



**MEETING MINUTES
CALIFORNIA ARCHITECTS BOARD
REGULATORY AND ENFORCEMENT COMMITTEE**

AUGUST 23, 2018
SACRAMENTO

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

Committee Members Present

Barry L. Williams, Chair
Robert C. Pearman, Jr., Vice Chair
Gary McGavin
Matthew McGuinness
Michael Merino
Sheran Voigt

Committee Members Absent

Fred Cullum
Robert De Pietro
Robert Ho

Board Staff Present

Laura Zuniga, Executive Officer
Vickie Mayer, Assistant Executive Officer
Alicia Hegje, Program Manager, Administration/Enforcement Units
Kristin Walker, Enforcement Analyst
Katie Wiley, Enforcement Analyst
Stacy Townsend, Enforcement Analyst, Landscape Architects Technical Committee (LATC)

Guests

Mark Christian, Director of Government Relations, The American Institute of Architects, California Council (AIACC)

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

Regulatory and Enforcement Committee (REC) Chair Barry L. Williams called the meeting to order at 10:00 a.m. Mr. Williams welcomed everyone and requested members provide self-introductions. Mark Christian of AIACC and Board staff introduced themselves.

Robert C. Pearman, Jr. called the roll. There being six members present at the time of roll, a quorum was established.

B. Public Comment on Items Not on the Agenda

Mr. Williams opened the floor for public comment regarding items not specified on the meeting agenda. No comments were received.

C. Review and Possible Action on August 24, 2017 Committee Meeting Minutes

Mr. Williams asked if there were any questions, comments, or changes to the August 24, 2017 REC Meeting Minutes. There were none.

Michael Merino moved to approve the August 24, 2017 REC Meeting Minutes.

Sheran Voigt seconded the motion.

Members Merino, Pearman, Voigt, and Committee Chair Williams voted in favor of the motion. Members McGavin and McGuinness abstained. The motion passed 4-0-2.

D. Update and Possible Action on Board's Enforcement Program and Complaint, Citation, and Disciplinary Action Statistical Data and Information

Alicia Hegje provided the Enforcement Program update and highlighted items of interest to the REC, including the status of the Board's pursuit of a collection agency contract, which has been a Strategic Plan objective since 2015-2016 and is planned to be executed by early 2019, and the continuing education (CE) audits and actions taken for noncompliance. Ms. Hegje reported that this year to date, there have been approximately 1,900 licensees audited, 333 licensees of those audits have not been in compliance, and that has resulted in 132 citations issued for noncompliance and for a violation of Business and Professions Code (BPC) section 5600.05.

Matthew McGuinness stated he did not understand the comment in the meeting packet indicating the high percentage of citations for CE violations where it stated that they are primarily due to the redirection of staffing as a result of vacancies in the Enforcement Unit. Mr. McGuinness questioned how the percentage of CE violations could increase if the percentage of licensees being audited remained the same. Vickie Mayer replied that due to vacant enforcement analyst positions, CE violations account for a higher percentage of overall violations that resulted in citations. She advised that these cases are being processed in priority order and the current quantity of CE cases is actually lower because we are in a non-renewal year. Mr. Merino voiced his concern that it appears the Board is more aggressively

pursuing CE violations and asked if staff intends to audit a higher percentage of license renewal applications. Ms. Mayer indicated that CE is currently staffed, but there are other analyst vacancies in the Enforcement Unit, so it appears a greater number of CE citations are being processed. Laura Zuniga explained that the number of other non-CE citations should balance out once the other vacancies are filled. Mr. Merino appreciates the change in staff; however, on behalf of consumer protection he would rather see the focus be on unlicensed practice. Mr. Merino emphasized that he would rather see the focus on illegal activity versus a licensee without CE because there is a more dangerous threat to consumers on CE. Ms. Zuniga pointed out that there is a report due to the Legislature on January 1, 2019, as such the Board must juggle existing workload and staff to continue to audit CE and present accurate data. Mr. Merino stated that the Board has always focused on consumer protection, health, and welfare and he cannot see the equivalency between the two types of violations. Mr. Williams agreed with Mr. Merino and explained that there are two types of issues, one being driven by the Legislature to show we are doing this because it is a requirement, and the other by being proactive about unlicensed activity. Mr. Merino explained that prioritization within the Board should not be driven by legislative emphasis it should be about consumer protection, and not outside issues. Gary McGavin also agreed and suggested placing a notice on the Board's website, so the licensees do not believe they are being targeted as opposed to unlicensed individuals. Mr. Merino interjected that when he read the language within the staff report it conveys a shift in emphasis that really is not the staff's intent. Ms. Mayer added that the Board does not want to give the impression that we are not working cases, it is just a matter of balancing limited staff with the workload and the report can be reworded. Ms. Hegje pointed out that the Board has recently lost two-thirds of the enforcement analysts who process typical complaints. She further explained the CE position has not changed, and the CE staff person cannot be redirected to work on the other cases because the higher-level of work required for licensed or unlicensed complaints are outside the civil service classification and job description.

