



Edmund G. Brown Jr.
GOVERNOR

CALIFORNIA ARCHITECTS BOARD

PUBLIC PROTECTION THROUGH EXAMINATION, LICENSURE, AND REGULATION

SUMMARY REPORT

REGULATORY & ENFORCEMENT COMMITTEE MEETING

May 11, 2011

Sacramento, California

Committee Members Present

Sheran Voigt, Chair
Richard Conrad (Departed 12:45 p.m.)
Fred Cullum
Robert George
Michael Merino
Phyllis A. Newton, Esq. (Arrived 10:10 a.m.)
Larry Segrue

Committee Member Excused

Robert De Pietro

Board Staff Present

Doug McCauley, Executive Officer
Vickie Mayer, Assistant Executive Officer
Hattie Johnson, Enforcement Officer
Bob Carter, Architect Consultant
Trish Rodriguez, Landscape Architects Technical Committee Program
Manager

A. Welcome and Introductions

Regulatory and Enforcement Committee (REC) Chair Sheran Voigt called the meeting to order at 10:00 a.m. She noted that Robert De Pietro was absent and excused.

Ms. Voigt welcomed the REC and staff, and requested self-introductions.

2420 DEL PASO ROAD,
SUITE 105
SACRAMENTO,
CA 95834

916-574-7220 T
916-575-7283 F

cab@dca.ca.gov
www.cab.ca.gov

Ms. Voigt announced that Larry Segrue was a recipient of the Octavius Morgan Distinguished Service Award. She provided a brief history of Mr. Segrue's volunteer work for the Board and presented the award to Mr. Segrue. Mr. Segrue stated that he was honored to be a recipient and thanked the Board. He added that he began working with the Board in 1979 and was an architect consultant for the Board for 13 years.

B. Enforcement Program Update

Hattie Johnson informed the REC that Barry Williams was awarded a new contract for architect consultant services for the Board. She indicated that the award was protested by another proposer and on April 15, 2011, an Administrative Law Judge from the Office of Administrative Hearings denied the protest. She advised that the Department of Consumer Affairs' (DCA) Contract Unit is currently processing Mr. Williams' new contract.

Ms. Johnson stated that the next Board meeting is scheduled for June 16, 2011 at the University of Southern California. She indicated the Board members Pasqual Gutierrez, Ms. Voigt, and Hraztan Zeitlian were reappointed to the Board by the Governor on January 2, 2011. She added that Fermin Villegas was appointed to the Board by the Senate Rules Committee. She noted that the Board currently has one vacancy.

Ms. Johnson advised the REC that on April 26, 2011, the Governor issued Executive Order B-06, prohibiting discretionary in-state and out-of-state travel, unless it is mission critical. She explained that the REC was able to meet because the meeting had already been posted on the Board's website and it was in Sacramento. Vickie Mayer noted that travel has been restricted and new requirements would have to be met in order to expend funds for travel. She indicated that a budget letter would be coming with further instructions.

Doug McCauley added that there is still a hiring freeze and at this time, there are a limited number of DCA employees that the Board is allowed to hire from. He noted that the Governor had reduced the number of cell phones state employees were allowed to utilize and prohibited state agencies from producing promotional items that are distributed to consumers at events. Mr. McCauley stated that the Governor's May revision to the State's 2011/2012 budget may contain additional restrictions.

Ms. Johnson noted that the Enforcement Program Statistics in the meeting packet showed the March 2011 pending complaint cases at 144. She indicated that for April 2011, the pending complaint cases had been reduced to 134.

Ms. Johnson explained that the Board's Winter 2011 newsletter, which was the first newsletter to be produced electronically, was posted on the Board's website on January 6, 2011 and the next newsletter is expected to be published in May 2011.

Ms. Johnson indicated that the Board is now posting accusations and decisions against individuals on its website. She explained that an accusation is a formal statement of charges filed by the Attorney General's Office.

Mr. McCauley indicated that licensees' renewal fees had been increased. He noted that this required legislation to raise the ceiling of fees. Regulations to increase the fees were then drafted and became effective on January 1, 2011. He added that fees had not been increased for 20 years.

