



Edmund G. Brown Jr.
GOVERNOR

CALIFORNIA ARCHITECTS BOARD

PUBLIC PROTECTION THROUGH EXAMINATION, LICENSURE, AND REGULATION

SUMMARY REPORT

REGULATORY AND ENFORCEMENT COMMITTEE MEETING

November 8, 2016

California Architects Board, Sequoia Room
2420 Del Paso Road, Suite 109, Sacramento, CA 95834

Committee Members Present

Matthew McGuinness, Chair
Fred Cullum
Robert De Pietro (via teleconference in Los Angeles, CA)
Robert Ho
Gary McGavin
Michael Merino (via teleconference in Orange, CA)
Robert C. Pearman, Jr.

Committee Members Absent

Barry Williams, Vice Chair
Sheran Voigt

Board Staff Present

Doug McCauley, Executive Officer
Vickie Mayer, Assistant Executive Officer
Alicia Hegje, Program Manager, Administration/Enforcement
Rebecca Bon, Staff Counsel, Department of Consumer Affairs (DCA)
Bob Carter, Architect Consultant
Reanna Graham, Enforcement Technician
Peter Merdinger, Enforcement Analyst
Stacy Townsend, Licensing Coordinator, Landscape Architects Technical Committee (LATC)
Kristin Walker, Enforcement Analyst

Guests

Kurt Cooknick, Director of Regulation and Practice, The American Institute of Architects, California Council (AIACC)
Yeaphana La Marr, Legislative Analyst, DCA Division of Legislative and Regulatory Review
Linda Panattoni, California Legislative Coalition for Interior Design

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A. Call to Order/Roll Call/Establishment of Quorum

Regulatory and Enforcement Committee (REC) Chair Matthew McGuinness called the meeting to order at 10:10 a.m.

Robert Pearman called the roll and indicated Committee members Sheran Voigt and Barry Williams were absent. A quorum was present.

Mr. McGuinness welcomed everyone and requested self-introductions. Guests and Board staff introduced themselves. He advised the REC that all motions and seconds should be repeated for the record, and votes on all motions would be taken by roll call.

B. Public Comment on Items Not on Agenda

Mr. McGuinness opened the floor for public comment on items not contained in the meeting agenda. No comments were received.

C. Review and Possible Action on April 28, 2016, REC Meeting Summary Report

Mr. McGuinness asked if there were any questions, comments, or changes to the April 28, 2016, REC Meeting Summary Report. There were none.

Michael Merino moved to approve the April 28, 2016, REC Meeting Summary Report.

Robert De Pietro seconded the motion.

Members Cullum, De Pietro, Ho, McGavin, Merino, and Committee Chair McGuinness voted in favor of the motion. Member Pearman abstained due to the fact he was not a member of the REC at the time of the meeting. The motion passed 6-0-1.

D. Enforcement Program Update

Alicia Hegje presented the Enforcement Program Update and highlighted items of interest to the REC, including the: 1) Request for Proposal (RFP) for architect consultant services for three years (February 1, 2017, through January 31, 2020) to replace the current contract that expires January 31, 2017; 2) next Board meeting scheduled for December 15-16, 2016, which includes a Strategic Planning session; 3) pursuit of a contract to allow the Board to begin referring unpaid administrative fines to a collection agency; and 4) audits regarding coursework on disability access requirements, actions taken for noncompliance, and the report regarding the coursework provisions that must be submitted to the Legislature by January 1, 2019. She also acknowledged the ongoing efforts of the Board's enforcement staff to reduce case aging, and explained the number and average age of pending complaints have been reduced by approximately 40% and 26%, respectively, compared to the last five fiscal years (FY).

Doug McCauley provided an update regarding the National Council of Architectural Registration Boards (NCARB) Integrated Path to Architectural Licensure (IPAL), which integrates the examination and experience requirements for licensure into a degree program. He informed the REC that 18 National Architectural Accrediting Board (NAAB) accredited programs were accepted to participate in IPAL, including three programs in California (NewSchool of Architecture & Design, University of Southern California, and Woodbury University). Mr. McCauley explained the programs are based on general framework from NCARB to enable students to test earlier and satisfy most, if not all, of the required hours for the Architectural Experience Program (AXP) while earning their degrees. He stated while there is no guarantee the students will be licensed upon graduation, as only the Board can grant licenses, the programs will award degrees with the goal for the graduates to become licensed shortly thereafter. Mr. McCauley shared the Board is enthusiastic about IPAL, and stated Business and Professions Code (BPC) section 5550.2 authorizes the Board to grant early eligibility for the Architect Registration Examination (ARE) to candidates enrolled in an IPAL program. He explained IPAL was implemented this year, and that the Board will be monitoring and measuring the success of the program.