Mr. Merino stated there is an unintended message that the Board is targeting licensees internally. Ms. Mayer suggested removing the term "redirecting" in the footnote of the report. Ms. Hegje stated that the number will start to shift due to the non-renewal year.

Mr. McGavin offered to prepare the notice for the website as to not add to the enforcement staff's workload. Mr. Williams noted that about 20 percent of the CE violations are from out of state licensees. Ms. Mayer explained that the law has been in effect since 2009, information is provided in the Board's newsletter, and licensees are given a 90-day notice.

Ms. Hegje pointed out that several new items of legislation have been authored since the last REC meeting, staff is currently monitoring to see how each bill will impact the Board, licensees, and consumers, if approved. She indicated the Enforcement Report highlights the changes in types of complaints; this year advertising cases decreased about 12 percent, unlicensed practice decreased about 5 percent, willful misconduct increased about 5 percent, and CE has remained about the same. She also advised the number of days a complaint case is pending has increased due to staff vacancies. Mr. Williams asked when the approval for new staff will be received. Ms. Mayer responded that there is tentative approval to fill one analyst position, and staff are working on approval for the second position. She indicated the office technician position had to be re-advertised a couple times as part of the civil service process.

Mr. McGavin commented that Senate Bill (SB) 721 (Hill) [Building standards: decks and balconies: inspection] was introduced on February 17, 2017, and Mr. Christian with AIACC confirmed that the bill passed the Legislature and is on its way to the Governor. Mr. McGavin provided detail about the language requiring special inspection, special detailing, approval of the building official, ongoing inspection of decks, and changing the terminology to “exterior elevated elements,” and it does not address unintended consequences; if the balcony deteriorates who is going to be at fault – the inspector, the contractor who put it in, or the architect. Mr. Williams interjected that the Board was against the bill for a lot of those reasons. He opined as architects we know that a lot of times decks get overloaded, and there are water proofing issues, and other damage that you cannot see from inspection unless you tear into it. Mr. McGavin added the language that is in the next iteration of both the existing building code and the standard building code regardless what the bill does.

REC discussed that the building code language still has 45 days for review and the Building Standards Commission needs to approve it. The time for the stakeholders to comment has passed, it is now up to individuals to comment within the 45-day open period. Mr. Merino added that there was a resultant design restriction because of an opening for residential projects where an unlicensed individual can design without a licensee’s stamp and questioned if there would be modification of the language. Mr. McGuinness responded that the current language is “building official approval of design” and there was no language in the bill modifying this upon his review.

Further REC discussion occurred in which Mr. Merino suggested the design component should be addressed after the bill is finalized. Mr. McGuinness reiterated that individuals, not stakeholders can oppose bill after 45 days. Mr. Williams suggested adding an occupant load limit on balconies.

Michael Merino moved to receive and file staff's report on the Board's Enforcement Program and Complaint, Citation, and Disciplinary Action Statistical Data and Information.

Gary McGavin seconded the motion.

Members McGavin, McGuinness, Merino, Pearman, Voigt, and Committee Chair Williams voted in favor of the motion. The motion passed 6-0.

E. Discuss and Possible Action on the Following 2017-2018 Strategic Plan Objectives to:

1. Update the *Building Official Information Guide* to Better Educate Local Building Officials on the Architects Practice Act

Kristin Walker presented this agenda item and reminded the REC that it reviewed and discussed the 2000 edition of the Board's *Building Official Information Guide* at its August 24, 2017 meeting. She stated staff and the architect consultants identified necessary updates and revisions to the content of the *Guide*, and she asked the REC to review the proposed revisions contained in the meeting packet and provide feedback to staff. She also indicated that following the meeting, staff will work with Department of Consumer Affairs (DCA) legal counsel on the proposed revisions and a final draft of the *Guide* will be presented to the REC for review and approval at its next meeting.

Mr. McGuinness asked why the information regarding swimming pools was removed from the *Guide* in the proposed revisions. Ms. Walker responded that the architect consultants recommended removing that information from the *Guide* because the design of swimming pools is not considered to be the practice of architecture and is generally outside of the Board's jurisdiction. Ms. Voigt questioned why the word "measures" was removed from the phrase "safety measures in, on, or about the site" in the response to question three under "Architects Scope of Practice." Ms. Walker replied that the change was made for consistency with the actual language of BPC section 5536.25(c), which does not include the word "measures."