Mr. McCauley stated that the Board worked diligently with staff in preparing a 100 page Sunset Review Report. He advised that it was submitted to the Business, Professions and Economic Development Committee in September 2010 and was similar to the report prepared in 2003. He indicated that a hearing was held March 21, 2011, where initial inquiries from the Committee were responded to. Mr. McCauley noted that the Committee asked questions concerning the Supplemental Examination and the Intern Development Program, and also asked the Board to explain what factors it sees leading to the lower passage rates for California Architect Registration Examination candidates. He stated that these questions were responded to in writing and after the hearing there were follow-up questions responded to in a second submittal. He added that one of the issues the Board was asked to explain was its inconsistent position on continuing education (CE). He reminded the REC that the Board conducted a study in 2001. He stated that at that time, data from a survey showed CE was not a problem sufficient to warrant CE. Mr. McCauley pointed out that a number of critical variables have changed. For example, over 46 states require CE for architects and Senate Bill (SB) 1608 mandated CE on disabled access. He stated the Board now feels that due to the rapidly changing complexities of practice a more comprehensive health, safety, and welfare CE is warranted. He indicated that he did not believe there would be a second round of hearings. Michael Merino commented that the Board was not unanimous on its position regarding CE.

Ms. Johnson asked if there were any questions concerning the Citations Issued and Final and the Final Administrative Actions contained in the meeting packet. Robert George asked if the citations issued to Nam H. Kim and Bruce Cameron McVay were related because they had the same business name. Ms. Johnson responded that they were. Mr. George commented that it appeared that most of the citations were directed at small firms. He asked if there were ever any citations issued against larger firms. Ms. Johnson indicated that in most instances, the only way the Board is advised of issues with a larger firm was through a settlement report. She noted that usually in larger, more complex projects, the client's complaints are satisfied through a settlement and therefore they would not complain to the Board.

Mr. Merino stated that the REC had discussed over the years how the Board collected administrative fines assessed in citations. He asked how many of the individuals issued a citation listed in the packet had paid their fines. Ms. Johnson responded that of the 24 individuals shown, five had paid their administrative fines. She noted that this was 21% of the fines assessed. She added that this is an increase from last fiscal year. She stated that unlicensed individuals frequently change addresses and it is very difficult to locate them. She indicated that staff is still using the Franchise Tax Board Intercept Program in an attempt to collect unpaid fines. She added that the Board had a contract with a collection agency to collect the fines; however, their services cannot be utilized until the Board has statutory authority to release individuals' social security numbers. She

indicated that she anticipates there would soon be legislation giving the Board authority to release social security numbers to collection agencies. Mr. McCauley stated that this issue could potentially receive statutory authority based on the Sunset Review process. Mr. Merino noted that there are other initiatives in the meeting packet addressing issues like fingerprinting; however, he would like to see more emphasis on collecting unpaid administrative fines.

C. Review and Approve April 26, 2010 REC Summary Report

Ms. Voigt asked if there were any comments, corrections or questions regarding the April 26, 2010 REC Summary Report.

A motion was made by Michael Merino and seconded by Richard Conrad to approve the April 26, 2010 REC Summary Report. The motion passed 7-0.

D. Discuss and Possible Action on Strategic Plan Objective to Develop a Strategy for Working With the League of California Cities and the California Chapter American Planning Association to Inform Them of Architects Practice Act Requirements

Mr. McCauley stated that this issue is a result of the Board's last Strategic Planning session. He noted that for years, the Board has had a solid relationship with the State's building departments. He added that for more than 20 years, the Board has had an outreach program where the Board's architect consultants would visit International Code Council chapters to discuss the Architects Practice Act, stamping requirements, etc. He indicated that in addition to the two architect consultants, there are currently only two enforcement analysts, one enforcement technician and the enforcement officer in the Board's Enforcement Unit. He stated that there are over 400 building departments in the state who interact with architects on a daily basis and can assist the Board. He explained that architecture does not begin with construction documents being submitted to the building department and there was an interest in the Board visiting planning departments. He explained that this would include the League of California Cities (LCC) and the California Chapter American Planning Association (CCAPA). Mr. McCauley indicated that the REC was tasked with discussing what the message might be and the best way to reach out to these organizations.

Mr. Merino stated that he continually sees documents prepared by unlicensed individuals, during the planning process. He opined that these planning documents should be subject to the same stamping requirements as plans that go to the building department. He noted that he would like to see the message contain an explanation of the projects that would require the services of an architect or registered engineer. He added that the cost of membership to the LLC is high and some cities have opted not to belong. He explained that Orange County cities are establishing their own group.

Fred Cullum agreed that he frequently sees unlicensed people presenting plans for nonexempt projects. Unfortunately, the project can be almost completed before a licensed architect or engineer is required by a city.

Mr. Segrue suggested that the problem may be more systemic in that the statute does not delineate when a project becomes “architecture.” He felt that if the statute was clarified, it would make the Board’s presentation to LLC and CCAPA stronger. Mr. Merino agreed. He stated that if the law is clarified, maybe a city could adopt the law as an ordinance.