Mr. McCauley advised the REC that Senate Bill (SB) 1132 (Galgiani) [Architect-in-Training], an AIACC-sponsored proposal to create and define a special title for candidates for licensure, was extensively discussed by the Board at its June 2016 meeting, and the Board ultimately voted to refer the matter to a working group to identify a model that would be functional for the Board and emerging professionals. He explained staff worked with the Board's DCA legal counsel to identify and develop four different models for the Board's consideration. Mr. McCauley informed the REC that the Board held a special meeting via teleconference in July 2016 to discuss SB 1132, and voted to support the bill if amended to require enrollment in AXP to use the architect-in-training title. He explained the bill was amended to reflect that requirement, but was ultimately vetoed by the Governor with a veto message indicating there is only a need for a title for licensees.

Mr. De Pietro asked, given there are three programs in California participating in IPAL, what happened to the other architecture programs, such as the one at California Polytechnic State University, San Luis Obispo. Mr. McCauley explained there are no changes to other architecture programs as a result of IPAL; it is a voluntary system and many schools are taking a "wait and see" approach prior to fully embracing it. He also commented that some architecture programs may never participate in IPAL, as their missions and goals may not be to prepare architects, but instead, to provide a broader, design-based education. Mr. De Pietro inquired about the experience IPAL participants will have compared to current requirements, if their years in school will have to increase for them to have adequate experience, and where are they going to get that experience. Mr. McCauley indicated there are no changes to the licensure requirements, and explained the IPAL participants will be completing the ARE and AXP in a more logical sequence, with better integration.

Mr. De Pietro asked if the candidates will have the same amount of experience as other schools or someone without an architecture degree. Mr. McCauley shared according to *NCARB by the Numbers*, on average, it takes about 13 years to obtain a license, due to

variables such as the rolling clock and experience reporting requirements, and indicated the goal of IPAL is to be more efficient through the integration of these variables.

Mr. De Pietro asked, with SB 1132 being vetoed by the Governor, if the issue would be pushed again in the future. Mr. McCauley indicated that it would be up to AIACC to decide whether to sponsor it again in the future. Gary McGavin inquired if additional programs can participate in IPAL at a later date. He also asked what will happen to the structures portion of the ARE, and suggested with early testing, students could take that division after they completed the coursework. Mr. McCauley stated several programs, such as the University of Kansas, were added after the initial list of 13 programs was released by NCARB, so additional programs may be able to pursue it. He also noted reform in public institutions, particularly in California, can take longer. Mr. McCauley explained the content of ARE 5.0 is much more integrated, and noted it will be up to the individual schools to review the transition plan, and determine how their coursework correlates to the ARE divisions. He also indicated it is important to ensure students have logged their requisite hours of experience. Mr. McGavin noted his school currently does that, and explained his school is one of the few that requires students to complete internships with licensed architects prior to graduation.

Robert Ho asked if the students in California IPAL programs have begun taking the ARE, or if they have just enrolled in the program. Mr. McCauley clarified the students have enrolled in an IPAL program. Mr. Ho inquired about when the students could begin taking the examination. Mr. McCauley explained the ARE eligibility points vary, and offered to obtain more information from the specific programs. He also noted the California IPAL programs are regularly invited to Board meetings because the Board wants to know how each program is working and what the Board, as the licensing entity, can do to support IPAL. Mr. McGavin asked if students who are not enrolled in an IPAL program could also begin taking the ARE after they have completed the appropriate coursework. Mr. McCauley explained the Board specifically posed that question to NCARB, but it is not envisioned at this point.