Mr. Merino inquired about the removal of the section regarding mechanics liens and commented that the information should remain in the *Guide*, as mechanics lien laws tend to be confusing to architects, consumers, and building officials. Mr. Merino asked whether mechanics lien laws should be added to the *Act* or otherwise reconsider removing that section and revising it to fit situations when a design professional uses a mechanics lien. Ms. Walker explained that this section was deleted on advice of the Board's architect consultants, who are not

present today. Ms. Zuniga noted the Board does not enforce mechanics lien laws but offered to include guidance where to obtain information regarding mechanics liens in that section of the *Guide*. Ms. Mayer asked if the Committee wanted page 34 to be struck from the *Guide* and suggested that the language can be revised. Mr. Williams added that mechanics lien laws are very complex and navigating the process is difficult. Mr. Merino reiterated that the Board must provide information and guidance to building officials about the *Act* and other issues of interest regarding architecture.

Mr. Christian pointed out that once the work of improvements begins, an architect can do a mechanics lien, prior to that the design professional can exercise the right to a lien subject to specific conditions being met.

Mr. Merino commented that sometimes an architect will file a mechanics lien during the design process which is incorrect because during the design process there is nothing to lien because no improvement has taken place. He advised the architect feels that have provided a creative service and a set of documents, but if the owner never makes the improvement, there is nothing for the architect to lien, which creates a gray area on this topic.

Mr. McGavin added that the way to protect instruments of service is by copyright. The REC discussed the fact that the instruments of service can be protected without a copyright symbol. Mr. Merino also suggested that a section about copyrighting be added to the *Guide*, to explain that the architect can retain their creative ownership of the ideas within the documents and the consumer has the right to use the plans but not the right to possess them. He advised this distinction might be helpful when dealing with a building official. Mr. Williams added that any changes must go through the architect; the client cannot use the plans for other projects, but this is not necessarily under the umbrella of the copyright. Mr. Merino stated that California Code of Regulations (CCR), title 24 clarifies the right of reuse issue.

Mr. Christian referenced the California Education Code section 17316 which describes the ability of a school board to use an architect's plans for later revisions without transferring the architect's copyright.

Michael Merion made a motion to accept the proposed revisions to the Building Official Information Guide except for the edit to strike the mechanics lien language and bring the Guide back to the REC at its next meeting.

Sheran Voigt seconded the motion.

The Committee discussed the motion and voiced concerns the action might limit modifications needed to the *Guide*.

Michael Merino amended the motion to receive and file the Guide and take note of the discussion regarding the mechanic's lien language.

Sheran Voigt accepted the amendment and seconded the motion.

Members McGavin, McGuinness, Merino, Pearman, Voigt, and Committee Chair Williams voted in favor of the motion. The motion passed 6-0.

2. Educate Consumers on the Standard of Care so They Understand What to Expect From an Architect When Choosing to Hire One

Ms. Walker presented this agenda item and reminded the REC that it extensively discussed the use of the term "Standard of Care" within the Strategic Plan objective at its August 24, 2017 meeting. She reminded the members that they expressed concern over legal implications and wanted to research and clarify the Board's intent. She indicated rather than the Board seeking to define the "Standard of Care" the Board wanted the REC to educate the public on what to expect from their architect and how to identify problems. She advised at the prior meeting, Board staff provided suggestions to update and expand the consumer section of the website, develop more consumer-oriented materials to share through social media, as well as promote the architect consultant's education and information program where consumers can call or email with questions about their ongoing projects. Ms. Walker asked that the REC review and discuss this objective to provide feedback.

Mr. Merino explained that this question would be extremely difficult on the fly because it would take a lot of care and time for consideration. He suggested a subcommittee of one to three members that will work with the staff to bring findings back to the REC. Ms. Voigt indicated that consumers should be informed that the Board provides architectural experts for questions or concerns. The REC discussed whether the National Council of Architectural Registration Boards (NCARB) provides a definition for the "Standard of Care." Mr. Merino stated there has been recent litigation on this topic and whether, for example, an architect's instruments of service must be perfect or whether they must be sufficient for a contractor to work from, with additional input from the architect. He recommended to discuss the topic with prior REC member architect attorney Phyllis Newton as a resource. Mr. Christian added that "Standard of Care" is a legal issue and agreed that attorneys should be involved. Ms. Zuniga suggested that additional research be performed on the term, history, and case law and then work with a subcommittee. The REC suggested contacting state architect

Chet Widom as a resource to the Board based on his 50 years of wide-based practice and his understanding of legal ramifications. The REC discussed using AIA's definition if they already have one and suggested reaching out to NCARB for their definition as well.

3. Measure the Effectiveness of the Board's Citation Collection Methods as a Means of Protecting Future Consumers

Ms. Walker reminded the REC of the current methods used by the Board to collect unpaid administrative fines from licensees and unlicensed individuals. She explained if a licensee fails to pay an administrative fine, a hold is placed on the license preventing it from being renewed without payment of both the renewal fee and fine pursuant to BPC section 125.9(b)(5). Ms. Walker stated the Board is currently utilizing the Franchise Tax Board Intercept Program as an additional tool to collect unpaid fines from unlicensed individuals, but the potential sources of recovery are limited to state tax refunds, lottery proceeds, and unclaimed property. She noted staff is in the process of securing a contract with a collection agency and expects the Board's citation collection rate to improve after the contract is executed. She informed the REC that the Board's overall citation collection rate over the past five fiscal years is approximately 59 percent, with collection rates of 81 percent for licensees and 43 percent for unlicensed individuals. She also indicated the Board's collection rate had increased five percent since the last REC meeting.

