



Edmund G. Brown Jr.
GOVERNOR

CALIFORNIA ARCHITECTS BOARD

PUBLIC PROTECTION THROUGH EXAMINATION, LICENSURE, AND REGULATION

SUMMARY REPORT

REGULATORY & ENFORCEMENT COMMITTEE MEETING

May 10, 2012

Sacramento, California

Committee Members Present

Sheran Voigt, Chair
Fred Cullum
Robert George
Phyllis A. Newton, Esq.
Fermin Villegas

Committee Members Excused

Robert De Pietro
Michael Merino
Larry Segrue

Board Staff Present

Doug McCauley, Executive Officer
Vickie Mayer, Assistant Executive Officer
Hattie Johnson, Enforcement Officer
Bob Carter, Architect Consultant
Barry Williams, Architect Consultant
Peter Merdinger, Enforcement Analyst
Sonja Ruffin, Enforcement Analyst

Guests

Doug Rhodes, California Society of the American Institute of Building
Design

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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, Michael Merino, and Larry Segreue were absent and excused. She indicated that Richard Conrad had resigned from the Committee.

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

- Ms. Voigt announced that Phyllis Newton was a recipient of the Octavius Morgan Distinguished Service Award. She provided a brief history of Ms. Newton's background and work history. She noted that Ms. Newton had recently joined the not-for-profit Miyamoto Disaster Relief as its Executive Director, where she works with structural engineers to help rebuild communities devastated by natural disasters, including earthquake-damaged schools in Haiti. She added that Ms. Newton had been a member of the REC since 2006 and has spent more than two decades and many volunteer hours educating architects on liability, risk management, and other practice related issues. Ms. Newton stated that she was honored to be a recipient and thanked the Board.

B. Enforcement Program Update

Hattie Johnson informed the REC that architect consultants Bob Carter and Barry Williams represented the Board at the California Building Officials (CALBO) 2012 Annual Business Meeting on February 13-17, 2012. She stated that the highlight of the awards luncheon was the presentation of a "special award" to past Board member and REC Chair John Canestro, who was one of the original founders of CALBO.

Ms. Johnson stated that the architect consultants also made a presentation to The American Institute of Architects (AIA) East Bay. Mr. Carter added that the presentation pertained to avoiding violations. He noted that one disappointment was that there were not more candidates and associate members. He stated that the presentation was well received. He indicated that AIA East Bay would like the architect consultants to return to give another presentation with the licensees and a separate presentation for candidates.

Ms. Johnson announced that the next Board meeting was scheduled for June 14, 2012, in Sacramento. She indicated that Marilyn Lyon was now Board President and Ms. Voigt was Vice-President.

Ms. Johnson pointed out that there were currently 83 pending complaint cases in the Board's Enforcement Unit. She noted that compared to March 2011, there were 136 pending cases. She added that in 2010 there were 187 pending cases and in 2009, there were 263 pending cases. She indicated that the enforcement staff had re-doubled their efforts in order to lower the pending caseload.

Ms. Johnson stated that the Board had sent an advisement letter to California planning departments. She reminded the Committee that the 2011 Strategic Plan directed the REC to develop a strategy for working with the League of California Cities and the American Planning Association, California Chapter, to inform them of the Architects Practice Act (Act) requirements. She noted that the Board determined that a letter should be sent to

California planning departments advising them of the Act's requirements pertaining to unlicensed individuals submitting plans for non-exempt projects. Ms. Johnson indicated that the Board for Professional Engineers, Land Surveyors, and Geologists co-signed the letter, which was mailed to all planning departments on April 17, 2012. She added that she had received six contacts from planning departments concerning this letter and for the most part, it was positive feedback. Mr. Carter added that the San Jose building department has a website that contains information about when a licensee is required on a project. He added that some of the individuals have been referred to that website. He noted that the Sonoma County building department website will soon contain a check-in document that will state when a licensee is required on a project and their website will be referred to other jurisdictions as a reference for planning departments.

Robert George stated that when he did a straw poll of building officials in his area, he discovered that the positive responses may be the result of jurisdictions that have a project review board that meets early in a project. He added that it is at this point in a project where a client is advised whether a licensee would be required.

Ms. Voigt reminded the REC that this issue arose due to concern about consumers who unwittingly hire unlicensed individuals for non-exempt projects, not realizing that a licensee would be required to stamp and sign their project.

Doug McCauley noted that initially CALBO was going to co-sign the letter with the Board; however, it voted at its January meeting to stay "neutral" on this issue and to not co-sign the letter. He added that CALBO indicated members did not want to be in the position of telling one of their fellow local departments what they should do.

Ms. Johnson stated that staff is working on a regulation that would allow the Board to delegate authority to the Board's Executive Officer to approve stipulated settlements to revoke or surrender a license.