E. Update and Possible Recommendation Regarding 2015-2016 Strategic Plan Objective to Identify and Pursue Needed Statutory and Regulatory Changes so Laws and Regulations are Consistent with Current Architectural Practice to Promote Public Health, Safety, and Welfare

Kristin Walker presented this agenda item, and reminded the REC that it reviewed the written contract requirement in 2013 and 2014, and made a recommendation, which the Board ultimately accepted, to amend BPC § 5536.22 to add a description of the: 1) project and address; and 2) procedure to accommodate contract changes, to the written contract requirement. She explained in January 2016, staff submitted a proposal to the Senate Business, Professions and Economic Development Committee for possible inclusion in an omnibus bill to include those items the REC recommended in 2014; however, the proposal was found to be substantive, and must be included in another bill. She explained at the April 28, 2016, REC meeting, staff suggested the REC also consider including a statement identifying the ownership or reuse of documents prepared by the architect, as well as a notification to the client that the architect is licensed by the Board, within the written contract requirement. She advised the REC that it directed staff to prepare proposed language to

include those two elements for its consideration, and asked the REC to review and discuss the proposed language and consider making a recommendation to the Board.

Mr. McGuinness questioned if it is necessary to include the Board's address, as any changes to the Board's location would require statutory amendments. Rebecca Bon suggested including the Board's website, as it includes all of the Board's contact information and may be more effective. Mr. McCauley informed the REC that staff can include both the address and website, if the REC wishes. Fred Cullum cautioned that it would still be in legislation. Mr. McCauley explained non-substantive items, such as addresses, can be updated through omnibus clean-up bills sponsored each year by the Assembly or the Senate.

Kurt Cooknick asked Ms. Bon if there are similar requirements for other professions regulated by DCA. Ms. Bon informed Mr. Cooknick that she would not be able to answer that question, as she has not worked with each of the DCA boards and bureaus. Mr. Cooknick inquired if there are any such requirements from the boards and bureaus she represents. Ms. Bon explained she mainly works with healthcare boards and other boards without written contract requirements, so she would be unable to respond. Mr. Cooknick asked if the purpose of the proposed language is to notify the consumer that there is a licensing board for architects. Mr. McCauley responded affirmatively. Mr. Cooknick explained he is struggling with the proposed notification requirement, and commented that AIACC may bring an amendment to the Board. He also indicated there is no issue with the proposed language regarding the ownership and use of the architect's instruments of service, as it is recommended in AIA contracts. Mr. McGuinness explained as a contractor, he is required to have his license number on everything to ensure the public knows he is licensed by the Contractors State License Board (CSLB).

Mr. Merino informed the REC that he agrees with Mr. Cooknick, and expressed his concerns that the language, as written, may encourage post-project litigation. He explained if the client has any buyer's remorse or issues, he or she may decide to file a frivolous complaint with the Board. Ms. Bon explained many boards and bureaus have establishment requirements to notify consumers there is a licensing board and encourage them to contact the board with any issues. Mr. Merino questioned if the language could simply state: "The individual providing this contract is licensed by the State of California. If you have any questions or comments..." He asked Ms. Bon if the proposed language for subsection (a)(9) is identical to other DCA boards and bureaus. Ms. Bon replied that she has seen similar prescriptive requirements, and stated she does not see any reason why it would be problematic to encourage consumers to know where to go with issues regarding a licensee. Mr. Merino reiterated his concerns regarding the use of the word "complaints" in the proposed language, as it implies the relationship has already turned negative.

Mr. Merino explained a consumer may read the proposed subsection (a)(9) and then decide he or she did have a complaint regarding the architect. Mr. De Pietro shared he would vote no on the proposed language. Mr. McCauley described the written contract requirement as an invaluable tool to protect the consumer and the architect. He explained when the Board receives a complaint, if the contract is sufficiently clear on the item that is in dispute, the architect is often protected when following the terms of the contract. He commented many

consumers will often inform staff they were unaware that architects are licensed or that the Board existed. Mr. McCauley informed the REC that as a consumer protection board, this notice to consumers should be considered. He also stated the majority of complaints involve consumers with residential or tenant improvement projects who have never worked with an architect before, and noted those consumers often have issues with their projects, as they may not understand the design and construction process. Mr. McCauley clarified the written contract requirement is not designed for a facilities director for a public agency; instead, the intent is to protect the consumers who have the most issues with their projects. Mr. Merino explained he supports putting a notice in the written contract requirement; however, he objects to the use of the word “complaints.” He stated contractors provide physical products, whereas architects provide services, and expressed his concerns that with a less-sophisticated consumer, the complaint could be based upon anything.

