-design; programming; planning; providing designs, drawings, specifications and other technical submissions; the administration of construction contracts; and the coordination of any elements of technical submissions prepared by others including, as appropriate and without limitation, consulting engineers and landscape architects. The practice of architecture shall not include the practice of engineering, but an architect may perform such engineering work as is incidental to the practice of architecture. No person not registered nor otherwise permitted to practice under the registration statute should be permitted to engage in the practice of architecture.

Except as provided in IV B and C, no person not registered should be permitted to acknowledge himself/herself as authorized to practice architecture or to use the title "architect" when offering to perform any of the services which the practice of architecture comprises or in circumstances which could lead a reasonable person to believe that such services were being offered; except that a person registered in another jurisdiction may use the title "architect" when identifying his/her profession in circumstances which would not lead a reasonable person to believe that the person using the title "architect" is offering to perform any of the services which the practice of architecture comprises.

A person currently employed under the responsible control of an architect and who maintains in good standing a National Council of Architectural Registration Boards Record may use the title "intern architect" or "architectural intern" in conjunction with his/her current employment, but may not engage in the practice of architecture except to the extent that such practice is excepted from the requirement of registration.

DISCUSS AND POSSIBLE ACTION ON STRATEGIC PLAN OBJECTIVE TO REVIEW AND CONSIDER ADDING MEDIATION TO REPORTING REQUIREMENTS [BUSINESS AND PROFESSIONS CODE (BPC) SECTION 5588]

The California Architects Board's (Board) 2013 Strategic Plan directs the Regulatory and Enforcement Committee (REC) to consider adding mediation to the list of actions that must be reported to the Board pursuant to BPC section 5588.

History

Since 1979, the Architects Practice Act, BPC 5588, has required architects and their professional liability insurance carriers to report to the Board any settlement or arbitration awards in excess of \$5,000. On June 23, 2003, Board members and staff met with nine representatives from the insurance carriers and other interested parties to discuss the Board's review process and compliance with section 5588. It was agreed that the Board's legal counsel would draft a request for an opinion and interpretation from the Attorney General (AG) regarding section 5588.

The AG opinion was received on August 27, 2004. The Board reviewed the AG opinion on October 6, 2004. The Board directed the REC to: 1) examine the statute and the AG opinion to provide the Board with a recommendation on the parameters for reporting; 2) consider and identify the types of events that would be reportable under the AG opinion; 3) consider and identify what would be reportable in an ideal situation to help the Board protect consumers; and 4) consider whether the Board should ask the AG any additional questions. The Board also directed staff to: 1) seek compliance with reporting requirements relative to settlements and arbitration awards over \$5,000 that involve formal legal action; 2) collect statistical data on the nature of the claim (i.e., zoning, code, access, leaks) to provide feedback on areas of practice that may be deficient; and 3) implement draft reporting form developed by staff to be used by insurance companies to report settlements.

On December 9, 2004, the Board approved REC's recommendation that section 5588 should be amended to require that only settlements precipitated by legal action or arbitration awards that exceed \$5,000 and allege wrongful conduct (fraud, deceit, negligence, incompetence, or recklessness) with respect to the architectural services being provided must be reported to the Board. This recommendation was based on the Board for Professional Engineers, Land Surveyors, and Geologists' recent legislation which limits reporting of settlements to an action, which was a key difference and may work better for the design and construction environment. It was also to avoid change orders from having to be reported to the Board. The Board also noted that The American Institute of Architects, California Council was the appropriate entity to sponsor such legislation and appointed a task force to work on this issue and report its findings back to the REC.

The language was consented into a Assembly Business Professions and Consumer Protection Committee bill (Assembly Bill 302), which became law on October 4, 2005.

Update

The Board received a question from a firm asking if mediations were required to be reported to the Board pursuant to BPC section 5588. Board staff requested its Deputy Attorney General (DAG) liaison, Michael German, to determine whether mediations must be reported to the Board. DAG German concluded that mediations do not have to be reported to the Board pursuant to BPC section 5588. Unless a settlement reached through mediation occurred pursuant to court-ordered mediation, it does not constitute a formal legal action.

The REC is asked to consider whether mediation should be added to BPC section 5588 as a reporting requirement, and make a recommendation to the Board.

Attachments:

1. Business and Professions Code Section 5588
2. Definitions, the Handbook of Professional Practice, The American Institute of Architects

BUSINESS AND PROFESSIONS CODE SECTION 5588

5588. (a) A licensee shall report to the board in writing within 30 days of the date the licensee has knowledge of any civil action judgment, settlement, arbitration award, or administrative action resulting in a judgment, settlement, or arbitration award against the licensee in any action alleging fraud, deceit, negligence, incompetence, or recklessness by the licensee in the practice of architecture if the amount or value of the judgment, settlement, or arbitration award is five thousand dollars (\$5,000) or greater.

(b) The report required by subdivision (a) shall be signed by the licensee and shall set forth the facts that constitute the reportable event. If the reportable event involves the action of an administrative agency or court, the report shall set forth all of the following:

- (1) The title of the matter.
- (2) The court or agency name.
- (3) The docket number.
- (4) The claim or file number.
- (5) The date on which the reportable event occurred.

(c) A licensee shall promptly respond to oral or written inquiries from the board concerning the reportable events, including inquiries made by the board in conjunction with license renewal.

(d) Failure of a licensee to report to the board in the time and manner required by this section shall be grounds for disciplinary action.

5588.1. (a) Within 30 days of payment of all or any portion of a civil action judgment, settlement, or arbitration award described in Section 5588 against a licensee of the board in which the amount or value of the judgment, settlement, or arbitration award is five thousand dollars (\$5,000) or greater, any insurer providing professional liability insurance to that licensee or architectural entity shall report to the board all of the following:

- (1) The name of the licensee.
- (2) The claim or file number.
- (3) The amount or value of the judgment, settlement, or arbitration award.
- (4) The amount paid by the insurer.
- (5) The identity of the payee.

(b) Within 30 days of payment of all or any portion of any civil action judgment, settlement, or arbitration award described in Section 5588 against a licensee of the board in which the amount or value of the judgment, settlement, or arbitration award is five thousand dollars (\$5,000) or greater, any state or local governmental agency that self insures that licensee shall report to the board all of the following:

- (1) The name of the licensee.
- (2) The claim or file number.
- (3) The amount or value of the judgment, settlement, or arbitration award.
- (4) The amount paid.
- (5) The identity of the payee.

5588.2. The requirements of Section 5588 and 5588.1 shall apply if a party to the civil action, settlement, arbitration award, or administrative action is or was a sole proprietorship, partnership, firm, corporation, or state or local governmental agency in which a licensee is or was an owner, partner, member, officer, or employee and is or was a licensee in responsible control of that portion of the project that was the subject of the civil judgment, settlement, arbitration award, or administrative action.

5588.3. Notwithstanding any other provision of law, a licensee shall not be considered to have violated a confidential settlement agreement or other confidential agreement by providing a report to the board as required by this article.

5588.4. The board may adopt regulations to further define the reporting requirements of Sections 5588 and 5588.1

DEFINITIONS
THE HANDBOOK OF PROFESSIONAL PRACTICE
THE AMERICAN INSTITUTE OF ARCHITECTS

Arbitration – method of dispute resolution in which an arbitrator or panel of arbitrators evaluates the merits of the positions of the respective parties and renders a decision.

Civil Action – a lawsuit in court seeking enforcement or protection of private rights.

Mediation – effort by an independent party to help others reach settlement of a controversy or claim. The mediator participates impartially in the proceedings, advising and consulting the various parties involved. A mediator cannot impose a settlement but can seek to guide the parties to achieve their own settlement voluntarily.

DISCUSS AND POSSIBLE ACTION ON STRATEGIC PLAN OBJECTIVE TO REVIEW AND UPDATE CAB'S DISCIPLINARY GUIDELINES

The California Architects Board's (Board) 2013 Strategic Plan directs the Regulatory and Enforcement Committee (REC) to review and update CAB's disciplinary guidelines.

History

In 1998, the REC reviewed and considered the Board's disciplinary guidelines and the possible need to amend the minimum penalties. Following this review, there was also a general consensus that all sections of the guidelines be consistent with a 90-day minimum suspension. Furthermore, the guidelines did not address the Rules of Professional Conduct.

The REC developed proposed revisions to the guidelines. The Board's legal counsel and Deputy Attorney General (DAG) Liaison both reviewed the REC's recommended changes and provided additional input that aided the Committee in finalizing its recommended changes.

The REC presented its recommended changes to the disciplinary guidelines to the Board at its September 15, 1998 meeting. The Board approved the changes and the guidelines were printed. In addition, California Code of Regulations section 154 (Disciplinary Guidelines) was modified. The guidelines are distributed to DAGs when a case is sent for disciplinary action and to interested parties.

Update

Board staff has obtained disciplinary guidelines from the Board for Professional Engineers, Land Surveyors, and Geologists (BPELSG), and the Contractors State License Board (CSLB). After review of the Board's guidelines and these other two boards' guidelines, staff found that the Board's guidelines are still relevant. As a result, staff made minor draft modifications to the guidelines for the REC's review. In addition, the Board's Disciplinary Guidelines were reviewed by the Board Deputy Attorney General (DAG) Liaison, who also had suggested amendments that have been incorporated into the guidelines.

The REC is asked to review the Board's disciplinary guidelines attached with staff's and the DAG's modifications, determine whether additional modifications should be made, and make a recommendation to the Board.

Attachments:

1. Board's Disciplinary Guidelines with staff's and the DAG's draft modifications
2. BPELSG's Disciplinary Orders, Title 16, California Code of Regulations Section 419
3. CSLB's Disciplinary Guidelines

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Introduction

To establish consistency in disciplinary penalties for similar offenses on a statewide basis, the California Architects Board (~~CAB hereinafter referred to as the~~ Board) has adopted these uniform disciplinary guidelines for particular violations. This document, designed for use by Administrative Law Judges, attorneys, Board licensees, others involved in the Board's disciplinary process, and ultimately the Board, shall be revised from time to time and will be distributed to interested parties upon request.

These guidelines include general factors to be considered, probationary terms, and guidelines for specific offenses. The guidelines for specific offenses are referenced to the statutory and regulatory provisions.

For purposes of this document, terms and conditions of probation are divided into two general categories: (1) Standard Conditions are those conditions of probation which will generally appear in all cases involving probation as a standard term and condition; and (2) Optional Conditions are those conditions which address the specific circumstances of the case and require discretion to be exercised depending on the nature and circumstances of a particular case.