Mr. Merino commented that the Board's citation collection rate is higher than he had anticipated, particularly for unlicensed individuals, and stated he expects the rate to increase further after the collection agency contract is in place.

Michael Merino moved to recommend to the Board that the 2017-2018 Strategic Plan objective to measure the effectiveness of the Board's citation collection methods as a means of protecting future consumers be carried over to the next Strategic Plan.

Sheran Voigt seconded the motion.

Members McGavin, McGuinness, Merino, Pearman, Voigt, and Committee Chair Williams voted in favor of the motion. The motion passed 6-0.

4. Develop Educational Materials for Newly Licensed Architects to Provide More Information About the Requirements in Order to Avoid Future Violations

Ms. Walker presented this agenda item and described the *New Licensee Information Guide* for new and experienced architects which includes a requirement overview checklist and a more detailed guide to laws and regulations that apply to architects. She advised the *Guide* is currently in draft form and will require DCA legal counsel to formally approve. She asked the REC to review the *Guide* and make a recommendation to the Board.

Ms. Voigt advised she was impressed with the document and felt it was informative and well thought out. Mr. Merino stated the *Guide* was well done and will be very helpful for architects to review. Mr. McGavin added that this would have been very helpful when he was younger instead of relying on mentors and asked if he could share the *Guide* in draft form with a professional practice instructor at California Polytechnic State University, San Luis Obispo. He indicated he felt it is something that architectural students who look forward to being licensed could benefit from also. Other Committee members discussed and agreed with this request. Mr. McGuinness encouraged that the *Guide* be provided to all new Board members.

Mr. Christian suggested that the table found under Agenda Item E.4 on page six regarding License Renewal Process be updated to include “in the odd number of years” to the statement “Licenses expire at midnight on the last day of the licensee’s birth month...” Committee members agreed with this change.

Michael Merino moved to approve the draft New Licensee Information Guide, direct staff to work with DCA legal counsel to obtain approval, and present the document to the Board at its next meeting.

Sheran Voigt seconded the motion.

Members McGavin, McGuinness, Merino, Pearman, Voigt, and Committee Chair Williams voted in favor of the motion. The motion passed 6-0.

5. Determine the Necessity and Implementation Alternatives of a Licensure Fingerprint Requirement as a Means of Protecting Consumers

Ms. Walker presented a slideshow to address the Board’s 2017-2018 Strategic Plan objective to determine the necessity and implementation alternatives of a licensure fingerprint requirement as a means of protecting consumers. She

indicated the objective was under the Enforcement Goal of the Plan which is to protect consumers by preventing violations and enforcing laws, codes, and standards when violations occur. Ms. Walker advised the Board last considered a fingerprint requirement in 2012. She noted that at the time, the Board anticipated a low number of arrest and prosecution records and determined there would be little increased benefit to the public's health, safety, and welfare. It was also noted that current law requires fingerprinting of architects for school projects when the architects would be on campus with students present. The Board also considered there would be an increased cost to licensees and candidates to fulfill this requirement.

Ms. Walker explained that the relevant provisions of law pertaining to convictions that allow the Board to take action against licensees and applicants if a crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued or applied for are: BPC sections 480 (Applicant's Grounds for Denial), 490 (Conviction of Crime), 5552 (Qualifications of Applicant), 5553 (Denial of License; Grounds; Conduct of Proceedings), and 5577 (Conviction of a Crime Substantially Related to the Qualifications, Functions, and Duties of an Architect).

Ms. Walker described the Board's substantial relationship criteria specifically defines what that means; we have a regulation that defines that. She explained, specifically, a crime or act is considered to be substantially related if a substantial degree of evidence is present of the potential unfitness of an architect to perform the functions authorized by their license in a manner consistent with the public health, safety, and welfare. She advised such crimes and acts would specifically include Chapter 3, Division 3, of the BPC which is the *Architects Practice Act (Act)*.

Mr. Pearman mentioned Assembly Bill (AB) 2138 (Chiu) [Licensing boards: denial of application: revocation or suspension of licensure: criminal conviction] if passed will only allow going back five years. Ms. Zuniga responded that it seems quite likely that this bill would pass because it is becoming harder for licensing boards to deny a license based on prior convictions. She advised the sponsors of this legislation think that once someone has served their time and been rehabilitated then they should not be further penalized by a board from employment. She indicated the bill would also prohibit licensing boards from asking applicants to disclose information.