Ms. Johnson then circulated Consumer Tip Design cards, which contain useful consumer information related to hiring an architect to design a project.

Mr. McCauley noted that the Board recently underwent the Sunset Review process for the third time. He indicated that the Board received no follow-up recommendations from the Legislature. He added that the Board's sunset date was extended to January 1, 2016.

Ms. Johnson asked if anyone had a question regarding the citations issued and administrative actions contained in the meeting packet. Mr. George noted that last year, there was concern about collecting administrative fines assessed in citations. He asked if there was any change this year. Ms. Johnson responded that there were 17 citations issued since the last meeting, the majority to unlicensed individuals. She indicated that four had paid the administrative fine and two were making payments. She added that staff will be utilizing the services of a collection agency in addition to the Franchise Tax Board (FTB) Intercept Program. She stated that letters had been sent to approximately 50 unlicensed individuals, advising that their names would be forwarded to a collection agency if they did not pay their citation fines. She noted that many of the individuals who received the letter are currently making payments to the Board.

Ms. Voigt commented that 12 of the 17 citations issued during this time period were against unlicensed people. Ms. Johnson added that citations issued against unlicensed people are the most difficult to collect fines for. She noted that licensees who have a citation issued and do not pay the fine, cannot renew their license.

Ms. Newton asked if the Board had social security numbers for licensees and if this information was released. Ms. Johnson responded that the Board does have licensees' social security numbers; however, this information is not given to collection agencies. She indicated that the Board can release social security numbers to the FTB because it is a State agency. She stated the FTB Intercept Program allows the FTB to intercept state tax returns or lottery winnings and forward to the Board to satisfy an individual's citation fine. Mr. McCauley noted that there was legislation that would have allowed the Board to release an individual's social security number to a collection agency, but it failed to pass.

Fermin Villegas asked how citation fine amounts were determined. Ms. Johnson responded that it was based on California Code of Regulations section 152(d), which lists the criteria to be considered when assessing the amount of a fine. She added that a fine could go up to \$5,000 for each cause, if certain criteria were met. Mr. Villegas noted that the meeting packet contained information on a citation issued to an unlicensed person for forging an architect's stamp and signature on plans. He asked if this individual could also be criminally charged. Ms. Johnson stated that he could be criminally charged and in fact, this particular case had been referred to the Sacramento District Attorney (DA) who declined to prosecute it. She noted that the case was also referred to the El Dorado County DA; however, staff is not aware whether they accepted the case. She added that this unlicensed individual was making payments to the Board on his citation.

C. Review and Approve May 11, 2011 REC Summary Report

Ms. Voigt asked if there were any comments, corrections. or questions regarding the May 11, 2011 REC Summary Report. Mr. George requested a change on page five, line eight of the Summary Report, stating that when he expressed concern to the city, he was ignored by planning staff. Ms. Newton asked that page eight, line four should state that there are legal issues concerning an applicant or licensee's right to earn a livelihood.

A motion was made by Robert George and seconded by Fred Cullum to approve the May 11, 2011 REC Summary Report with the changes noted. The motion passed 5-0.

D. Discuss and Possible Action on Strategic Plan Objective to Pursue an Amendment to Clarify Consumers' Rights with Respect to Confidentiality

Ms. Voigt stated that this issue arose due to concern that confidentiality settlements or agreements would preclude consumers from responding to the Board's request for information concerning the settlement or agreement.

Ms. Johnson reviewed the suggested amendments to Business and Professions Code (BPC) section 5588.3. Ms. Newton noted that she was concerned that just stating "or other parties" was vague and suggested that "to a settlement agreement" be added to "or other parties."

Mr. McCauley indicated that legal counsel had suggested additional information to augment this amendment; however, it would specifically prohibit the use of a confidentiality clause. He noted that adding the additional information might make it more difficult to pass legislation.

Vickie Mayer asked Ms. Newton if she felt “or confidential agreement” should be added to the recommendation above, so that it would be consistent to the other similar references. Ms. Newton agreed that this should be added.

Mr. Villegas asked why this statute was limited only to licensees and not unlicensed people. Ms. Johnson responded that unlicensed people are not required to report settlement agreements.

A motion was made by Phyllis Newton and seconded by Robert George to approve the proposed amendment to BPC section 5588.3 with changes as discussed and recommend it to the Board. The motion passed 5-0.

E. Discuss and Possible Action on Strategic Plan Objective to Review Department of Consumer Affairs’ Best Practices, and Analyze and Adjust CAB’s Enforcement Procedures Where Appropriate

Ms. Voigt reviewed the list of best practices attached to this agenda item. She noted that only the items highlighted in blue required review by the REC. Ms. Johnson indicated that the items highlighted in blue were issues that were already being pursued by the Board or Department of Consumer Affairs (DCA). She asked the REC whether they felt there were any additional tasks that could be added to the list or deleted. She added that these tasks were recommended by the boards and bureaus within DCA and other states’ regulatory agencies. She noted that the majority of these recommended best practices were intended for the healing arts boards.