The Board recognizes that these recommended penalties and conditions of probation are merely guidelines and that mitigating or aggravating circumstances and other factors may necessitate deviations, as discussed herein. If there are deviations from the guidelines, the Board would request that the Administrative Law Judge hearing the matter include an explanation in the Proposed Decision so that the circumstances can be better understood and evaluated by the Board upon review of the Proposed Decision and before final action is taken.

Additional copies of this document may be obtained by contacting the ~~CAB~~-[Board](#) at its office in Sacramento, California. There may be a charge assessed sufficient to cover the cost of production and distribution of copies.

General Conditions

The Board requests that proposed decisions following administrative hearings include the following:

- a. Specific code sections violated with their definitions.
- b. Clear description of the violation.
- c. Respondent's explanation of the violation if he/she is present at the hearing.
- d. Findings regarding aggravation, mitigation, and rehabilitation where appropriate.
- e. When suspension or probation is ordered, the Board requests that the disciplinary order include terms within the recommended guidelines for that offense unless the reason for departure from the recommended terms is clearly set forth in the findings and supported by the evidence.

Factors to be Considered:

In determining whether revocation, suspension or probation is to be imposed in a given case, factors such as the following should be considered:

1. Nature and severity of the act(s), offense(s), or crime(s) under consideration.
2. Actual or potential harm to any consumer, client or the general public.
3. Prior disciplinary record.
4. ~~Number and/or variety of current violations.~~ Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the Business and Professions Code.
5. Mitigation evidence.
6. ~~Rehabilitation evidence.~~ Evidence, if any, of rehabilitation submitted by the applicant.
7. ~~In the case of a criminal conviction, compliance with terms of sentence and/or court-ordered probation.~~
8. ~~Overall criminal record.~~
9. ~~Time passed since the act(s) or offense(s) occurred.~~ The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.
10. Whether or not the respondent cooperated with the Board's investigation, other law enforcement or regulatory agencies, and/or the injured parties.
11. Recognition by respondent of his or her wrongdoing and demonstration of corrective action to prevent recurrence.

Disciplinary Guidelines

The offenses are listed by section number in the Business and Professions Code or California Code of Regulations. The standard terms of probation as stated herein shall be included for all probations. The optional conditions of probation as stated herein, are to be considered and imposed along with any other optional conditions if facts and circumstances warrant. The number(s) in brackets listed after each condition of probation refers to the conditions listed on pages _____.

Business and Professions Code Sections

Section 5577

Conviction of a Crime Substantially Related to the Qualifications, Duties and Functions of an Architect

MAXIMUM: Revocation or denial of license application

MINIMUM: Stayed revocation, 90 days actual suspension and 5 years probation on the following conditions:

- a. All standard conditions of probation [#1-7]
- b. Cost reimbursement [#12]
- c. Criminal probation reports [#14]

Section 5578

Acts in Violation of the Architects Practice Act

The appropriate penalty depends on the nature of the offense.

Section 5579

Fraud or Misrepresentation in Obtaining License

MAXIMUM/MINIMUM: Revocation

Section 5580

Impersonation or Use of Assumed or Corporate Name

MAXIMUM: Revocation

MINIMUM: Stayed revocation, 90 days actual suspension and 5 years probation on the following conditions:

- a. All standard conditions of probation [#1-7]
- b. Continuing education courses [#11]
- b. Cost reimbursement [#12]
- d. Restitution [#13]

Section 5582

Aiding and Abetting the Unlicensed Practice of Architecture

MAXIMUM: Revocation

MINIMUM: Stayed revocation, 90 days actual suspension and 5 years probation on the following conditions:

- a. All standard conditions of probation [#1-7]
- b. Continuing education courses [#11]
- c. Cost reimbursement [#12]
- d. Restitution [#13]

Section 5582.1

Signing Others Instruments of Service or Permitting Misuse of Name

MAXIMUM: Revocation

MINIMUM: Stayed revocation, 90 days actual suspension and 5 years probation on the following conditions:

- a. All standard conditions of probation [#1-7]
- b. Continuing education courses [#11]
- c. Cost reimbursement [#12]
- d. Restitution [#13]

Section 5583

Fraud or Deceit

MAXIMUM: Revocation

MINIMUM: Stayed revocation, 90 days actual suspension and 5 years probation on the following conditions:

- a. All standard conditions of probation [#1-7]
- b. Continuing education courses [#11]
- c. Cost reimbursement [#12]
- d. Restitution [#13]

Section 5584

Negligence

MAXIMUM: Revocation

MINIMUM: Stayed revocation, 90 days actual suspension and 5 years probation on the following conditions:

- a. All standard conditions of probation [#1-7]
- b. California Supplemental Examination [#9]
- c. Continuing education courses [#11]
- d. Cost reimbursement [#12]
- e. Restitution [#13]

Section 5584
Willful Misconduct

MAXIMUM: Revocation

MINIMUM: Stayed revocation, 90 days actual suspension and 5 years probation on the following conditions:

- a. All standard conditions of probation [#1-7]
- b. Continuing education courses [#11]
- c. Cost reimbursement [#12]
- d. Restitution [#13]

Section 5585
Incompetency or Recklessness

MAXIMUM: Revocation

MINIMUM: Stayed revocation, 90 days actual suspension and 5 years probation on the following conditions:

- a. All standard conditions of probation [#1-7]
- b. California Supplemental Examination [#9]
- c. Continuing education courses [#11]
- d. Cost reimbursement [#12]
- e. Restitution [#13]

General Provisions of Business and Professions Code

Section 125.6
Discrimination by Licensee

MAXIMUM: Revocation

MINIMUM: Stayed revocation, 60 days actual suspension and 5 years probation on the following conditions:

- a. All standard conditions of probation [#1-7]
- b. Cost reimbursement [#12]

Section 480 (a)
Denial of Licenses

An applicant's application may be denied for (1) conviction of a crime substantially related to the qualifications, functions, or duties of the practice of architecture; (2) any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; (3) any act which if done by a licensee would be grounds for suspension or revocation of license; or (4) knowingly making a false statement of fact required to be revealed in the application for such license.

RECOMMENDED DISCIPLINE: Denial of license

Section 496
Subversion of Licensing Examinations or Administration of Examinations

RECOMMENDED DISCIPLINE: Denial or revocation of license

California Code of Regulations
Article 9. Professional Conduct

Section 160
Rules of Professional Conduct

a. Competence

MAXIMUM: Revocation

MINIMUM: Stayed revocation, 90 days actual suspension and 5 years probation on the following conditions:

- a. All standard conditions of probation [#1-7]
- b. California Supplemental Examination [#9]
- c. Continuing education courses [#11]
- d. Cost reimbursement [#12]
- d. Restitution [#13]

b. Willful Misconduct

MAXIMUM: Revocation

MINIMUM: Stayed revocation, 90 days actual suspension and 5 years probation on the following conditions:

- a. All standard conditions of probation [#1-7]
- b. California Supplemental Examination [#9]
- c. Continuing education courses [#11]
- d. Cost reimbursement [#12]
- e. Restitution [#13]

c. Conflict of Interest

MAXIMUM: Revocation

MINIMUM: Stayed revocation, 90 days actual suspension and 5 years probation on the following conditions:

- a. All standard conditions of probation [#1-7]
- b. Continuing education courses [#11]
- c. Cost reimbursement [#12]
- d. Restitution [#13]

d. Full Disclosure

MAXIMUM: Revocation

MINIMUM: Stayed revocation, 90 days actual suspension and 5 years probation on the following conditions:

- a. All standard conditions of probation [#1-7]
- b. Continuing education courses [#11]
- c. Cost reimbursement [#12]
- d. Restitution [#13]

e. Copyright Infringement

MAXIMUM: Revocation

MINIMUM: Stayed revocation, 90 days actual suspension and 5 years probation on the following conditions:

- a. All standard conditions of probation [#1-7]
- b. Continuing education courses [#11]
- c. Cost reimbursement [#12]
- d. Restitution [#13]

Violation of Probation

Maximum Penalty

Actual suspension; vacate stay order and reimpose penalty that was previously stayed; and/or revoke, separately and severally, for violation of probation and/or for any additional offenses.

Minimum Penalty

Actual suspension and/or extension of probation.

The maximum penalty is appropriate for repeated similar offenses, or for probation violations indicating a cavalier or recalcitrant attitude. If the probation violation is due in part to the commission of additional offense(s), additional penalties shall be imposed according to the nature of the offense; and the probation violation shall be considered as an aggravating factor in imposing a penalty for those offenses.

Conditions of Probation

Standard Conditions

(To be included in all Cases of Probation)

1. Obey All Laws

Respondent shall obey all federal, state and local laws and regulations [and comply with all conditions of probation](#). ~~governing the practice of architecture in California.~~

2. Submit Quarterly Reports

Respondent, within 10 days of completion of the quarter, shall submit quarterly written reports to the Board on [the Board's](#) a Quarterly Report of Compliance ~~form (1/00) obtained from the Board~~ (Attachment A).

3. Personal Appearances

Upon reasonable notice by the Board, the respondent shall report to and make personal appearances at times and locations as the Board may direct.

4. Cooperate During Probation

Respondent shall cooperate fully with the Board, and with any of its agents or employees in their supervision and investigation of his/her compliance with the terms and conditions of this probation. Upon reasonable notice, the respondent shall provide the Board, its agents or employees with the opportunity to review all plans, specifications, and instruments of service prepared during the period of probation.

5. Tolling for Out-of-State Practice, Residence or In-State Non-Practice

Respondent shall provide a list of all states, United States territories, and elsewhere in the world where he or she has ever been licensed as an architect or held any architecture related professional license or registration within 30 calendar days of the effective date of this decision. Respondent shall further provide information regarding the status of each license and registration and any changes in the license or registration status within ten calendar days, during the term of probation. Respondent shall inform the Board if he or she applies for or obtains an architectural license or registration outside of California within ten calendar days during the term of probation.