Mr. Pearman added that the Board would not be able to ask for the prior convictions but could discover this information from the fingerprinting. Ms. Zuniga advised the Board could no longer ask for the convictions but could receive the criminal record. She further indicated the applicant would no longer be responsible for the court documents; the Board would need to request and incur the cost for these documents.

Mr. Merino asked whether this could be unconstitutional and may be a violation of the underlying rights of an individual's privacy. He suggested that an applicant may be forced to violate his own right to prevent self-incrimination. Ms. Zuniga advised she had not heard that argument but could be part of the reasoning. Mr. Merino questioned if this had been vetted and worth the Committee's time to take any action.

Ms. Walker indicated that the provisions of AB 2138, assuming that it passes, should be part of the REC discussion considering the necessity of a fingerprint requirement. She stated when the Board receives applications with convictions there is a set of criteria for rehabilitation that needs to be considered which is standard among all boards and takes into account the nature and severity of that act or crime, evidence of any subsequent acts, time that has elapsed since the act or crime, extent to which applicant has complied with their sentence, along with any evidence of rehabilitation that the applicant submits.

Ms. Walker further explained the criteria for rehabilitation of a licensee are very similar and include the nature and severity, total criminal record, time that has elapsed, whether licensee has complied with their sentence, evidence of expungement proceeding pursuant to Penal Code section 1203.4, and any evidence of rehabilitation that the licensee submits.

Ms. Walker noted the way the Board currently finds out about convictions is from applicant and licensee applications and renewals submitted to the Board; in which individuals certify under penalty of perjury whether they have been convicted of a crime. She further explained after those are received, the Enforcement Unit reviews the application along with the conviction information to determine if the applicant/licensee needs to be contacted, if the Enforcement Unit needs certified copies of records, or whether the conviction is related to the practice of architecture. She advised other DCA boards have general statutory

authority for fingerprinting under BPC section 144(a); the Board is not included with such authority.

Ms. Walker explained that Criminal Offender Record Information (CORI) is obtained through fingerprinting; in-state applicants/licensees use Live Scan and visit a Live Scan site such as a police station or another agency to have their fingerprints taken and electronically submitted. She further explained the applicant will pay the Department of Justice (DOJ) and Federal Bureau of Investigation (FBI) fee directly to the site and will potentially pay a rolling fee which varies by the site location. Ms. Walker added that out-of-state applicants/licensees unable to visit California to use a Live Scan site will use a fingerprint card at a police station to have fingerprints taken and then the card will be provided to the Board which is then forwarded to DOJ along with the fee for processing.

Ms. Walker pointed out that once Live Scan fingerprints are submitted to DOJ/FBI for a background check, usually a "clear" result will be provided within 48-72 hours if there is no matching record returned. She advised if there is a criminal record it can take up to 30 days or longer due to the fact that the record must be manually reviewed by a technician to ensure a disposition for each arrest.

Ms. Walker indicated that a delay can occur if a record is returned due to incomplete information or if there are issues with the quality of the fingerprint. She further explained an individual may be sent back to be re-fingerprinted; if the fingerprint quality remains unusable then a background check with the individual's name will be done.

Ms. Walker noted that the Board; LATC; Bureau of Automotive Repair; Board of Barbering and Cosmetology; Bureau of Household Goods and Services (formerly the Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation); and Bureau for Private Postsecondary Education are the six boards and bureaus that do not have fingerprinting authority.

Mr. Merino asked if fingerprinting was required by the Contractors State License Board (CSLB) and Ms. Zuniga confirmed they did. Ms. Zuniga explained that CSLB has approximately 300,000 licensees and started fingerprinting in 2005. She advised they did not do retroactive fingerprinting on existing licensees; only

new applicants were fingerprinted. She explained CSLB gets a considerable amount of criminal records, but the license denials are very low. Ms. Zuniga further stated they receive subsequent arrest information on licensees that are already fingerprinted, and a separate enforcement unit investigates those cases to determine whether they need to take action against those licensees. The REC discussed the fact that CSLB would get a lot more applicants than the Board would.

Ms. Walker explained most of the boards and bureaus that require fingerprinting include new applicants and all licensees; however, the Board for Professional Engineers, Land Surveyors, and Geologists (BPELSG), Bureau of Cannabis Control (BCC), CSLB, and Court Reporters Board only fingerprint new applicants. She advised the BCC only has new licensees and applicants at this time.

Ms. Walker highlighted that approximately 17 percent of CSLB applicants have a criminal history record; about 1 percent of those were denied licensure due to criminal convictions, and another 1.6 percent were issued probationary licenses in lieu of denial. She surmised it is a small percentage of those that are received that result in any kind of action.

Ms. Walker advised that the CSLB 2014 Sunset Review adopted a policy opposing retroactive fingerprinting as CSLB believes such a program is unnecessary, costly, and would negatively impact the industry. She acknowledged they only fingerprint new licensees or when a new application is filed.