Mr. McCauley suggested the REC consider reviewing similar language for contractors and real estate salespersons, and noted the REC’s concerns regarding the word “complaints.” Ms. Bon stated with regard to the concerns about the word “complaints,” the Board is the place to address complaints from the public, so the language would be beneficial for consumers. She also cautioned the REC to not underestimate the skills of Board staff, and noted with the appropriate laws in place, such as the written contract requirement, staff can properly field complaints. Mr. Cooknick commented he was not comfortable with requiring such a statement in an architect’s written contract, as it is an instrument of service, not an advertisement for the Board. He noted the written contract is 22 years old; however, the Board is still disciplining architects for failing to comply with the requirement. He cautioned there will still be problems with architects not including the required items in their written contracts, and suggested a consumer who hires an architect more than likely knows he or she is licensed, as compared to a consumer who hires an unlicensed individual without a written contract. Mr. Cooknick commented he understands the intent to heighten consumer awareness, but does not believe it addresses the real problem of unlicensed activity, which he argued is causing more harm to consumers than licensed activity. Mr. Merino agreed with Mr. Cooknick’s comments, and explained he has no objection to the thought process, but is not sure it addresses the matter and would not be comfortable with the language. Mr. McGuinness expressed that as a consumer safety board, the proposed subsection (a)(9) would educate the consumer at the beginning of the project through the written contract. He commented the requirement is not at the end of the project, where a consumer may be looking for reasons to sue the architect, and noted that if the consumer was looking for reasons to sue, he or she will find them. He explained the language is not intended to solve separate issues, such as projects by unlicensed individuals without written contracts, and stated in his time on the Board, this is the first proposal he has seen that is clearly in the interest of consumer safety.

Mr. Cullum explained he likes the idea of having the notice to the client in the written contract, as the client may not see it in an initial visit to an architect’s office, but he feels the word “complaints” is too inflammatory. He explained he would be more comfortable with “questions or concerns.” DCA Legislative Analyst Yeaphana La Marr read an excerpt from CSLB’s written contract requirement, which, in part, states: “If you file a complaint against a licensed contractor within the legal deadline, usually within four years, CSLB has the

authority to investigate the complaint. For more information, visit CSLB's website ____, call ____, or write ____." She also offered to poll other legislative analysts in her office regarding language within similar practice acts, if it would be beneficial to the Board. Mr. Merino stated he would be more comfortable if he had more background information and facts, and if the language was also available to AIACC to analyze and provide a position. He also stated he would support the word "questions."

Robert Ho moved to recommend to the Board that it approve the proposed language to amend BPC § 5536.22 with the word "comments" instead of "complaints" in the proposed subsection (a)(9).

Robert De Pietro seconded the motion.

Mr. McGuinness asked if it is acceptable to amend the language. Mr. McCauley responded affirmatively, but explained that based upon the Board's consumer protection mandate, the word "complaints" should not be problematic, as that is a mechanism available to consumers to address issues with architects. Mr. McCauley suggested if consumers were more aware the Board existed, they may be less inclined to file civil lawsuits. He explained consumers will find their remedy, and the REC should not be concerned about complaints coming to the Board. Mr. Merino informed Mr. McCauley it is an issue of concern to practitioners. Mr. McCauley reminded the REC that with the *North Carolina State Board of Dental Examiners v. Federal Trade Commission* case, any action by the Board that does not further consumer interest may need to be explained to the Legislature through Sunset Review or to the DCA Director. Mr. Merino suggested the REC consider a motion that states the REC had some concerns and would like to review additional language from other DCA boards and bureaus before making a formal recommendation to the Board.

Bob Carter informed the REC that as an architect consultant to the Board, he speaks with a number of consumers who are just seeking information and do not want to file a complaint. He suggested the REC consider the word "concerns" instead of "comments." Mr. Ho concurred with Mr. Carter's suggestion and asked if doctors are required to post a sign in their offices directing patients to file complaints with the Medical Board of California or file malpractice lawsuits. Mr. McCauley stated the signs do not mention litigation, and indicated he is not familiar with the specific requirement. Mr. Cooknick shared that he has seen a patient's bill of rights posted in a doctor's office.