In the event respondent should leave California to reside or to practice outside the State or for any reason stop practicing architecture in California, respondent shall notify the Board or its designee in writing within ten days of the dates of departure and return, or the dates of non-practice or the resumption of practice within California. Respondent's probation is tolled, if and when he or she ceases practicing in California. Non-practice is defined as any period of time exceeding thirty days in which respondent is not engaging in any activities defined in Section 5500.1 of the Business and Professions Code. Periods of temporary or permanent residency or practice outside California or of non-practice within California will not apply to the reduction of this probationary period. Respondent shall not be relieved of the obligation to maintain an active and current license with the Board. It shall be a violation of probation for Respondent's probation to remain tolled pursuant to the provisions of this condition for a period exceeding a total of five years.

All provisions of probation other than the quarterly report requirements, examination requirements, costs reimbursement, restitution, and education requirements, shall be held in abeyance until respondent resumes practice in California. All other provisions of probation shall recommence on the effective date of resumption of practice in California. ~~Periods of temporary or permanent residency or practice outside California or of non-practice within California will not apply to the reduction of this probationary period.~~

6. Violation of Probation

If respondent violates probation in any respect, the Board, after giving respondent notice and opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If an accusation or a petition to revoke probation is filed against respondent during probation or the matter is referred to the Attorney General's office, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

If a respondent has not complied with any term or condition of probation, the board shall have continuing jurisdiction over respondent, and probation shall automatically be extended, until all terms and conditions have been satisfied or the board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed.

If respondent violates probation in any respect, the board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay and/or revocation of the license. If a petition to revoke probation or an accusation is filed against respondent during probation, the board shall have continuing jurisdiction and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

7. Completion of Probation

Upon successful completion of probation, respondent's license will be fully restored.

Optional Conditions

8. Suspension

Respondent is suspended from the practice of architecture for _____ days beginning on the effective date of the Decision.

9. California Supplemental Examination

Within _____ days of the effective date of this Decision, respondent shall take and pass the California Supplemental Examination designated by the Board.

If respondent fails to pass said examination within 6 months, respondent shall so notify the Board and shall cease practice until respondent takes and successfully passes said examination, has submitted proof of same to the Board, and has been notified by the Board that he/she may resume practice. Failure to pass the required examination no later than ~~100 days~~ one year prior to the termination of probation shall constitute a violation of probation. Respondent is responsible for all costs of such examination.

10. Written Examination

Respondent shall take and pass (specified) sections of the Architect Registration Examination (ARE).

If respondent fails to pass said examination within one year or within two attempts, respondent shall so notify the Board and shall cease practice until respondent takes and successfully passes said examination, has submitted proof of same to the Board, and has been notified by the Board that he/she may resume practice. Failure to pass the required examination no later than ~~100 days~~ one year prior to the termination of probation shall constitute a violation of probation. Respondent is responsible for all costs of such examination.

11. Continuing Education Courses

Respondent shall successfully complete and pass professional education courses approved in advance by the Board or its designee, directly relevant to the violation as specified by the Board. The professional education courses shall be completed within a period of time designated by the Board, which timeframe shall be incorporated as a condition of this probation.

Failure to satisfactorily complete the required courses as scheduled or failure to complete same no later than ~~100 days~~ one year prior to the termination of probation shall constitute a violation of probation. Respondent is responsible for submitting to the Board for its approval the specifics of each course required by this condition, and for paying all costs of such courses.

12. Cost Reimbursement

Respondent shall reimburse the Board \$ _____ for its investigative and prosecution costs. The payment shall be made within _____ days/months of the date the Board's decision is final.

Option: The payment shall be made as follows: _____ (specify either prior to the resumption of practice or in monthly or quarterly payments, the final payment being due one year before probation is scheduled to terminate).

13. Restitution

Within _____ days of the effective date of this Decision, respondent shall make restitution to _____ in the amount of \$_____ and shall provide the Board with proof from _____ attesting the full restitution has been paid. In all cases, restitution shall be completed no later than one year before the termination of probation.

14. Criminal Probation Reports

In the event of conviction of any crime, Respondent shall provide the Board with a copy of the standard conditions of the criminal probation, copies of all criminal probation reports and the name of his/her probation officer.

15. Relinquish License and Wall Certificate

Respondent shall relinquish and shall forward or deliver the license to practice and the wall certificate to the Board within 10 days of the effective date of this decision and order.

16. Notification to Clients/Cessation of Practice

In orders which provide for a cessation or suspension of practice, respondent shall comply with procedures provided by the Board regarding notification to, and management of, clients.

Rehabilitation Criteria

California Code of Regulations, Title 16, Division 2, Section 110.1, Criteria for Rehabilitation states:

- (a) When considering the denial of an architect's license under Section 480 of the Business and Professions Code, the Board, in evaluating the rehabilitation of the applicant and his/her present eligibility for a license will consider the following criteria:
 - (1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
 - (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the Business and Professions Code.

- (3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).
 - (4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.
 - (5) Evidence, if any, of rehabilitation submitted by the applicant.
- (b) When considering the suspension or revocation of the license of an architect on the grounds that the person licensed has been convicted of a crime, the Board, in evaluating the rehabilitation of such person and his/her present eligibility for licensure will consider the following criteria:
- (1) Nature and severity of the act(s) or offense(s).
 - (2) Total criminal record.
 - (3) The time that has elapsed since commission of the act(s) or offense(s).
 - (4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
 - (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
 - (6) Evidence, if any, of rehabilitation submitted by the licensee.
- (c) When considering the petition for reinstatement of the license of an architect, the Board shall evaluate evidence of rehabilitation submitted by the petitioner, considering those criteria specified in subsection (b).



CALIFORNIA ARCHITECTS BOARD

400 R STREET, SUITE 4000, SACRAMENTO, CALIFORNIA 95814-6238

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Attachment A

QUARTERLY REPORT OF COMPLIANCE

1. NAME: (Last/First/Middle) TELEPHONE #: (Residence)

RESIDENCE ADDRESS:

CITY: STATE: ZIP CODE:

2. NAME OF FIRM: YOUR TITLE:

FIRM ADDRESS:

CITY: STATE: ZIP CODE:

TELEPHONE #: ()

3. On the back of this form detail your architectural activities for the probation period

beginning and ending Mo. Day Year Mo. Day Year

4. Site any other activities related to the practice of architecture:

Table with columns: ACTIVITY, DATE

5. I declare under penalty of perjury under the laws of the State of California that the information contained in this quarterly report regarding my professional practice is true and correct.

Signature:

Date:



BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND GEOLOGISTS

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DISCIPLINARY ORDERS
Title 16, California Code of Regulations
Section 419

**BOARD FOR PROFESSIONAL
ENGINEERS, LAND SURVEYORS, AND GEOLOGISTS**

TITLE 16, CALIFORNIA CODE OF REGULATIONS

419. Disciplinary Orders.

For violations of Business and Professions Code sections 6775 and/or 8780 which result in an order issued in accordance with Chapters 4.5 and 5 of Part 1 of Division 3 of Title 2 of the Government Code against a professional engineering and/or a professional land surveying license, the following provisions shall apply to disciplinary orders contained in decisions of the Board:

(a) The minimum disciplinary order shall be reproof. The maximum disciplinary order shall be revocation of the license.

(b) If warranted by extenuating and/or mitigating factors in the matter, the disciplinary order may be stayed by an express condition that the respondent comply with probationary conditions. The minimum time period in which the respondent shall have to comply with the conditions shall be two years. For purposes of this section, this time period shall be known as the "period of probation."

(c) All decisions containing stayed disciplinary orders as described in subdivision (b) shall include the following probationary conditions:

(1) The respondent shall obey all laws and regulations related to the practices of professional engineering and professional land surveying.

(2) The respondent shall submit such special reports as the Board may require.

(3) The period of probation shall be tolled during the time the respondent is practicing exclusively outside the state of California. If, during the period of probation, the respondent practices exclusively outside the state of California, the respondent shall immediately notify the Board in writing.

(4) If the respondent violates the probationary conditions in any respect, the Board, after giving the respondent notice and the opportunity to be heard, may vacate the stay and reinstate the disciplinary order which was stayed. If, during the period of probation, an accusation or petition to vacate stay is filed against the respondent, or if the matter has been submitted to the Office of the Attorney General for the filing of such, the Board shall have continuing jurisdiction until all matters are final, and the period of probation shall be extended until all matters are final.

(5) Upon successful completion of all of the probationary conditions and the expiration of the period of probation, the respondent's license shall be unconditionally restored.

(d) All decisions containing stayed disciplinary orders as described in subdivision (b) may include one or more of the following probationary conditions:

(1) The respondent's license shall be suspended for a period not to exceed two years. If a suspension of the license is ordered, it shall begin on the effective date of the decision.

(2) Within 60 days of the effective date of the decision, the respondent shall successfully complete and pass the California Laws and Board Rules examination, as administered by the Board.

(3) The respondent shall successfully complete and pass a course in professional ethics, approved in advance by the Board or its designee. The probationary condition shall include a time period in which this course shall be successfully completed which time period shall be at least 60 days less than the time period ordered for the period of probation.

(4) Within 30 days of the effective date of the decision, the respondent shall provide the Board with evidence that he or she has provided all persons or entities with whom he or she has a contractual or employment relationship such that the relationship is in the area of practice of professional engineering and/or professional land surveying in which the violation occurred with a

copy of the decision and order of the Board and shall provide the Board with the name and business address of each person or entity required to be so notified. During the period of probation, the respondent may be required to provide the same notification to each new person or entity with whom he or she has a contractual or employment relationship such that the relationship is in the area of practice of professional engineering and/or land surveying in which the violation occurred and shall report to the Board the name and address of each person or entity so notified.

(5) The respondent shall provide verifiable proof to the Board that restitution has been paid as ordered. The probationary condition shall include a time period in which the verifiable proof shall be provided to the Board which time period shall be at least 60 days less than the time period ordered for the period of probation.

(e) In addition to the conditions as may be ordered pursuant to subdivisions (c) and/or (d), the following conditions shall be included for the following specific violations:

(1) Incompetency in the practice of professional engineering and/or professional land surveying:

(A) The respondent shall successfully complete and pass, with a grade of “C” or better, a minimum of one and a maximum of three college-level courses, approved in advance by the Board or its designee. Such courses shall be specifically related to the area of violation. For purposes of this subdivision, “college-level course” shall mean a course offered by a community college or a four-year university of three semester units or the equivalent; “college-level course” does not include seminars. The probationary condition shall include a time period in which the course(s) shall be successfully completed which time period shall be at least 60 days less than the time period ordered for the period of probation.