Ms. Walker stated that BPELSG has an applicant fingerprint requirement; they only fingerprint new applicants or when an application is filed to change to a different branch of engineering. She advised BPELSG issues approximately 2,000 civil engineer licenses per year and only 2 resulted in denial; a very low denial rate.

Ms. Walker noted the Board issues about 700 licenses per year and only denies approximately 1 to 2 of the applications; the majority are not being denied due to any type of criminal record.

Ms. Walker explained that to implement fingerprinting at BPELSG, a Budget Change Proposal (BCP) was approved and they were granted one Office Technician position for the increased workload. She advised they were first given the statutory authority to be able to fingerprint, then they established regulations to provide specific authority to collect fingerprints from applicants and to obtain state and federal criminal history information. She further advised in 2015, they experienced implementation delays to upgrading their computer systems due to DCA resources allocated to BreEZe (online licensing and enforcement system at DCA) at that time.

Ms. Walker examined the fingerprinting practices of architectural boards in other states and found that only the Texas Board of Architectural Examiners required fingerprinting for all their active-status registrants which began on January 1, 2014. Ms. Voigt asked if this was done just once. Ms. Walker responded that you fulfil the requirement once and then you are in the system and then the Board would continue to receive updates. Ms. Walker noted that the Pennsylvania State Architects Licensure Board does not require fingerprinting; however, it requires a criminal background check for each state lived in for the past five years—some states require fingerprinting for the background check.

Ms. Walker stated that the items for the REC to consider today are the necessity of a fingerprint requirement to the protection of the public health, safety, and welfare, and preventing consumer harm, and the limitations of the way we are currently receiving the information. She advised this applies mostly to licensees because there are licensees actively practicing but are not required to notify the Board of a conviction until license renewal which could be up to two years. She suggested the REC consider the impact on candidates and licensees given the low percentage that are actually denied, and the potential impact on the Board's workload and budget. She outlined three potential implementation options: 1) fingerprint all applicants and apply the requirement retroactively to licensees at time of renewal over a specific time; 2) require future applicants only and grandfather existing licensees; or 3) keep the status quo and not require fingerprinting.

Ms. Walker further noted that implementation requirements would include obtaining statutory authority by amending BPC section 144, developing and adopting regulatory changes, seeking approval of a BCP for additional staff/resources, upgrading the system to track criminal information received, and

the staff having access to the data would need to be fingerprinted, along with a background check, and training. Ms. Walker then turned the issue over to the REC to discuss.

Mr. McGuinness wanted to clarify how the Board currently is made aware of criminal records. Ms. Mayer responded that sometimes the Board is notified by other agencies such as another state, but usually at the time of license renewal when the licensee answers “yes” to the conviction question.

Ms. Zuniga discussed the CSLB and how they capture their convictions. She advised once a contractor is arrested or convicted the Board received notification based on the fingerprinting on file.

Mr. Pearman asked what real harm the Board is trying to prevent; do we need to find architects who have committed a violation and who lie about their record? He wondered what the value is if the number is so low. Mr. Merino asked Ms. Zuniga what value was added to CSLB by fingerprinting. Ms. Zuniga explained that she was not employed at CSLB in 2005 when fingerprinting first started but thought the argument was consumer protection because you are allowing licensees access into your home or when a contract is a high dollar amount then consumers want to know about financial crimes or convictions. She advised not all individuals being fingerprinted go into the homes. She explained CSLB licenses a contractor entity which about 50 percent of licensees are sole proprietors, but the others are often a large corporation where the licensee is not the person who is interacting with the client. She also stated CSLB does license home improvement sales people.

Mr. Merino stated this consumer protection concern supports why fingerprinting is valid for the Board because an architect is more likely to enter the home and interact with family members.

Mr. McGuinness stated that this presupposes that everyone is bad when it is a minuscule percentage.

Mr. Williams asked for a past example when fingerprinting would have been helpful with a case by having the fingerprint requirement. Ms. Walker described a case where a licensee was convicted of a crime that involved worker’s compensation fraud and diverting funds from his employees in his role as a

contractor which is very related to architecture and he was convicted of multiple felonies. She advised that a member of the public notified the Board about the conviction and asked why the Board had not done anything to the licensee which triggered a Board investigation. Later, she advised the Board filed an accusation against his license but given the amount of time that had passed from when the conviction occurred to the hearing date the licensee was able to expunge the record and that weakened the case. She indicated the Board was still successful, but the argument was if the Board knew about the conviction earlier, then the Board could have started working on the case faster and perhaps had a stronger case. She acknowledged the licensee was not out of compliance because his renewal was not due until the year following the conviction.

Ms. Walker explained that by not fingerprinting there is a delay until finding out about the convictions and the Board is relying on honesty.