Robert Ho moved to amend the motion to recommend to the Board that it approve the proposed language to amend BPC § 5536.22 with the word "concerns" instead of "complaints" in the proposed subsection (a)(9).

Michael Merino seconded the motion as amended.

Mr. Carter suggested the REC consider using the words "concerns about" instead of "complaints concerning." Mr. Ho agreed with Mr. Carter's proposed revision.

Robert Ho moved to amend the motion to recommend to the Board that it approve the proposed language to amend BPC § 5536.22 with the words “concerns about” instead of “complaints concerning” in the proposed subsection (a)(9).

Robert Pearman seconded the motion as amended.

Members Cullum, De Pietro, Ho, McGavin, Merino, Pearman, and Committee Chair McGuinness voted in favor of the motion. The motion passed 7-0.

F. Update and Possible Recommendation Regarding 2015-2016 Strategic Plan Objective to Pursue Recruitment of Additional Architect Consultant to Ensure Continuity and Effectiveness in Board’s Enforcement Program

Ms. Walker presented this agenda item, and reminded the REC that this objective had been previously discussed by the REC at its November 5, 2015, and April 28, 2016, meetings. She advised the REC that the Board currently contracts with two architect consultants who work from the Board’s office in Sacramento. She reiterated that staff is currently in the process of replacing the architect consultant contract that expires on January 31, 2017, and noted the final date for submission of proposals in response to the RFP is November 28, 2016.

Ms. Walker explained that to address the Strategic Plan objective, staff also completed the necessary training to execute delegated contracts with independent expert consultants who can assist the Board by providing an expert opinion on enforcement matters. She noted the Board also uses delegated contracts with subject matter experts who assist in California Supplemental Examination development and occupational analyses. Ms. Walker reminded the REC that at its November 5, 2015, meeting, the REC voted to recommend to the Board that it authorize staff to pursue an RFP to provide the Board with a third architect consultant and continue to utilize the services of independent expert consultants through the delegated contract process, and the recommendation was approved by the Board at its December 10, 2015, meeting.

Mr. McCauley explained that no action from the REC is necessary at this time, as staff has authority from the Board to award a third architect consultant contract. He shared that as he reported to the Board at its September 2016 meeting, staff’s current workload does not warrant three consultants, and he has already reduced the number of hours worked by one of the consultants. Mr. McCauley explained staff must be mindful of workload, and a third consultant contract would be difficult to justify at this time, and stated the intent of the Strategic Plan objective is to focus on succession planning.

Michael Merino moved to receive and file staff’s report on the status of the Strategic Plan objective.

Fred Cullum seconded the motion.

Mr. Ho asked about the amount of work for the architect consultants. Mr. McCauley explained in recent history, the Board’s pending caseload has reduced approximately 30%,

but suggested focusing on the number of cases with the consultants, as they handle the more robust, professional practice-based cases. Mr. Ho asked if the consultants are expected to be physically available to Board staff. Mr. McCauley responded affirmatively and informed Mr. Ho that the consultants work from the Board's office in Sacramento.

Members Cullum, De Pietro, Ho, McGavin, Merino, Pearman, and Committee Chair McGuinness voted in favor of the motion. The motion passed 7-0.

G. Discuss and Possible Recommendation Regarding Proposed Amendments to Title 16, California Code of Regulations (CCR) sections 152 (Citations) and 152.5 (Contest of Citations, Informal Conference)

Ms. Walker presented this agenda item, and informed the REC that the Board's Executive Officer (EO) is authorized to issue citations for violations of the Architects Practice Act (Act) and Board regulations pursuant to California Code of Regulations, Title 16, (CCR) section 152. She explained after the issuance of a citation, a cited person may request an informal conference before the EO, which provides the cited person with an opportunity to demonstrate to the EO that there was not a violation of the Act as alleged in the citation, and/or a formal administrative hearing before an administrative law judge (ALJ).