Mr. George wondered how the Board could convince the cities that it would be to their benefit to require licensees for an entire nonexempt project. He stated that he had had some of the same experiences Mr. Merino had expressed. Mr. George noted that when he expressed his concern to the city, he was he was ignored by the planning staff.

Mr. Merino stated that the Board wanted to ensure that the limitations for unlicensed people were codified so that a consumer would not have to go through the whole design process with an unlicensed person, only to discover that a licensee would be needed to stamp and sign the plans.

Mr. Conrad asked why unlicensed people were allowed to submit plans to the planning department for nonexempt projects. Bob Carter responded that planning departments do not enforce the Board’s statute which building departments do enforce. He suggested that this issue be taken from a consumer protection standpoint by enforcing what the law says. He added that clarifying the law would assist in this endeavor. He noted that the real question is when does a project constitute architectural planning of the site.

Mr. Merino suggested that instead of guessing what the planning departments would consider an effective way to address this issue, the Board could create some synergy and explain to the CCAPA what the Board perceives the challenge is. He suggested asking CCAPA how the Board could publicize this to planners and how this could be made enforceable at the planning stage, i.e., how to make this happen at the entitlement planning stage to be compliant with the law.

Mr. McCauley stated he liked Mr. Merino’s suggested approach because the Board could go straight to the organization rather than a grassroots method, which would be difficult based on budget constraints. Mr. Merino noted that he felt the initial reaction of CCAPA would be that the planners would think the Board does not have authority to enforce this requirement. He suggested going to the CCAPA before going to the LCC.

The REC recommended to the Board that it first open a dialog with the CCAPA to discuss the Board’s role as a consumer protection agency and its statutes, describe the Board’s concern regarding unlicensed individuals presenting plans to the planning department for non-exempt projects, and identify whether CCAPA perceives this to be an issue.

E. Discuss and Possible Action on Strategic Plan Objective to Determine the Appropriateness of “Gag” Clauses in Civil Settlement Agreements

Ms. Johnson noted that a gag clause would prohibit a licensee from entering into a settlement that prohibits reporting the settlement to the licensee’s licensing agency. Ms. Johnson indicated that this issue was brought to the Board’s attention at its last meeting

by Julie Fellmeth from the Center for Public Interest Law. Ms. Johnson stated that the Board already has a statute that somewhat addresses this issue. She advised that Business and Professions Code (BPC) section 5588.3 states: “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.”

Ms Johnson explained that SB 544 (Price) is proposed legislation directed at DCA’s healing arts boards. She explained that there is one proposed section in this legislation that would affect all of DCA’s boards and bureaus requiring “gag” clauses be prohibited as part of a civil settlement. She added that the bill was scheduled to be heard by the Business, Professions and Economic Development Committee on May 2, 2011, however, it was cancelled at the request of the author. Ms. Johnson asked REC members if they felt that the Board’s existing statute and the proposed legislation would address problems associated with gag clauses.

Phyllis Newton stated that the term “gag order” is a misnomer. She stated that a gag order is imposed by a court and it cannot be violated. She noted that this is really an issue of confidentiality clauses, which are inserted in settlement agreements. She explained that in California, there is a requirement that an architect must report any settlement over \$5,000 to the Board. Ms. Johnson indicated that these reports are not public information unless they result in an enforcement or disciplinary action. Ms. Newton noted that a confidentiality agreement does not prevent an architect from making a settlement report to the Board, because it is a statutory requirement. She stated that she felt that the provisions in SB 544 did not provide any more protection to consumers than what already existed in statute.

Ms. Mayer asked if the confidentiality agreement would extend to the client. Ms. Newton responded that it would. Ms. Mayer explained that there are times when more information may be needed from a client; however, they say they cannot provide the information because of the confidentiality agreement. She added that BPC section 5588.3 does not extend to consumers.

Mr. Merino stated that he felt this was a non-issue because there is already a statute that requires architects to report settlements to the Board. Mr. McCauley asked REC members if they felt that a clause could be added to BPC section 5588.3 that would allow other parties to the agreement to report and respond to the Board regarding settlements. They agreed that this addition to the statute should be recommended to the Board.

F. Discuss and Possible Action on Strategic Plan Objective to Review and Make Recommendation Regarding Department of Consumer Affairs’ (DCA) Proposals (Senate Bill 1111)

Ms. Johnson stated that SB 1111 was introduced last year. She noted that it was pursued to improve DCA’s boards’ and bureaus’ enforcement processes; however, the legislation failed to pass. She indicated that DCA is encouraging boards and bureaus to review some of the provisions included in SB 1111 and determine whether they might be utilized to improve the enforcement processes. She explained that DCA’s suggestions were included in the meeting packet.