Mr. McGavin mentioned that out of 30,000 licensed architects there is only one example where fingerprinting may have been useful. Mr. Mayer responded that this is the only case the Board knows about, there may be others. She advised the Board has discovered that licensees have falsified their renewal applications and the Board will later find out about it. Ms. Mayer explained there is exposure to potential consumers where there is a risk.

Mr. McGavin does not think there are enough offenses to justify the requirement and feels that option three for the Board to take no action is appropriate.

Mr. Merino questioned what type of crime would trigger a Board investigation. Ms. Walker explained that is done on a case by case basis and Ms. Mayer added it would depend on the circumstances and if the individual was convicted, and if the conviction was substantially related to the practice of architecture. Ms. Zuniga commented that the regulations would define this. Mr. Merino asked if a licensee was convicted of an assault/altercation with a client would that result in an action against the licensee. REC discussion indicated that if the licensee was convicted of assault then most likely an action would occur. Mr. Merino questioned if we let one individual slip through, because we continue to allow the licensee to practice - is that one case too many?

Mr. McGuinness added that on a positive note, if a licensee is convicted of a crime then the Board would be alerted because of the fingerprinting requirement.

The REC discussed the statistics further.

Mr. McGuinness commented that architects are already professionals, we are never going to get rid of all the bad guys. He stated he believes there is a reasonable question included on the renewal application, "Have you been convicted...?"

Ms. Walker clarified that the fingerprint record stays in the system and the Board would immediately receive a notification for any subsequent arrest or conviction.

Ms. Mayer commented that self-reporting may go away if the bill passes. She advised the Board could be prohibited from even asking the question about prior convictions on applications. REC discussion indicated that if the bill passes then it may be illegal to request this conviction information.

Ms. Mayer added that the new law will reduce what convictions the Board may take action on, but it will not take it away completely. She explained it will amend criteria to be used up to seven years. Ms. Zuniga confirmed that the bill may limit that number of convictions that can be used to take action to deny a license.

Ms. Voigt advised she has two jobs that require fingerprinting; real estate broker and notary business. She explained notary fingerprinting is required every four years and she has very smooth fingertips, so this can be a hassle when it cannot be read. Ms. Mayer added that an architect would only need to be fingerprinted once. Ms. Voigt added the fingerprinting is beneficial because it would protect the Board and show that the Board has gone the extra step to protect our citizens. Mr. McGuinness commented the Board would be building up staff and more money would be spent by the Board and licensees.

Mr. McGavin added that as a school architect he is required to be fingerprinted and that it makes sense because he is on campus with students. Mr. Merino questioned why, when school architects are being fingerprinted; why not use caution across the spectrum of the profession and fingerprint everybody? Mr. Merino argued that architects work in a home where children can be present.

Mr. McGavin stated that we cannot protect people from everything; we are just building a bigger bureaucracy without any statistics to support the need. He

argued that even CSLB with a huge number of contractors did not have big statistics to prove the need for fingerprinting. He added that he had a pretty big firm and that often he sent unlicensed individuals to meet with clients.

Mr. Christian commented that he has not talked to AIACC leadership about this topic; but if there is an increased cost for licensees then there needs to be good justification, with benefits to the public, to infringe on the licensee privacy and rights. He used SB 721 as an example, once a tragic event occurred in Berkeley and a balcony fell, strict new legislation was proposed to test every exterior elevated element.

Mr. Merino commented that fingerprinting dissuades a licensee from doing something they should not be doing; and gives licensees a second thought before acting.

Mr. Williams questioned why only new applicants should be fingerprinted, it should apply to all licensees; everyone has the potential to be arrested or convicted.

REC discussed that working 8-12 years to obtain a license in this industry should be enough of a deterrent not to commit a crime.

Ms. Mayer commented that everything the Board's Enforcement Program does is based around consumer protection and the resultant number of accusations and denials is low in comparison to the size of the program and license population. She added we are one of a few boards within DCA that do not require fingerprinting. She cautioned with all the current criminal activity, fingerprinting would help prevent someone from slipping through such as Mr. Merino suggested.

Mr. Pearman supports fingerprinting because the potential cost to the Board by not implementing it could be far costlier from a lawyer's perspective. Mr. Merino added there is a little bit of cost, but it only takes one architect to slip through. Mr. Pearman suggests minimizing the cost by only fingerprinting new applicants. Mr. Williams added that would be short-changing by only fingerprinting new applicants and not all licensees.

Mr. McGuinness commented that we need to consider delays; indeterminate amount of time to receive the criminal record because of DOJ or otherwise. Ms. Mayer suggested implementing fingerprinting during the eligibility check point and then by the time the applicant was applying for licensure the Board would be aware of any criminal record. Ms. Zuniga added that we would need to review other boards' processes to avoid delays. Ms. Mayer suggested giving the applicant the choice of when to submit payment for fingerprinting where they can pay at the very end, but it may delay the issuance of the license.