Ms. Walker stated staff requests the REC, and ultimately the Board, consider possible amendments to CCR § 152.5 that would allow the EO to delegate to a designee, such as the Assistant Executive Officer or Enforcement Program Manager, the authority to hold an informal conference with a cited person and make a decision to affirm, modify, or dismiss a citation. She informed the REC that this delegation would only be used in the event the EO knows one of the parties in the investigation or for simple unlicensed or continuing education cases. She explained staff also suggests additional revisions to CCR § 152.5, including:

- Changing the deadline for requesting an informal conference from 10 days after service of the citation to 30 days of the date of issuance of the citation, for consistency with the deadline for requesting an administrative hearing as provided for in BPC § 125.9(b)(4).
- Authorizing the EO or a designee to extend the 60-day period for holding the informal conference for good cause.
- Clarifying that the decision to affirm, modify, or dismiss a citation is made following (rather than at the conclusion of) an informal conference, and a copy of the decision will be sent to the cited person within 30 days.

Ms. Walker asked the REC to review and discuss the proposed regulatory language to amend CCR § 152.5, and consider making a recommendation to the Board. Mr. Ho questioned if this proposed regulation was due to the EO being too busy to conduct informal conferences. Mr. McCauley explained the primary purpose is to address situations where he, as the EO, may know one of the parties involved in the case. He recalled a recent case where an unlicensed individual had assumed the identity of an architect who he knows personally and

lives in his neighborhood. Mr. McCauley explained with the unlicensed individual's consent, he recused himself from the informal conference and allowed the Enforcement Program Manager to preside over it, to ensure there was no perception of a problem. He advised the REC it would be better to have clear authority to delegate this duty to a designee, but such delegation would be used infrequently.

Michael Merino moved to recommend to the Board that it approve the proposed regulation to amend CCR § 152.5 and authorize staff to proceed with the regulatory change.

Robert Ho seconded the motion.

Members Cullum, De Pietro, Ho, McGavin, Merino, Pearman, and Committee Chair McGuinness voted in favor of the motion. The motion passed 7-0.

H. Update and Possible Recommendation Regarding Proposed Amendments to Board's Disciplinary Guidelines and Title 16, CCR section 154 (Disciplinary Guidelines)

Ms. Walker presented this agenda item, and reminded the REC that it had previously reviewed and discussed revisions to the Board's *Disciplinary Guidelines* in 2013 and 2014. She explained in April 2016, legal counsel advised staff that further substantive changes were necessary to the *Guidelines* prior to submission to the Office of Administrative Law, and recommended: 1) comparing the Board's *Guidelines* to other DCA boards' and bureaus' disciplinary guidelines; 2) lowering the minimum penalty of 90 days suspension and 5 years of probation; 3) adding recommended penalties for additional violations of the Act, general provisions of the BPC, and Board regulations, if necessary; and 4) further refining the timelines in Optional Conditions 9 (California Supplemental Examination) and 10 (Written Examination) as they relate to the tolling provisions. Ms. Walker informed the REC that based on legal counsel's recommendations, staff proposes additional revisions to the Board's *Guidelines*, including:

- Expanding the content of the "General Considerations" section to better assist ALJs in preparing proposed decisions and deputy attorneys general in negotiating stipulated settlements.
- Adding recommended maximum and minimum penalties for additional violations of the BPC.
- Amending the recommended minimum penalties for violations based upon changes made to the standard and optional conditions of probation.
- Adding model language for disciplinary orders.
- Adding a severability clause, a license surrender option, and requirements for a probationer to maintain an active and current license and notify the Board of any

changes to his or her address, telephone number, and employment, to the standard conditions of probation.

- Adding an ethics course and the procedures for the notification to clients to the optional conditions of probation.
- Amending the language of Optional Conditions 9 and 10 to revise the timelines within the “condition subsequent” option as they relate to the tolling provisions, and provide a “condition precedent” option that would require a probationer to take and pass the examination(s) prior to resuming or continuing practice.
- Making minor, technical or non-substantive changes throughout the *Guidelines*.