(B) The respondent shall take and achieve the passing score as set by the Board for the second division examination (including the seismic principles and engineering surveying examinations for civil engineers), provided that in the event the respondent holds multiple licenses, the Board shall select the examination in the area of practice of professional engineering and/or professional land surveying in which the violation occurred and in the area of professional engineering and/or professional land surveying in which the respondent is licensed. The Board or its designee may select the specific examination questions such that the questions relate to the specific area of violation and comprise an examination of the same duration as that required of an applicant for licensure. The respondent shall be required to pay the application fee as described in Section 407 and shall be afforded all examination appeal rights as described in Sections 407, 443, and 444. The probationary condition shall include a time period in which the examination(s) shall be successfully completed which time period shall be at least 60 days less than the time period ordered for the period of probation.

(C) During the period of probation, the respondent may practice professional engineering and/or professional land surveying only under the supervision of a professional engineer and/or professional land surveyor licensed in the same branch as the respondent. This person or persons shall be approved in advance by the Board or its designee. Such supervising professional engineer and/or professional land surveyor shall initial every stamped or sealed document in close proximity to the respondent’s stamp or seal.

(2) Negligence in the practice of professional engineering and/or professional land surveying:

(A) The respondent shall successfully complete and pass, with a grade of “C” or better, a minimum of one and a maximum of three college-level courses, approved in advance by the Board or its designee. Such courses shall be specifically related to the area of violation. For purposes of this subdivision, “college-level course” shall mean a course offered by a community college or a four-year university of three semester units or the equivalent; “college-level course” does

not include seminars. The probationary condition shall include a time period in which the course(s) shall be successfully completed which time period shall be at least 60 days less than the time period ordered for the period of probation.

(3) Violation and/or breach of contract in the practice of professional engineering and/or professional land surveying:

(A) The respondent shall successfully complete and pass, with a grade of “C” or better, a minimum of one and a maximum of three college-level courses, approved in advance by the Board or its designee. Such courses shall be specifically related to the area of violation. For purposes of this subdivision, “college-level course” shall mean a course offered by a community college or a four-year university of three semester units or the equivalent; “college-level course” does not include seminars. The probationary condition shall include a time period in which the course(s) shall be successfully completed which time period shall be at least 60 days less than the time period ordered for the period of probation.

(4) Failure to file a record of survey and/or corner record in the practice of professional land surveying:

(A) For any records of survey and/or corner records found not to have been filed and recorded, the respondent shall file or record, as appropriate, the required record(s) with the appropriate governmental agency within 90 days of the effective date of the decision. The respondent shall provide the Board with verifiable proof that the required record(s) have been filed or recorded, as appropriate, by the governmental agency within 30 days of such filing or recordation. If an actual suspension of the respondent’s license is ordered as a probationary condition, the record(s) required by this subdivision shall be the only professional land surveying work the respondent is allowed to perform during the suspension.

(f) If the respondent is a civil engineer who is legally authorized to practice professional land surveying and the violation involves negligence and/or incompetency in the practice of professional land surveying and if warranted by aggravating factors in the matter, the disciplinary order shall include the following condition:

(1) The existing civil engineer license shall be revoked; a new civil engineer license shall be issued which does not authorize the respondent to practice professional land surveying. Before being permitted to practice professional land surveying, the respondent shall complete and comply with all of the legal requirements for licensure as a professional land surveyor, including, but not limited to, supplying the appropriate application documents and fees and taking and passing the entire second-division examination in professional land surveying.

In addition to the disciplinary orders described in this section, all decisions shall address recovery of the Board’s investigation and enforcement costs, as described in and authorized by Business and Professions Code section 125.3.

Notwithstanding this section, non-conforming terms and conditions may be included as part of the disciplinary order, including such other further or lesser action as the Board deems appropriate, in the interest of protecting the public health, safety, and welfare.

As used in this section, “license” includes certificate of registration or license as a professional engineer, licensure as a professional land surveyor, and certificates of authority to use the titles “structural engineer,” “geotechnical engineer,” “soil engineer,” “soils engineer,” or “consulting engineer.”

CHAPTER 13. CSLB RULES & REGULATIONS

871. Disciplinary Guidelines

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the board shall consider the disciplinary guidelines entitled “Disciplinary Guidelines” (rev. 12/11/96) which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the board in its sole discretion determines that the facts of the particular case warrant such a deviation—for example, the presence of mitigating factors such as the age of the case; evidentiary problems. *(Authority cited: Section 7008, Business and Professions Code; and Sections 11400.20 and 11400.21, Government Code. Reference: Sections 7090 and 7095, Business and Professions Code; and Section 11425.50(e), Government Code.)*

DISCIPLINARY GUIDELINES (Rev. 12/11/96)

In assessing a disciplinary penalty against a person who has not had a previous citation, revocation, suspension nor denial of application, as the result of the filing of an accusation or a statement of issues, the Registrar shall give due consideration to the following guidelines. In addition to any penalties imposed, all persons that have had a license disciplined, whether or not the disciplinary action has been stayed, will be required to post a disciplinary bond pursuant to Section 7071.8. Unless otherwise specified, all references are to the Business and Professions Code.

Factors to Be Considered

In determining whether revocation, suspension or probation is to be imposed in a given case, factors such as the following should be considered:

- 1 Nature and severity of the act(s), offenses, or crime(s) under consideration.
- 2 Actual or potential harm to the public.
- 3 Performed work that was potentially hazardous to the health, safety, or general welfare of the public.
- 4 Prior disciplinary record.
- 5 Number and/or variety of current violations.
- 6 Mitigation evidence.
- 7 Rehabilitation evidence.
- 8 In case of a criminal conviction, compliance with terms of sentence and/or court ordered probation.

Sections and Disciplinary Guidelines

125. Conspiracy with an Unlicensed Person

Minimum Penalty: Revocation, stayed, 3 years probation; Maximum Penalty: Revocation if warranted:

- 1 Actual suspension of 5 days or more.
- 2 Standard terms and conditions in cases of probation. (See page 529.)
- 3 Submit copies of construction contracts to the Registrar upon demand during the probation period.
- 4 If not taken within the past 5 years, take and pass the CSLB law and business examination.
- 5 Take and pass a course in Contractors License Law or a course related to construction law at an accredited community college. All courses must be approved in advance by the Registrar.
- 6 Community Service time as determined by the Registrar; 521 days.
- 7 Pay CSLB investigation and enforcement costs.

141. Disciplinary Action by Foreign Jurisdiction

Minimum Penalty: Revocation, stayed, 3 years probation; Maximum Penalty: Revocation if warranted:

- 1 Actual suspension of 5 days or more.

CHAPTER 13. CSLB RULES & REGULATIONS

- 2 Standard terms and conditions in cases of probation. (See page 529.)
- 3 Pay CSLB investigation and enforcement costs.
- 4 Community Service as determined by the Registrar; 521 days.

490. Conviction of a Crime—Substantial Relationship Required

Minimum Penalty: Revocation, stayed, 3 years probation; Maximum Penalty: Revocation if warranted:

- 1 Absent compelling mitigating circumstances, conviction of a crime related to the functions of a contractor is a serious offense that warrants an outright revocation.
- 2 Actual suspension of at least 30 days.
- 3 Standard terms and conditions in cases of probation. (See page 529.)
- 4 Make restitution.
- 5 If not taken within the past 5 years, take and pass the CSLB law and business examination.
- 6 Prohibit receipt of down payments.
- 7 Community Service as determined by the Registrar; 521 days.
- 8 Pay CSLB investigation and enforcement costs.

496. Violation of Section 123—Subversion of Licensee Examinations

Minimum Penalty: Revocation Maximum Penalty: Revocation if warranted:

- 1 Pay CSLB investigation and enforcement costs.

498. Securing a License through Fraud, Deceit or Knowing Misrepresentation

Minimum Penalty: Revocation Maximum Penalty: Revocation if warranted:

- 1 Pay CSLB investigation and enforcement costs.

499. False Statement in Support of Application

Minimum Penalty: Revocation, stayed, 3 years probation if warranted:

- 1 Absent compelling mitigating circumstances, making a false statement in support of an application of another person is a serious offense that warrants an outright revocation.
- 2 Actual suspension of at least 30 days.
- 3 Standard terms and conditions in cases of probation. (See page 529.)
- 4 If not taken within the past 5 years, take and pass the CSLB law and business examination.
- 5 Take and pass a course in Contractors License Law or a course related to construction law at an accredited community college. All courses must be approved in advance by the Registrar.
- 6 Community Service as determined by CSLB; 521 days.
- 7 Pay CSLB investigation and enforcement costs.

860. (CCR) Penalty for Failure to Comply with Rules

Minimum Penalty: 5 day suspension, stayed, 1 year probation; Maximum Penalty: Revocation if warranted:

- 1 Actual suspension of 5 days or more.
- 2 Standard terms and conditions in cases of probation. (See page 529.)
- 3 If not taken within the past 5 years, take and pass the CSLB law and business examination.
- 4 Take and pass a course in Contractors License Law or a course related to construction law at an accredited community college. All courses must be approved in advance by the Registrar.
- 5 Pay CSLB investigation and enforcement costs.

7018.5. Notice to Owner; Mechanics' Lien Law

Minimum Penalty: 5 day suspension, stayed, 1 year probation; Maximum Penalty: 60 day suspension, 1 year probation if warranted:

CHAPTER 13. CSLB RULES & REGULATIONS

- 1 Standard terms and conditions in cases of probation. (See page 529.)
- 2 Submit copies of construction contracts to the Registrar upon demand during the probation period.
- 3 If not taken within the past 5 years, take and pass the CSLB law and business examination.
- 4 Take and pass a course in Contractors License Law or a course related to construction law at an accredited community college. All courses must be approved in advance by the Registrar.
- 5 Pay CSLB investigation and enforcement costs.

7027.3. Fraudulent Use of a License Number

Minimum Penalty: Revocation Maximum Penalty: Revocation if warranted:

- 1 Pay CSLB investigation and enforcement costs.

7029.1. Contracting Jointly Without a Joint Venture License

Minimum Penalty: 5 day suspension, stayed, 1 year probation; Maximum Penalty: 60 day suspension, 1 year probation if warranted:

- 1 Actual suspension of 5 days or more.
- 2 Standard terms and conditions in cases of probation. (See page 529.)
- 3 If not taken within the past 5 years, take and pass the CSLB law and business examination.
- 4 Take and pass a course in Contractors License Law or a course related to construction law at an accredited community college. All courses must be approved in advance by the Registrar.
- 5 Pay CSLB investigation and enforcement costs.