Mr. Merino opined that he was concerned about the issue of sexual misconduct included in proposal number two in the meeting packet. He stated that he felt that this issue would not apply to architects. He stated that the fact that an applicant is registered as a sex offender should be considered in the licensure process for architects, because there had been a court that convicted the individual. He asked if a convicted felon could be licensed as an architect. Ms. Johnson responded that this is taken on a case by case basis. The REC determined that they would review each provision separately:

1. *Board delegation to Executive Officer regarding stipulated settlements to revoke or surrender license: Permit the Board to delegate to the Executive Officer the authority to adopt a “stipulated settlement” if an action to revoke a license has been filed and the licensee agrees to surrender the license, without requiring the Board to vote to adopt the settlement. Recommend: Amend 16 CCR 1403.*

Ms. Johnson explained that this would allow the Executive Officer to adopt a stipulation that would revoke the license of an architect. Mr. Merino asked if all due processes had been met concerning this type of action. Mr. McCauley responded that this is an action the architect had agreed to. The REC agreed to recommend this proposal to the Board.

2. *Revocation for sexual misconduct: Require an Administrative Law Judge (ALJ) who has issued a decision finding that a licensee engaged in any act of sexual contact with a patient or who has committed or been convicted of sexual misconduct to order revocation which may not be stayed. Recommend: Amend regulations/disciplinary guidelines.*

Ms. Johnson stated that the concern with this provision would be that an ALJ would be required to revoke a license for a finding of sexual contact with a patient. She noted that the Board does have jurisdiction over a licensee who has been convicted of a crime. The REC agreed that this is not relevant to the Board.

3. *Denial of application for registered sex offender: Require the Board to deny a license to an applicant or revoke the license of a licensee who is registered as a sex offender. Recommend: Amend the regulations pertaining to applicant requirements and disciplinary guidelines.*

Ms. Johnson noted that this type of information about an applicant would be taken on a case by case basis to determine licensure. She explained that an applicant has to report convictions on applications sent to the Board applying for various testing and licensure.

Mr. Merino stated that because due process had already taken place and an individual is convicted of a sexual offense, this provision should be recommended to the Board to support. Mr. Mayer noted that this would take away the Board’s discretion in this area. She noted that she could not recall ever seeing this type of information on an application at this Board.

Mr. Merino opined that he felt the Board or staff should not be put in a position of determining whether a registered sex offender should be licensed. He stated that he felt

registered sex offenders should be denied a license. He stated that he was concerned that a family for a residential project would be exposed to a registered sex offender. Ms. Newton stated that she felt that the public was protected because the individual was on a registry. She stated that there are legal issues concerning an applicant or licensee's right to earn a livelihood. She questioned the constitutionality of this provision. Mr. Merino asked what the basis was for staff to issue a license to someone who had been convicted of a crime. Ms. Mayer responded that the crime has to be substantially related to the practice of architecture in order to deny licensure and the Board considers rehabilitation in its determination.

A motion was made by Phyllis Newton and seconded by Fred Cullum to recommend that the Board oppose this provision. The motion passed 6-1 (Michael Merino opposed).

4. *Confidentiality agreements regarding settlements: Confidentiality agreements regarding settlements can cause delay and thwart a Board's effort to investigate possible cases of misconduct, thereby preventing the Board from performing its most basic function – protection of the public. Recommend: Define in regulation that participating in confidentiality agreements regarding settlements is unprofessional conduct.*

Ms. Voigt noted that this proposal had already been addressed under Agenda Item E.

5. *Failure to provide documents and 718 (d) - Failure to comply with court order: Require a licensee to comply with a request for medical records or a court order issued in enforcement of a subpoena for medical records. Recommend: Define in regulation that failure to provide documents and noncompliance with a court order is unprofessional conduct.*

Ms. Johnson indicated that the Board does not subpoena medical records. Mr. Merino asked if the Board ever subpoenaed construction documents. Ms. Johnson responded that the staff had not yet done this but had the power to do so if necessary. Mr. Merino asked if staff felt this proposal would assist them in the enforcement process. Ms. Johnson stated that there is already a law that makes it willful misconduct if a licensee does not provide records, as requested by the Board, as part of an investigation. The REC agreed to recommend to the Board that this would be a non-issue because it is already addressed in current statute.