Ms. Walker asked the REC to review the additional recommended revisions to the Board’s *Guidelines* and the revised proposed regulation to amend CCR § 154, and consider making a recommendation to the Board. Mr. Merino asked if BPC § 5586 (Disciplinary Action by a Public Agency) is existing statutory language or if it is being proposed through regulation. Ms. Walker replied BPC § 5586 is an existing law within the Act, but was inadvertently excluded from the 2000 edition of the Board’s *Guidelines*. Mr. Merino asked staff to explain disciplinary action by a public agency, as he feels it is open-ended and draconian. Vickie Mayer clarified that all code sections listed in the *Guidelines* are existing laws and regulations, and explained a public agency, in the context of BPC § 5586, includes other state architectural boards, as well as other governmental agencies within California. She reiterated BPC § 5586 is an existing law, and the Board is articulating suggested guidelines when imposing penalties for it. Mr. Merino expressed his concern that the Division of the State Architect (DSA) may gain the ability to take action against architects, and asked if there could be a potential ramification for licensees under that law. Mr. McCauley informed the REC that he discussed project closeout and certifications with the Deputy State Architect, and clarified that it is a quasi-enforcement action on the part of DSA. He explained if DSA started filing complaints with the Board for violations of DSA’s statutory provisions, he, as EO, would not be issuing citations to enforce another agency’s provisions, as it is not an appropriate use of Board resources and may not stand up to appeal before an ALJ.

Mr. Merino restated his concern that the term “public agency” is vague, and asked if the language could be clarified. Ms. Mayer explained in order for the Board to take action based upon BPC § 5586, another public agency must have taken disciplinary action against a licensee for an act substantially related to the qualifications, functions, or duties of an architect. Mr. Merino questioned how it could happen if DSA has no authority or jurisdiction to take disciplinary action. Ms. Mayer clarified that BPC § 5586 only applies when another public agency has taken disciplinary action against an architect. She explained staff reviews the circumstances of the action taken against the licensee, and determines if action should be taken against the California license. Mr. Merino asked Ms. Mayer if, in her opinion, the language of BPC § 5586 was clear enough that it could not be abused or taken out of context. Ms. Mayer responded affirmatively and explained it specifically states “disciplinary action,” so it must be based upon a formal action taken against a licensee. Mr. McCauley advised Mr. Merino to keep in mind that the Board’s *Guidelines* are beneficial

because they set parameters for the ALJ, and asked Mr. Carter if he recalled how many cases within the past few years involved actions from other public agencies. Mr. Carter replied that BPC § 5586 typically applies in cases where an architect holds a contractor license, and that license is disciplined by CSLB for violations substantially related to the practice of architecture. Mr. Merino explained his intent is not to make the statute agency-specific, and stated if the REC and staff feel it is not an issue, he will not push any further.

Mr. McGuinness asked if there was any explanation of the requirements for the ethics course required by Optional Condition 14 (Ethics Course). Mr. Cooknick asked if the ethics course was optional. Ms. Walker replied that the ethics course is an optional condition of probation. Mr. McGuinness noted it was not included as an option for each violation. Ms. Mayer explained recommended penalties depend on the type of violation, and stated the ethics course is included as an optional condition where appropriate.

Mr. Pearman asked Mr. McCauley if staff tracks deviations from the Board's *Guidelines* in proposed decisions issued by ALJs, and if those deviations affect future modifications to the *Guidelines*. Mr. McCauley indicated deviations are informally tracked by staff, and offered to review cases in the past five years, identify any deviations from the Board's *Guidelines*, and bring that information to the next Board meeting. Mr. Pearman questioned if by "cost reimbursement, including expert consultant opinions and services," the Board is pursuing the fees of its architect consultants. Ms. Walker replied affirmatively. Mr. Pearman asked if this was a new change. Ms. Walker stated it is not a change in procedure; instead, new language was added to the *Guidelines* to explain the purpose. Mr. Pearman asked how the Board tracks and calculates the architect consultants' costs for disciplinary cases. Ms. Mayer clarified cost reimbursement was already included in the *Guidelines*, but was added as an optional condition of probation for additional violations. She explained the consultants track their time, and the Board is allowed to pursue cost reimbursement up to the point of the hearing, either through a stipulated settlement or a proposed decision from an ALJ. Mr. Pearman asked if the costs have been included in the past. Ms. Mayer responded affirmatively. Ms. Bon explained cost recovery is standard across DCA, as BPC § 125.3 provides the authority to charge for it. She stated cost recovery can be included in a stipulated settlement, where the disciplined licensee is agreeing to pay those costs through the agreement, or at the hearing level, following factual findings of the validity and support for cost recovery, based upon itemized invoices. Mr. Pearman asked what is meant by "mitigating evidence" under the "Factors to be Considered." Ms. Bon explained mitigating evidence could be anything that helps demonstrate rehabilitation or correction of the error. Mr. Pearman asked if it is included as a "catch-all" provision. Ms. Bon described the language as intentionally broad.