7029.5. Identification on Vehicle, Plumbing, Electrical Sign, and Well Drilling

Minimum Penalty: 5 day suspension, stayed, 1 year probation; Maximum Penalty: 60 suspension, 1 year probation if warranted:

- 1 Standard terms and conditions in cases of probation. (See page 529.)
- 2 Pay CSLB investigation and enforcement costs.

7068.2. Failure to Notify; Disassociation of RMO/RME

Minimum Penalty: 60 day suspension, stayed, 1 year probation; Maximum Penalty: Revocation if warranted:

- 1 Standard terms and conditions in cases of probation. (See page 529.)
- 2 If not taken within the past 5 years, take and pass the CSLB law and business examination.
- 3 Take and pass a course in Contractors License Law or a course related to construction law at an accredited community college. All courses must be approved in advance by the Registrar.
- 4 Pay CSLB investigation and enforcement costs.

7071.11. Judgment, Admitted Claim or Good Faith Payment on Bond

Minimum Penalty: 60 day suspension, stayed, 1 year probation; Maximum Penalty: Revocation if warranted:

- 1 Actual suspension of 5 days or more.
- 2 Standard terms and conditions in cases of probation. (See page 529.)
- 3 Make restitution.
- 4 Pay CSLB investigation and enforcement costs.

7071.13. Reference in Advertising; Contractors Bond

Minimum Penalty: 5 day suspension, stayed, 1 year probation; Maximum Penalty: 60 day suspension, 1 year probation if warranted:

- 1 Standard terms and conditions in cases of probation. (See page 529.)

CHAPTER 13. CSLB RULES & REGULATIONS

- 2 Submit copies of advertisements relating to contracting business to the Registrar prior to their being displayed or published during the probation period.
- 3 If not taken within the past 5 years, take and pass the CSLB law and business examination.
- 4 Take and pass a course in Contractors License Law or a course related to construction law at an accredited community college. All courses must be approved in advance by the Registrar.
- 5 Pay CSLB investigation and enforcement costs.

7071.15. Failure to Maintain a Sufficient Bond

Minimum Penalty: 60 day suspension, stayed, 1 year probation; Maximum Penalty: Revocation if warranted:

- 1 Actual suspension of 5 days or more.
- 2 Standard terms and conditions in cases of probation. (See page 529.)
- 3 If not taken within the past 5 years, take and pass the CSLB law and business examination.
- 4 Take and pass a course in Contractors License Law or a course related to construction law at an accredited community college. All courses must be approved in advance by the Registrar.
- 5 Pay CSLB investigation and enforcement costs.

7076. Failure to Notify; Death or Disassociation of Licensee Personnel

Minimum Penalty: 60 day suspension, stayed, 1 year probation; Maximum Penalty: Revocation if warranted:

- 1 Standard terms and conditions in cases of probation. (See page 529.)
- 2 If not taken within the past 5 years, take and pass the CSLB law and business examination.
- 3 Take and pass a course in Contractors License Law or a course related to construction law at an accredited community college. All courses must be approved in advance by the Registrar.
- 4 Pay CSLB investigation and enforcement costs.

7083. Failure to Notify, Changes of Personnel, Business Name, Address, Bond Exemption, and Multiple License Exemption

Minimum Penalty: 60 day suspension, stayed, 1 year probation; Maximum Penalty: Revocation if warranted:

- 1 Standard terms and conditions in cases of probation. (See page 529.)
- 2 If not taken within the past 5 years, take and pass the CSLB law and business examination.
- 3 Take and pass a course in Contractors License Law or a course related to construction law at an accredited community college. All courses must be approved in advance by the Registrar.
- 4 Pay CSLB investigation and enforcement costs.

7090. Failure to Obtain Building Permits

Minimum Penalty: 60 day suspension, stayed, 1 year probation; Maximum Penalty: Revocation if warranted:

- 1 Actual suspension of 5 days or more.
- 2 Standard terms and conditions in cases of probation. (See page 529.)
- 3 Make restitution.
- 4 Submit copies of building permits to the Registrar upon demand for projects undertaken during the probation period.
- 5 If not taken within the past 5 years, take and pass the CSLB trade examination.
- 6 Take and pass a course in Contractors License Law or a course related to construction law at an accredited community college. All courses must be approved in advance by the Registrar.
- 7 Pay CSLB investigation and enforcement costs.

CHAPTER 13. CSLB RULES & REGULATIONS

7090.5. Fraud and Repeated Acts, Despite Corrections of Conditions

Minimum Penalty: Revocation, stayed, 3 years probation; Maximum Penalty: Revocation if warranted:

- 1 Actual suspension of 5 days or more.
- 2 Standard terms and conditions in cases of probation. (See page 529.)
- 3 Take and pass a course in accounting, bookkeeping and/or business management at an accredited community college. All courses must be approved in advance by the Registrar.
- 4 Submit copies of building permits to the Registrar upon demand for projects undertaken during the probation period.
- 5 Submit copies of construction contracts to the Registrar upon demand during the probation period.
- 6 Prohibit receipt of down payments.
- 7 Submit to the Registrar a detailed plan setting forth the procedure to be used to provide for direct supervising and control by the qualifying individual.
- 8 If not taken within the past 5 years, take and pass the CSLB law and business examination.
- 9 Take and pass a course in Contractors License Law or a course related to business law at an accredited community college. All courses must be approved in advance by the Registrar.
- 10 If not taken within the past 5 years, take and pass the CSLB trade examination.
- 11 Take and pass a vocational course(s) related to the trade(s) employed on the project. All courses must be approved in advance by the Registrar.
- 12 Pay CSLB investigation and enforcement costs.

7099.6. Failure to Comply with a Citation

Minimum Penalty: Revocation, stayed, 1 year probation; Maximum Penalty: Revocation if warranted:

- 1 Actual suspension of 5 days or more.
- 2 Standard terms and conditions in cases of probation. (See page 529.)
- 3 Make restitution.
- 4 Take and pass a course in Contractors License Law or a course related to construction law at an accredited community college. All courses must be approved in advance by the Registrar.
- 5 Pay CSLB investigation and enforcement costs.

7103. Disciplinary Action by another State

Minimum Penalty: Revocation, stayed, 3 years probation. Maximum Penalty: Revocation if warranted:

- 1 Actual suspension of 5 days or more.
- 2 Standard terms and conditions in cases of probation. (See page 529.)
- 3 Pay CSLB investigation and enforcement costs.

7107. Abandonment

Minimum Penalty: Revocation, stayed, 3 years probation; Maximum Penalty: Revocation if warranted:

- 1 Absent compelling mitigating circumstances, abandonment of a project is a serious offense that warrants an actual period of suspension of at least 30 days.
- 2 Standard terms and conditions in cases of probation. (See page 529.)
- 3 Make restitution.
- 4 Submit copies of building permits to the Registrar upon demand for projects undertaken during the probation period.
- 5 Submit copies of construction contracts to the Registrar upon demand during the probation period.
- 6 Submit to the Registrar a detailed plan setting forth the procedure to be used to provide for direct supervision and control by the qualifying individual.
- 7 If not taken within the past 5 years, take and pass the CSLB law and business examination.

CHAPTER 13. CSLB RULES & REGULATIONS

- 8 Take and pass a course in Contractors License Law or a course related to construction law at an accredited community college. All courses must be approved in advance by the Registrar.
- 9 If not taken within the past 5 years, take and pass the CSLB trade examination.
- 10 Take and pass a vocational course(s) related to the trade(s) employed on the project. All courses must be approved in advance by the Registrar.
- 11 During the period of probation, provide lien releases to project owners as soon as payment is received.
- 12 Pay CSLB investigation and enforcement costs.

7108. Misuse of Funds

Minimum Penalty: Revocation, stayed, 3 years probation; Maximum Penalty: Revocation if warranted:

- 1 Absent compelling mitigating circumstances, misuse of funds is a serious offense that warrants an actual period of suspension of at least 30 days.
- 2 If diversion or misuse of funds is for personal use not related to construction work, outright revocation is appropriate.
- 3 Standard terms and conditions in cases of probation. (See page 529.)
- 4 Make restitution.
- 5 Take and pass a course in accounting, bookkeeping and/or business management at an accredited community college. All courses must be approved in advance by the Registrar.
- 6 Submit copies of construction contracts to the Registrar upon demand during the probation period.
- 7 If not taken within the past 5 years, take and pass the CSLB law and business examination.
- 8 Take and pass a course in Contractors License Law or course related to construction law at an accredited community college. All courses must be approved in advance by the Registrar.
- 9 Community Service as determined by CSLB; 521 days.
- 10 Pay CSLB investigation and enforcement costs.

7108.5. Prime Contractors and Subcontractors; Payment Required

Minimum Penalty: 60 day suspension, stayed, 1 year probation; Maximum Penalty: Revocation if warranted:

- 1 Actual suspension of 5 days or more.
- 2 Standard terms and conditions in cases of probation. (See page 529.)
- 3 Make restitution.
- 4 Take and pass a course in accounting, bookkeeping and/or business management at an accredited community college. All courses must be approved in advance by the Registrar.
- 5 If not taken within the past 5 years, take and pass the CSLB law and business examination.
- 6 Take and pass a course in Contractors License Law or a course related to construction law at an accredited community college. All courses must be approved in advance by the Registrar.
- 7 Pay CSLB investigation and enforcement costs.

7109(a). Departure from Accepted Trade Standards for Workmanship

Minimum Penalty: Revocation, stayed, 2 years probation; Maximum Penalty: Revocation if warranted:

- 1 Actual suspension of 5 days or more. If the departure from trade standards is substantial, actual suspension of at least 30 days.
- 2 Standard terms and conditions in cases of probation. (See page 529.)
- 3 Make restitution.
- 4 Submit copies of building permits to the Registrar upon demand for projects undertaken during the probationary period.
- 5 Submit copies of construction contracts to the Registrar upon demand during the probation period.

CHAPTER 13. CSLB RULES & REGULATIONS

- 6 Submit to the Registrar a detailed plan setting forth the procedure to be used to provide for direct supervising and control by the qualifying individual.
- 7 If not taken within the last 5 years, take and pass the CSLB law and business examination.
- 8 Take and pass a course in Contractors License Law or a course related to construction law at an accredited community college. All courses must be approved in advance by the Registrar.
- 9 If not taken within the past 5 years, take and pass the CSLB trade examination.
- 10 Take and pass a vocational course(s) related to the trade(s) employed on the project. All courses must be approved in advance by the Registrar.
- 11 Pay CSLB investigation and enforcement costs.