Mr. McGuinness reiterated that over 30 boards in California require fingerprinting, but the other 48 states do not.

Ms. Zuniga stated that the Legislature's viewpoint has shifted more recently to focus on what is being done to the applicant and not making it any harder on them. She advised if the Board supports fingerprinting, it would need to go to the Legislature for approval.

REC discussion showed that there is a benefit to fingerprinting, but they were unsure if the benefit is significant enough because all the other states do not require it.

Gary McGavin moved to continue with our current Board processes and react to any new legislation when it is introduced.

Matthew McGuinness seconded the motion.

Members McGavin, McGuinness, Merino, Voigt, and Committee Chair Williams voted in favor of the motion. Member Pearman abstained. The motion passed 5-0-1.

F. Discuss and Possible Action on Alternative Methods of Disclosure to Consumers That Architects are Licensed and Regulated by the Board

Ms. Walker presented this agenda item and reminded the REC that the Board's 2015-2016 Strategic Plan included an objective to identify and pursue needed statutory and regulatory changes so laws and regulations were consistent with current architectural practice, including amending the written contract requirement (BPC section 5536.22). She advised there are several proposed additions to the written contract requirement and most recently staff had brought forward adding a

statement identifying the ownership of the use of instruments of service prepared by the architect as well as a notification to the client that the architect is licensed by the Board in that language. She reminded the members that at the November 2016 REC meeting, the REC recommended to the Board that it approve the proposed language with the words, "concerns about" instead of "complaints concerning" within that language. She advised the highlighted language in Attachment 3 was discussed at the December 15, 2016 Board meeting where the Board approved the proposed language to amend BPC section 5536.22 with the exception of the proposed subsection (a)(9); the Board returned the subsection (a)(9) to the REC for further study and consideration. She further explained the Board was concerned that this subsection would apply to all contracts including public agencies and it might not be the right vehicle for disclosure. Ms. Walker then turned this item over to the REC for discussion with a recommendation that the Board either pursue additional methods of disclosures to consumers or keep the status quo with the regulation.

Mr. Pearman explained the language directs the consumers where to complain about their architect. He suggested including language that states the architect is licensed by CAB and provide the Board's address.

Mr. McGuinness stated that he is opposed because he receives a lot of electronic contracts where he can only strike lines and sign; there is no additional space for comments. He indicated if he had to add such information later to contracts, it would draw a huge amount of attention to the language. In addition, he advised these consumers who use electronic contracts are well educated about the Board.

Mr. McGavin asked if those contracts could be converted to PDF and make the changes in Acrobat or print the contract and make the changes by hand.

Mr. McGuinness asked if this will be a battle with every single contract; how are we protecting the consumer when a burden is placed on the architect to provide information that should already be public knowledge.

Ms. Mayer stated that LATC has an exclusion regarding a public agency contract (BPC section 5616 Landscape Architecture Contract – Contents, Notice Requirements).

Ms. Walker added that LATC and BPELSG have a written contract provision, subdivision (a) which outlines what needs to be in the contract and subdivision (b) outlines when you do not need to meet that requirement. She advised there is an exemption while dealing with a public agency, that is not in our proposed language.

Mr. Merino commented that subsection (a)(9) highlights the anticipation for problems and the option to initiate a complaint against an architect which could have been handled otherwise.

Mr. McGuinness commented that many members of the public are not aware of the Board.

Mr. Merino stated that he is most concerned about the wording “Any questions or concerns about” an architect may be referred to the California Architects Board and suggested replacing it with “located at” to simply show where the person is licensed.

Ms. Mayer added that the revised language currently includes “any questions or concerns about” instead of “complaints.” Ms. Mayer also recommended to add a provision for a public agency.

Mr. Christian clarified that subsection (b) in the written contract does not apply to public contracts.

Mr. Merino stated that most public entities provide the architect with the contract.

Ms. Zuniga commented that there has not been a problem with this language. Ms. Walker added that during the review of a settlement report regarding a written contract some of the provisions of (a) might be missing such as a license number or architect’s address. She advised this is a violation, but we do not commonly cite for it; usually it results in an advisory letter to the licensee.

Ms. Mayer explained that public agency contracts are sometimes forced upon an architect and the architect would have to add an addendum for any revisions.

Michael Merino moved to recommend to the Board that it amend the language in (a)(9) to remove “Any questions or concerns about an architect may be referred to the California Architects Board,” and replace with “located at” and refer to the Board to consider adding an exclusion for public agency contracts.

*[The proposed language for subsection (a)(9) would read:
“Architects are licensed and regulated by the California Architects Board located at 2420 Del Paso Road, Suite 105, Sacramento, CA 95834.”]*

Sheran Voigt seconded the motion.

Members McGavin, McGuinness, Merino, Pearman, Voigt, and Committee Chair Williams voted in favor of the motion. The motion passed 6-0.

G. Adjournment

The meeting adjourned at 12:16 p.m.