6. *Psychological or medical evaluation of applicant: Authorize the Board to order an applicant for licensure to be examined by a physician or psychologist if it appears that the applicant may be unable to safely practice the licensed profession due to a physical or mental illness; authorize the Board to deny the application if the applicant refuses to comply with the order; and prohibit the Board from issuing a license until it receives evidence of the applicant's ability to safely practice. Recommend: Amend regulations pertaining to applicant requirements that a psychological or medical evaluation may be required.*

Mr. Merino stated that this issue had previously been reviewed and considered by the Board. He noted that the REC had recommended that the Board adopt such a statute; however, the Board did not adopt the REC's recommendation. He stated that now the DCA is asking that this issue be addressed by the Board.

A motion was made by Michael Merino and seconded by Phyllis Newton to recommend that the Board support DCA's proposal. The motion passed 4-3 (Sheran Voigt, Fred Cullum and Larry Segrue opposed).

7. *Sexual misconduct: Currently defined in B&P Code §726. Recommend: Define in regulation that sexual misconduct is unprofessional conduct.*

The REC agreed to recommend to the Board that this would be a non-issue.

8. *Failure to provide information or cooperate in an investigation: Make it unprofessional conduct for a licensee to fail to furnish information in a timely manner or cooperate in a disciplinary investigation. Recommend: Define in regulation that failure to provide information or cooperate in an investigation is unprofessional conduct.*

Ms. Johnson advised that the Board already had California Code of Regulations section 160(b)(2), which addresses this issue. She explained that a licensee would be in violation if he/she did not provide requested information to the Board within 30 days of the request. The REC agreed to recommend to the Board that this would be a non-issue because it is already addressed in current statute.

9. *Failure to report an arrest, conviction, etc.: Require a licensee to report to the Board any felony indictment or charge or any felony or misdemeanor conviction. Recommend: Define in regulation that failure to report an arrest, conviction, etc. is unprofessional conduct.*

Ms. Johnson explained that court clerks are currently required to report criminal actions by licensees to the Board pursuant to BPC section 5590. In addition, licensees are required to report criminal action taken against them on their biennial architect license renewal forms.

The REC agreed to recommend to the Board that this would be a non-issue because it is already addressed in current statute.

G. Discuss and Possible Action on Strategic Plan Objective to Utilize DCA's Recommended Enforcement Performance Measures as Appropriate

Ms. Johnson stated that the Performance Measures are quarterly statistical data that includes, among other things, the number of complaints received and the average number of days it takes to close a case. Mr. Merino stated that he preferred the statistical data chart staff prepared and presented at the last Board meeting. Ms. Voigt stated that this data shows the Board is doing well.

H. Discuss and Possible Action on Strategic Plan Objective to Review, Update, and Publish Consumer’s Guide to Hiring an Architect

Ms. Johnson stated that the Guide was last updated in 2004. She noted that staff made suggested changes, which were included in the REC meeting packet.

The REC reviewed each section of the Guide and provided staff with guidance for changes. Ms. Newton volunteered to conduct a more in depth review of the Guide and provide her comments and recommendations to staff in a few days. She asked if the Guide would be printed in hard copy form or only be available on the Board’s website. Mr. McCauley stated that based on budget constraints, it had not yet been decided. The REC agreed to have staff incorporate all changes and either present them at the next scheduled REC meeting or possibly conduct a teleconference regarding the changes to the Guide.

I. Discuss and Possible Action on Strategic Plan Objective to Monitor Fingerprint Requirement for Licensees to Determine its Potential Application to CAB

Ms. Johnson stated that at this time, the Board does not fingerprint its applicants. She noted that the Board of Accountancy (BA) receives about 3,000 applications for licensure per year that includes fingerprints. She indicated that they receive approximately 250 Records of Arrests and Prosecution (RAP) sheets per year. She added that based on the RAP sheets received, about 15-20 cases are sent to their enforcement unit for investigation.

Ms. Johnson advised that last year the Board received 733 Architect Registration Examination (ARE) Applications and 531 Applications for Licensure. She noted that based on the BA’s data, the Board might receive 59 RAP sheets per year if fingerprints were provided with the ARE applications and 42 if they were provided with the Application for Licensure. She indicated that the Board is not included in proposed legislation that would require that it fingerprint its applicants. She stated that a need has not been identified to require this statute. She noted that at this point, staff is not recommending new mandates at this time given the fiscal climate, unless there is a documented specific need for it.

Mr. Merino stated that fingerprints are also used for identification purposes. Ms. Voigt noted that she would rather see the Board be given authority to release social security numbers to its contracted collection agency for collection of unpaid citation fines. Mr. McCauley indicated that there are few boards that do not have this requirement and the Board is one of them. The REC agreed to recommend to the Board that the legislation that requires the Board of Professional Engineers, Land Surveyors, and Geologists obtain fingerprints, be monitored.

The meeting adjourned at 1:05 p.m.