7109(b). Departure from Plans and/or Specifications

Minimum Penalty: Revocation, stayed, 2 years probation; Maximum Penalty: Revocation if warranted:

- 1 Actual suspension of 5 days or more. If the departure from plans and/or specifications is substantial, actual suspension of at least 30 days.
- 2 Standard terms and conditions in cases of probation. (See page 529.)
- 3 Make restitution.
- 4 Submit copies of building permits to the Registrar upon demand for all projects undertaken during the probationary period.
- 5 Submit copies of construction contracts to the Registrar upon demand during the probation period.
- 6 Submit to the Registrar a detailed plan setting forth the procedure to be used to provide for direct supervising and control by the qualifying individual.
- 7 If not taken within the past 5 years, take and pass the CSLB law and business examination.
- 8 Take and pass a course in Contractors License Law or a course related to construction law at an accredited community college. All courses must be approved in advance by the Registrar.
- 9 If not taken within the past 5 years, take and pass the CSLB trade examination.
- 10 Take and pass a vocational course(s) related to the trade(s) employed on the project. All courses must be approved in advance by the Registrar.
- 11 Pay CSLB investigation and enforcement costs.

7109.5. Violation of Safety Orders

Minimum Penalty: Revocation, stayed, 2 years probation; Maximum Penalty: Revocation if warranted:

- 1 Actual suspension of 5 days or more.
- 2 Standard terms and conditions in cases of probation. (See page 529.)
- 3 If not taken within the past 5 years, take and pass the CSLB law and business examination.
- 4 Take and pass a course in Contractors License Law or a course related to construction law at an accredited community college. All courses must be approved in advance by the Registrar.
- 5 Establish a safety program.
- 6 Pay CSLB investigation and enforcement costs.

7110. Violations of Other Laws; Disciplinary Action

Minimum Penalty: Revocation, stayed, 2 years probation; Maximum Penalty: Revocation if warranted:

- 1 Actual suspension of 5 days or more.
- 2 Standard terms and conditions in cases of probation. (See page 529.)
- 3 Make restitution.
- 4 Comply with orders or assessments of relevant agency.
- 5 If not taken within the past 5 years, take and pass the CSLB law and business examination.
- 6 Take and pass a course in Contractors License Law or a course related to construction law at an accredited community college. All courses must be approved in advance by the Registrar.

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- 7 Submit copies of building permits to the Registrar upon demand for projects undertaken during the probation period.
- 8 Establish a safety program.
- 9 Pay CSLB investigation and enforcement costs.

7110.1. Violation of Labor Code Section 206.5; Requiring Release of Claim for Wages

Minimum Penalty: 60 day suspension, stayed, 1 year probation; Maximum Penalty: Revocation if warranted:

- 1 Actual suspension of 5 days or more.
- 2 Standard terms and conditions in cases of probation. (See page 529.)
- 3 If not taken within the past 5 years, take and pass the CSLB law and business examination.
- 4 Take and pass a course in Contractors License Law or a course related to construction law at an accredited community college. All courses must be approved in advance by the Registrar.
- 5 Pay CSLB investigation and enforcement costs.

7110.5. Violation Pursuant to Section 98.9 of the Labor Code

Minimum Penalty: 60 day suspension, stayed, 1 year probation; Maximum Penalty: Revocation if warranted:

- 1 Actual suspension of 5 days or more.
- 2 Standard terms and conditions in cases of probation. (See page 529.)
- 3 If not taken within the past 5 years, take and pass the CSLB law and business examination.
- 4 Take and pass a course in Contractors License Law or a course related to construction law at an accredited community college. All courses must be approved in advance by the Registrar.
- 5 Pay CSLB investigation and enforcement costs.

7111. Preservation of Records

Minimum Penalty: 60 day suspension, stayed, 1 year probation; Maximum Penalty: Revocation if warranted:

- 1 Actual suspension of 5 days or more.
- 2 Standard terms and conditions in cases of probation. (See page 529.)
- 3 Take and pass a course in accounting, bookkeeping and/or business management at an accredited community college. All courses must be approved in advance by the Registrar.
- 4 If not taken within the past 5 years, take and pass the CSLB law and business examination.
- 5 Take and pass a course in Contractors License Law or a course related to construction law at an accredited community college. All courses must be approved in advance by the Registrar.
- 6 Pay CSLB investigation and enforcement costs.

7111.1. Failure of Licensee to Cooperate in an Investigation of a Complaint

Minimum Penalty: 60 day suspension, stayed, 1 year probation; Maximum Penalty: Revocation if warranted:

- 1 Actual suspension of 5 days or more.
- 2 Standard terms and conditions in cases of probation. (See page 529.)
- 3 If not taken within the past 5 years, take and pass CSLB law and business examination.
- 4 Take and pass a course in Contractors License Law or a course related to construction law at an accredited community college. All courses must be approved in advance by the Registrar.
- 5 Pay CSLB investigation and enforcement costs.

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7112. Misrepresentation on an Application

Minimum Penalty: Revocation, stayed, 3 years probation; Maximum Penalty: Revocation if warranted:

- 1 Absent compelling mitigating circumstances, misrepresentation is a serious offense that warrants an outright revocation.
- 2 Actual suspension of at least 30 days.
- 3 Standard terms and conditions in cases of probation. (See page 529.)
- 4 Community Service as determined by CSLB; 521 days.
- 5 Pay CSLB investigation and enforcement costs.

7113. Failure to Complete Project for Contract Price

Minimum Penalty: Revocation, stayed, 2 years probation; Maximum Penalty: Revocation if warranted:

- 1 Actual suspension of 5 days or more. If injury is substantial, actual suspension of at least 30 days.
- 2 Standard terms and conditions in cases of probation. (See page 529.)
- 3 Make restitution.
- 4 Complete an education course in estimating construction costs or a related course in the field of construction science. All courses must be approved in advance by the Registrar.
- 5 Prohibit receipt of down payments.
- 6 If not taken within the past 5 years, take and pass the CSLB law and business examination.
- 7 Take and pass a course in Contractors License Law or a course related to construction law at an accredited community college. All courses must be approved in advance by the Registrar.
- 8 Pay CSLB investigation and enforcement costs.

7113.5. Settlement of Lawful Obligations

Minimum Penalty: Revocation, stayed, 2 years probation; Maximum Penalty: Revocation if warranted:

- 1 Actual suspension of 5 days or more.
- 2 Standard terms and conditions in cases of probation. (See page 529.)
- 3 Make restitution.
- 4 Take and pass a course in accounting, bookkeeping and/or business management at an accredited community college. All courses must be approved in advance by the Registrar.
- 5 Submit a list of all subcontractors used on construction projects to the Registrar upon demand during the probation period.
- 6 Submit a list of all material suppliers used on construction projects to the Registrar upon demand during the probation period.
- 7 Pay CSLB investigation and enforcement costs.

7114. Aiding and Abetting an Unlicensed Person

Minimum Penalty: Revocation, stayed, 2 years probation; Maximum Penalty: Revocation if warranted:

- 1 Actual suspension of 5 days or more.
- 2 Standard terms and conditions in cases of probation. (See page 529.)
- 3 If not taken within the past 5 years, take and pass the CSLB law and business examination.
- 4 Take and pass a course in Contractors License Law or a course related to construction law at an accredited community college. All courses must be approved in advance by the Registrar.
- 5 Submit a list of all subcontractors used on construction projects to the Registrar upon demand during the probation period.
- 6 Pay CSLB investigation and enforcement costs.

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7114.1. Certifying to False Experience

Minimum Penalty: Revocation, stayed, 3 years probation; Maximum Penalty: Revocation if warranted:

- 1 Absent compelling mitigating circumstances, certifying false experience is a serious offense that warrants an outright revocation.
- 2 Standard terms and conditions in cases of probation. (See page 529.)
- 3 Community Service as determined by CSLB; 521 days.
- 4 Pay CSLB investigation and enforcement costs.

7115. Violation of the Contractors License Law

Minimum Penalty: 5 day suspension, stayed, 1 year probation; Maximum Penalty: Revocation if warranted:

- 1 Actual suspension of 5 days or more.
- 2 Standard terms and conditions in case of probation. (See page 529.)
- 3 Pay CSLB investigation and enforcement costs.

7116. Any Willful or Fraudulent Act

Minimum Penalty: Revocation, stayed, 3 years probation; Maximum Penalty: revocation If warranted:

- 1 Absent compelling circumstances, fraud is a serious offense that warrants an actual suspension of at least 60 days.
- 2 If the injury is substantial, outright revocation is appropriate.
- 3 Standard terms and conditions in case of probation. (See page 529.)
- 4 Make restitution.
- 5 If not taken within the past 5 years, take and pass the CSLB law and business examination.
- 6 Take and pass a course in Contractors License Law or a course related to construction law at an accredited community college. All courses must be approved in advance by the Registrar.
- 7 Community Service as determined by CSLB; 521 days.
- 8 Pay CSLB investigation and enforcement costs.

7117. Variance from License as to Name or Personnel

Minimum Penalty: 5 day suspension, stayed, 1 year probation; Maximum Penalty: 364 day suspension, 2 years probation if warranted:

- 1 Standard terms and conditions in case of probation. (See page 529.)
- 2 If not taken within the past 5 years, take and pass the CSLB law and business examination.
- 3 Take and pass a course in Contractors License Law or a course related to construction law at an accredited community college. All courses must be approved in advance by the Registrar.
- 4 Pay CSLB investigation and enforcement costs.

7117.5. Contracting with an Inactive, Suspended or Expired License

Minimum Penalty: Revocation, stayed, 2 years probation; Maximum Penalty: Revocation if warranted:

- 1 Actual suspension of 5 days or more.
- 2 Standard terms and conditions in case of probation. (See page 529.)
- 3 If not taken within the past 5 years, take and pass the CSLB law and business examination.
- 4 Take and pass a course in Contractors License Law or a course related to construction law at an accredited community college. All courses must be approved in advance by the Registrar.
- 5 Pay CSLB investigation and enforcement costs.