Mr. Pearman questioned why, under CCR § 110.1 (Rehabilitation Criteria), expungement proceedings pursuant to Penal Code (PC) section 1203.4 are not included when considering the denial of an architect license, but the expungements are considered with the suspension or revocation of a license. Ms. Bon noted Mr. Pearman is referring to existing regulation language, and explained in the development of the *Guidelines*, staff included the regulation for reference, but is not seeking to revise it. She suggested making the text of the regulation an item for future discussion and consideration by the REC. Mr. Pearman questioned why

the language could not be revised within the *Guidelines*. Ms. Mayer responded it is an existing regulation that is already in effect with that wording, and clarified that Ms. Bon is suggesting the REC may want to consider changing that regulation in the future. Ms. Bon noted the “Factors to be Considered” already include mitigation and rehabilitation evidence, so staff already has the ability to take applicants’ expungements into consideration, and explained the statements of issues typically plead the underlying facts of the criminal violation, not just the conviction, because if the criminal conviction is expunged, the administrative case can still rely on the underlying facts. Ms. Mayer commented that expungement proceedings may also be included under CCR § 110.1(a)(4), which references the extent to which the applicant has complied with any terms of parole, probation, restitution, or any sanctions lawfully imposed against the applicant, and noted in order to have a conviction dismissed under PC § 1203.4, the applicant would have complied with the terms of probation or parole. Mr. Pearman asked if, based upon the discussion, the REC could not add or modify anything under CCR § 110.1. Ms. Mayer responded affirmatively, and reiterated the Board would need to amend the regulation and then revise it in the *Guidelines*.

Mr. Pearman stated although he does not agree, he understands staff’s position, and questioned why there was not additional information regarding a petition for a reduction of penalty. Ms. Bon explained the *Guidelines* must accurately restate a regulation, but suggested removing the regulation and generally stating the principles the Board is looking for, or revising the underlying regulation and updating the *Guidelines* accordingly. Mr. Pearman commented that since the regulation does not describe the guidelines for the reduction of penalty, the Board is free to do so through its *Guidelines*. Ms. Bon responded affirmatively.

Mr. McGavin asked if there are any qualifications for the ethics course, such as the type of provider, due to the problems he has seen in education. Mr. McCauley explained the Board considers the courses on a case-by-case basis, and noted that the ethics course requirement is used infrequently. Mr. McGuinness noted the ethics course will be used more often, as it is a recommended penalty for many violations. Ms. Mayer clarified that probationers must submit courses to the Board for prior approval.

Mr. McGuinness asked for clarification regarding “informed consent” under CCR § 160(f)(1). Mr. Carter explained the intent of the regulation is to prevent an architect from making a substantial change to a design or project without the owner’s written consent.

Mr. Cooknick commented that there are a lot of changes for architects and candidates to digest, and asked the Board to help “get the word out” regarding these changes and the potential consequences. Mr. McCauley stated one of the Board’s most popular outreach components involves the architect consultants speaking to licensees and advising them how to stay out of trouble. Ms. Mayer explained the existing *Guidelines* are posted on the Board’s website, and offered to include an article in the Board’s newsletter on the *Guidelines* when they are final to alert licensees and candidates of the changes. Mr. Pearman noted that there is a long lead time to educate individuals regarding the changes.

Fred Cullum moved to recommend to the Board that it approve the additional revisions to the Board's Disciplinary Guidelines and the proposed regulation to amend CCR § 154, and authorize staff to proceed with the required regulatory change to amend CCR § 154 in order to incorporate the revised Disciplinary Guidelines by reference.

Gary McGavin seconded the motion.

Members Cullum, De Pietro, Ho, McGavin, Merino, Pearman, and Committee Chair McGuinness voted in favor of the motion. The motion passed 7-0.

I. Adjournment

The meeting adjourned at 11:43 a.m.