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7117.6. Contracting Out of Classification

Minimum Penalty: 60 day suspension, stayed, 1 year probation; Maximum Penalty: Revocation if warranted:

- 1 Actual suspension of 5 days or more.
- 2 Standard terms and conditions in case of probation. (See page 529.)
- 3 Submit copies of construction contracts to the Registrar upon demand during the probation period.
- 4 Submit copies of all advertisements relating to contracting business to the Registrar prior to their being displayed or published during the probation period.
- 5 Pay CSLB investigation and enforcement costs.

7118. Contracting with an Unlicensed Person

Minimum Penalty: Revocation, stayed, 2 years probation; Maximum Penalty: Revocation if warranted:

- 1 Actual suspension of 5 days or more.
- 2 Standard terms and conditions in cases of probation . (See page 529.)
- 3 If not taken within the past 5 years, take and pass the CSLB law and business examination.
- 4 Take and pass a course in Contractors License Law or a course related to construction law at an accredited community college. All courses must be approved in advance by the Registrar.
- 5 Submit a list of all subcontractors used on construction projects to the Registrar upon demand during the probation period.
- 6 Community Service as determined by CSLB; 521 days.
- 7 Pay CSLB investigation and enforcement costs.

7118.4. Asbestos Related Inspection with Knowledge of Report being Required for Loan; Disclosure Required

Minimum Penalty: 60 day suspension, stayed, 1 year probation; Maximum Penalty: Revocation if warranted:

- 1 Absent compelling mitigating circumstances, conducting an asbestos related inspection while maintaining a financial relationship with an entity which performs corrective work without disclosing this fact is a serious offense that warrants an actual suspension of 60 days.
- 2 Standard terms and conditions in cases of probation. (See page 529.)
- 3 If not taken within the past 5 years, take and pass the CSLB law and business examination.
- 4 Take and pass a course in Contractors License Law or a course related to construction law at an accredited community college. All courses must be approved in advance by the Registrar.
- 5 Community Service as determined by CSLB; 521 days.
- 6 Pay CSLB investigation and enforcement costs.

7118.5. Asbestos Related Work; Contracting with Uncertified Contractor

Minimum Penalty: 60 day suspension, stayed, 1 year probation; Maximum Penalty: Revocation if warranted:

- 1 Absent compelling mitigating circumstances, contracting with an uncertified asbestos contractor to perform asbestos related work is a serious offense that warrants an actual suspension of 60 days.
- 2 Standard terms and conditions in cases of probation. (See page 529.)
- 3 Submit a list of all subcontractors used on construction projects to the Registrar upon demand during the probation period.
- 4 Community Service as determined by CSLB; 521 days.
- 5 Pay CSLB investigation and enforcement costs.

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7118.6. Asbestos Contracting with an Uncertified Person for Removal or Remedial Action

Minimum Penalty: 60 day suspension, stayed, 1 year probation; Maximum Penalty: Revocation if warranted:

- 1 Absent compelling mitigating circumstances, contracting with an uncertified person for removal or remedial asbestos work is a serious offense that warrants an actual suspension of 60 days.
- 2 Standard terms and conditions in cases of probation. (See page 529.)
- 3 Submit a list of all subcontractors used on construction projects to the Registrar upon demand during the probation period.
- 4 Community Service as determined by CSLB; 521 days.
- 5 Pay CSLB investigation and enforcement costs.

7119. Lack of Reasonable Diligence

Minimum Penalty: 60 day suspension, stayed, 1 year probation; Maximum Penalty: Revocation if warranted:

- 1 Actual suspension of 5 days or more.
- 2 Standard terms and conditions in cases of probation. (See page 529.)
- 3 Make restitution.
- 4 Prohibit receipt of down payments.
- 5 Pay CSLB investigation and enforcement costs.

7120. Failure to Pay Money

Minimum Penalty: 60 day suspension, stayed, 1 year probation; Maximum Penalty: Revocation if warranted:

- 1 Actual suspension of 5 days or more.
- 2 Standard terms and conditions in cases of probation. (See page 529.)
- 3 Take and pass a course in accounting, bookkeeping and/or business management at an accredited community college. All courses must be approved in advance by the Registrar.
- 4 If not taken within the past 5 years, take and pass the CSLB law and business examination.
- 5 Take and pass a course in Contractors License Law or a course related to construction law at an accredited community college. All courses must be approved in advance by the Registrar.
- 6 Submit a list of all subcontractors used on construction projects to the Registrar upon demand during the probation period.
- 7 Submit a list of all material suppliers used on construction projects to the Registrar upon demand during the probation period.
- 8 Prohibit the receipt of down payments.
- 9 Provide lien releases to project owners on all future construction projects upon receipt of payments.
- 10 Pay CSLB investigation and enforcement costs.

7121. Prohibition against Association

Minimum Penalty: Revocation, stayed, 2 years probation; Maximum Penalty: Revocation if warranted:

- 1 Actual suspension of 5 days or more.
- 2 Standard terms and conditions in cases of probation. (See page 529.)
- 3 Make restitution.
- 4 If not taken within the past 5 years, take and pass the CSLB law and business examination.
- 5 Take and pass a course in Contractors License Law or a course related to construction law at an accredited community college. All courses must be approved in advance by the Registrar.
- 6 Pay CSLB investigation and enforcement costs.

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7123. Conviction of a Crime

Minimum Penalty: Revocation, stayed, 3 years probation; Maximum Penalty: Revocation if warranted:

- 1 Absent compelling mitigating circumstances, conviction of a crime related to the functions of a contractor is a serious offense and warrants an outright revocation.
- 2 Actual suspension of at least 30 days.
- 3 Standard terms and conditions in cases of probation. (See page 529.)
- 4 Make restitution.
- 5 If not taken within the past 5 years, take and pass the CSLB law and business examination.
- 6 Take and pass a course in Contractors License Law or a course related to construction law at an accredited community college. All courses must be approved in advance by the Registrar.
- 7 Prohibit the receipt of down payments.
- 8 Community Service as determined by CSLB; 521 days.
- 9 Pay CSLB investigation and enforcement costs.

7123.5. Violation of Prohibition against Overpricing Following an Emergency or Disaster (Penal Code Section 396)

Minimum Penalty: 6 month suspension, 3 years probation; Maximum Penalty: Revocation if warranted:

- 1 Absent compelling mitigating circumstances, overpricing following an emergency or disaster is a serious offense and warrants an outright revocation.
- 2 Actual suspension of 6 months.
- 3 Standard terms and conditions in cases of probation. (See page 529.)
- 4 Make restitution.
- 5 If not taken within the past 5 years, take and pass the CSLB law and business examination.
- 6 Take and pass a course in Contractors License Law or a course related to construction law at an accredited community college. All courses must be approved in advance by the Registrar.
- 7 Prohibit the receipt of down payments.
- 8 Community Service as determined by CSLB; 521 days.
- 9 Pay CSLB investigation and enforcement costs.

7125(b). Filing False Workers' Compensation Exemption Reports

Minimum Penalty: Revocation, stayed, 2 years probation; Maximum Penalty: Revocation if warranted:

- 1 Actual suspension of 5 days or more.
- 2 Standard terms and conditions in cases of probation. (See page 529.)
- 3 If not taken within the past 5 years, take and pass the CSLB law and business examination.
- 4 Take and pass a course in Contractors License Law or a course related to construction law at an accredited community college. All courses must be approved in advance by the Registrar.
- 5 Submit a list of persons employed on construction related projects to the Registrar upon demand during the probation period.
- 6 Make restitution.
- 7 Pay CSLB investigation and enforcement costs.

7154. Employment of a Nonregistered Home Improvement Salesperson

Minimum Penalty: 60 day suspension, stayed, 1 year probation; Maximum Penalty: Revocation if warranted:

- 1 Actual suspension of 5 days or more.
- 2 Standard terms and conditions in cases of probation. (See page 529.)
- 3 If not taken within the past 5 years, take and pass the CSLB law and business examination.

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- 4 Take and pass a course in Contractors License Law or a course related to construction law at an accredited community college. All courses must be approved in advance by the Registrar.
- 5 Pay CSLB investigation and enforcement costs.

7155. Violation of Contractors License Law by Home Improvement Salesperson

Minimum Penalty: 60 day suspension, stayed, 1 year probation; Maximum Penalty: Revocation if warranted:

- 1 Actual suspension of 5 days or more.
- 2 Standard terms and conditions in cases of probation. (See page 529.)
- 3 Submit copies of construction contracts to the Registrar upon demand during the probation period.
- 4 If not taken within the past 5 years, take and pass the CSLB law and business examination.
- 5 Take and pass a course in Contractors License Law or a course related to construction law at an accredited community college. All courses must be approved in advance by the Registrar.
- 6 Pay CSLB investigation and enforcement costs.

7155.5. Liability of a Contractor for a Home Improvement Salesperson

Minimum Penalty: Suspension, stayed, 1 year probation; Maximum Penalty: Revocation

If warranted:

- 1 Actual suspension of 5 days or more.
- 2 Standard terms and conditions in cases of probation. (See page 529.)
- 3 If not taken within the past 5 years, take and pass the CSLB law and business examination.
- 4 Take and pass a course in Contractors License Law or a course related to construction law at an accredited community college. All courses must be approved in advance by the Registrar.
- 5 Submit copies of construction contracts to the Registrar upon demand during the probation period.
- 6 Prohibit the receipt of down payments.
- 7 Pay CSLB investigation and enforcement costs

7156. Registered Salespersons Violations

Minimum Penalty: 60 day suspension, stayed, 1 year probation; Maximum Penalty: Revocation if warranted:

- 1 Actual suspension of 5 days or more.
- 2 Standard terms and conditions in cases of probation. (See page 529.)
- 3 Submit copies of construction contracts to the Registrar upon demand during the probation period.
- 4 Pay CSLB investigation and enforcement costs.

7157. Home Improvement Inducements

Minimum Penalty: 60 day suspension, stayed, 1 year probation; Maximum Penalty: Revocation if warranted:

- 1 Actual suspension of at least 5 days.
- 2 Standard terms and conditions in cases of probation. (See page 529.)
- 3 If not taken within the past 5 years, take and pass the CSLB law and business examination.
- 4 Take and pass a course in Contractors License Law or a course related to construction law at an accredited community college. All courses must be approved in advance by the Registrar.
- 5 Submit copies of advertisements relating to contracting business to the Registrar prior to their being displayed or published during the probation period.
- 6 Prohibit the receipt of down payments.
- 7 Pay CSLB investigation and enforcement costs.

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7158. False Completion Certificate

Minimum Penalty: Revocation, stayed, 3 years probation; Maximum Penalty: Revocation if warranted:

- 1 Absent compelling circumstances, knowingly using a false certificate is a serious offense that warrants an actual suspension of at least 30 days.
- 2 Standard terms and conditions in cases of probation. (See page 529.)
- 3 If not taken within the past 5 years, take and pass the CSLB law and business examination.
- 4 Take and pass a course in Contractors License Law or a course related to construction law at an accredited community college. All courses must be approved in advance by the Registrar.
- 5 Make restitution.
- 6 Submit copies of construction contracts to the Registrar upon demand during the probation period.
- 7 Prohibit receipt of down payments.
- 8 Community Service as determined by CSLB; 521 days.
- 9 Pay CSLB investigation and enforcement costs.

7159. Home Improvement Contract Requirements

Minimum Penalty: 60 day suspension, stayed, 1 year probation; Maximum Penalty: Revocation if warranted:

- 1 If any injuries are involved, actual suspension of at least 30 days.
- 2 Standard terms and conditions in cases of probation. (See page 529.)
- 3 If not taken within the past 5 years, take and pass the CSLB law and business examination.
- 4 Take and pass a course in Contractors License Law or a course related to construction law at an accredited community college. All courses must be approved in advance by the Registrar.
- 5 Submit copies of construction contracts to the Registrar upon demand during the probation period.
- 6 Prohibit receipt of down payments.
- 7 Community Service as determined by CSLB; 521 days.
- 8 Pay CSLB investigation and enforcement costs.

7161. Misrepresentation; False Advertisement

Minimum Penalty: Revocation, stayed, 3 years probation; Maximum Penalty: Revocation if warranted:

- 1 Absent compelling mitigating circumstances, misrepresentation and false or deceptive advertising are serious offenses that warrant an actual period of suspension of at least 30 days.
- 2 If injury is substantial, outright revocation is appropriate.
- 3 Standard terms and conditions in cases of probation. (See page 529.)
- 4 If not taken within the past 5 years, take and pass the CSLB law and business examination.
- 5 Take and pass a course in Contractors License Law or a course related to construction law at an accredited community college. All courses must be approved in advance by the Registrar.
- 6 Submit copies of construction contracts to the Registrar upon demand during the probation period.
- 7 Submit copies of advertisements relating to contracting business to the Registrar prior to their being displayed or published during the probation period.
- 8 Prohibit the receipt of down payments.
- 9 Community Service as determined by CSLB; 521 days.
- 10 Pay CSLB investigation and enforcement costs.

7162. Representation with Respect to Trademark or Brand Name; Quantity or Size

Minimum Penalty: Revocation, stayed, 2 years probation; Maximum Penalty: Revocation if warranted:

- 1 Actual suspension of 5 days or more.
- 2 Standard terms and conditions in cases of probation. (See page 529.)
- 3 If not taken within the past 5 years, take and pass the CSLB law and business examination.

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- 4 Take and pass a course in Contractors License Law or a course related to construction law at an accredited community college. All courses must be approved in advance by the Registrar.
- 5 Make restitution.
- 6 Submit copies of construction contracts to the Registrar upon demand during the probation period.
- 7 Submit copies of advertisements relating to contracting business to the Registrar prior to their being displayed or published during the probation period.
- 8 Prohibit the receipt of down payments.
- 9 Pay CSLB investigation and enforcement costs.

7164. Contract Form for Single Family Dwelling

Minimum Penalty: 60 day suspension, stayed, 1 year probation; Maximum Penalty: Revocation if warranted:

- 1 Actual suspension of 5 days or more.
- 2 Standard terms and conditions in cases of probation. (See page 529.)
- 3 If not taken within the past 5 years, take and pass the CSLB law and business examination.
- 4 Take and pass a course in Contractors License Law or a course related to construction law at an accredited community college. All courses must be approved in advance by the Registrar.
- 5 Submit copies of construction contracts to the Registrar upon demand during the probation period.
- 6 Pay CSLB investigation and enforcement costs.

7165. Swimming Pool Construction Contract

Minimum Penalty: 60 day suspension, stayed, 1 year probation; Maximum Penalty: Revocation if warranted:

- 1 Actual suspension of 5 days or more.
- 2 Standard terms and conditions in cases of probation. (See page 529.)
- 3 If not taken within the past 5 years, take and pass the CSLB law and business examination.
- 4 Take and pass a course in Contractors License Law or a course related to construction law at an accredited community college. All courses must be approved in advance by the Registrar.
- 5 Submit copies of construction contracts to the Registrar upon demand during the probation period.
- 6 Pay CSLB investigation and enforcement costs.

7183.5. Asbestos; Certification Obtained under False Pretenses

Minimum Penalty: Revocation, stayed, 3 years probation; Maximum Penalty: Revocation if warranted:

- 1 Absent compelling mitigating circumstances, obtaining an asbestos certification under false pretenses is a serious offense and warrants an outright revocation.
- 2 Actual suspension of at least 30 days.
- 3 Standard terms and conditions in cases of probation. (See page 529.)
- 4 Community Service as determined by CSLB; 521 days.
- 5 Pay CSLB investigation and enforcement costs.

7189. Asbestos Certification; Conflicts of Interest

Minimum Penalty: 60 day suspension, stayed, 1 year probation; Maximum Penalty: Revocation if warranted:

- 1 Absent compelling circumstances, a person defined as an “asbestos consultant” or a “site surveillance technician,” having financial or proprietary interest in an asbestos contractor’s company is a serious offense that warrants an actual suspension period of at least 30 days.
- 2 Standard terms and conditions in cases of probation. (See page 529.)
- 3 Submit copies of construction contracts to the Registrar upon demand during the probation period.
- 4 Prohibit the receipt of down payments.

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- 5 Community Service as determined by CSLB; 521 days.
- 6 Pay CSLB investigation and enforcement costs.

All Other Violations

Minimum Penalty: 5 day suspension, stayed, 1 year probation; Maximum Penalty: Revocation if warranted:

- 1 Actual suspension of 5 days or more.
- 2 Standard terms and conditions in cases of probation. (See page 529.)
- 3 If not taken within the past 5 years, take and pass the CSLB law and business examination.
- 4 Take and pass a course in Contractors License Law or a course related to construction law at an accredited community college. All courses must be approved in advance by the Registrar.
- 5 If not taken within the past 5 years, take and pass the CSLB trade examination.
- 6 Take and pass a vocational course(s) related to the trade(s) employed on the project. All courses must be approved in advance by the Registrar.
- 7 Submit copies of construction contracts to the Registrar upon demand during the probation period.
- 8 Make restitution
- 9 Pay CSLB investigation and enforcement costs.

Standard Terms and Conditions to Be Included in all Cases of Probation

- 1 Obey All Laws: Respondent shall comply with all federal, state and local laws governing the activities of a licensed contractor in California.
- 2 Interviews with Regional Deputy: Respondent and any of respondent's personnel of record shall appear in person for interviews with the Regional Deputy or designee upon request and reasonable notice.
- 3 Completion of Probation: Upon successful completion of probation, the contractor's license will be fully restored.
- 4 Violation of Probation: If respondent violates probation in any respect, the Registrar, after giving notice and opportunity to be heard, may revoke probation and impose the disciplinary order that was stayed. If the decision contains an order to make restitution, the Registrar may impose the disciplinary order without giving the respondent an opportunity to be heard should the respondent fail to comply with the restitution order.
- 5 Respondent shall submit copies of documents directly related to the person's construction operations to the Registrar upon demand during the probation period.

DISCUSS AND POSSIBLE ACTION ON STRATEGIC PLAN OBJECTIVE TO REVIEW AND CONSIDER ADDING A PROVISION REGARDING “SCOPE OF WORK” TO THE WRITTEN CONTRACT REQUIREMENTS (BPC SECTION 5536.22)

The California Architects Board’s (Board) 2013 Strategic Plan directs the Regulatory and Enforcement Committee (REC) to determine whether a provision should be added to the written contract requirement (BPC section 5536.22) concerning scope of work.

The written contract requirement was added to the Architects Practice Act in 1996 and has immensely improved architect/client relations. While the current requirement has accomplished much to protect consumers and architects, it has some deficiencies, which if addressed, could greatly improve the protections afforded the architect and the consumer.

In summary, the current BPC section 5536.22 requires that a written contract:

1. Describe the services to be provided by the architect;
2. Describe the basis of compensation and method of payment;
3. Identify by name and address the client and architect including the architect’s license number;
4. Describe the procedure to accommodate additional services; and,
5. Describe the procedure to be used by both parties to terminate the contract.

A missing critical requirement is a description of the project scope for which the architect’s services are being retained. Over the years, many of the disputes that have led to consumer complaints to the Board stemmed from a misunderstanding(s) by either or both parties of the project scope and/or failure to manage the changes in scope during the design process. Description of the project scope has direct bearing on the 1) design services required; 2) compensation related to these services; and, 3) project budget and schedule.

Project Scope: There are varying degrees of detail that can be provided in a project scope statement; however, in its most simple form the project scope defines what is to be built, how big it is to be and what the expected levels of quality should be. These facts will dictate (and ultimately be controlled by) the project budget and schedule. Often times, there is no clear definition of the project scope; therefore, the first phase of project services will explore and define the project scope.

Tracking progress and comparing it with stated goals and objectives is integral to effective project management. Without a defined project scope, it is often not clear whether the project is on track in meeting the expectations and project requirements established by the client and the architect.

Below are staff's recommended revisions to BPC section 5536.22 to meet this Strategic Plan objective:

5536.22. (a) An architect shall use a written contract when contracting to provide professional services to a client pursuant to this chapter. That written contract shall be executed by the architect and the client, or his or her representative, prior to the architect commencing work, unless the client knowingly states in writing that work may be commenced before the contract is executed. The written contract shall include, but not be limited to, all of the following items:

- (1) A description of project scope and the services to be provided by the architect to the client.
- (2) A description of any basis of compensation applicable to the contract and method of payment agreed upon by both parties.
- (3) The name, address, and license number of the architect, ~~and~~ the name and address of the client, the project address and the name and address of the property owner.
- (4) A description of the procedure that the architect and the client will use to accommodate contract changes including changes in project scope and ~~additional~~ in scope of services.
- (5) A description of the procedure to be used by either party to terminate the contract.

The REC is asked to review and discuss the recommended revisions to BPC section 5536.22 and make a recommendation to the Board.

ADJOURNMENT

Time: _____