Ms. Newton asked if the item “Provide consumer information booklets or brochures” was still possible due to the State’s limited budget. Ms. Mayer responded that it was the promotional given away items at consumer fairs that were discontinued and prohibited. She noted that the *Consumer’s Guide to Hiring an Architect* is currently being formatted by DCA’s publication unit. Ms. Newton asked if the Act was in print. Ms. Mayer indicated that it is available on the Board’s website. She stated that if someone does not have access to a computer, Board staff will print it out and mail it to the individual. She noted that the *Consumer’s Guide to Hiring an Architect* will be printed and sent to building officials for distribution.

A motion was made by Fermin Villegas and seconded by Fred Cullum to recommend to the Board that it approve the best practices as presented. The motion passed 5-0.

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

Mr. Carter stated that the Board has been asked many times by individuals about the definition of “instruments of service.” He stated that he has always relied on AIA’s

definition. He indicated that the Certified Access Specialist Institute (CASI) went to the Legislative Counsel to obtain an interpretation as to whether Certified Access Specialist program (CASp) reports would be considered instruments of service that would require a stamp and signature. Mr. Carter explained that the Legislative Counsel opined that they are not final documents; therefore, they are not instruments of services. He noted that this is contrary to the standard of the profession. He stated that the Act should contain a definition of instruments of service, as the Landscape Architects Practice Act does.

A draft definition of instruments of service was distributed to those in attendance. Mr. Carter explained that Board staff had prepared the draft utilizing elements from the Landscape Architects Practice Act and AIA. He noted that staff had requested that legal counsel review it.

Ms. Newton stated that she was concerned about using the term “cost estimates” and that “calculations” was a little vague in the draft language. She wondered if this meant Title 24 calculations. Mr. George responded that building departments are requiring more and more calculations, not just structural but sustainability, egress, parking, etc. He noted that he felt that calculations should be included in the definition. He stated that some items need to be further defined as to whether they are required or should be included in a contract for services.

Mr. Carter noted that the draft language contains a list of services an architect can include in his contract; it does not require an architect to perform all of these items. Ms. Newton indicated that the terms “calculations” and “studies” are very broad. She wondered how the courts had defined the term “instruments of services.” She noted that there was case law on this issue. Mr. Carter agreed that case law should be reviewed. He noted that BPC section 5500.1, the definition of architecture, includes studies, analysis, and reports. He stated that whatever an architect does for another person, including studies, analysis, and reports, would be considered instruments of services. He explained that the definition of instruments of service that the Legislative Counsel provided to CASI included case law from more than 50 years ago. He indicated that the Board’s legal counsel had stated that there was more recent case law that broadens the definition.

Ms. Newton stated that a color spectrum study might be a service provided by an architect, which would be applicable to architects’ standard of practice. She wanted to ensure that this is what the Board was looking for, i.e., that it is a deliberative process in that a color spectrum study would be subject to the standard of practice.

Mr. Cullum questioned whether CASps who are architects are treated differently than unlicensed CASps. He wondered if this means that they are subject to a further level of review than unlicensed CASPs while providing the same service. Mr. Carter responded that this was addressed in a letter the Board sent to CASI, which will be discussed under Agenda Item H. He noted that CASps who are licensed as architects are not held to a higher standard as a CASp; they are held to a higher standard because they are architects, by virtue of the license. He explained that if the Board receives a complaint against an architect who is a CASp, the complaint will be treated as all complaints are. He added that if the complaint is relative to a CASp report or CASp study, it is forwarded to the Division of the State Architect (DSA) because they certify CASps and the Board may take action against the architect based on the DSA’s disposition.

Following discussion, the REC determined that further work was required on this issue, such as researching case law. Mr. Carter indicated that one of staff's concerns is that the proposed language refers to "...a person licensed to practice architecture..." He questioned whether this definition should include unlicensed individuals. He stated this language could allow unlicensed people to state they do not have to sign plans pursuant to BPC section 5536.1, which requires all people to sign instruments of service, because plans prepared by unlicensed people are not instruments of service.

Ms. Newton volunteered to assist in further research of this issue and case law. Ms. Voigt asked that when staff gathers more information, it be disseminated to the REC so that it can determine whether a task force should be formed or if another meeting was required, possibly by telephone conference.

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

Mr. McCauley explained that at the Board's Strategic Planning session, The American Institute of Architects, California Council's (AIACC) representative indicated that AIACC was reviewing legislation to assist with issues related to local agencies who do not adhere to the Qualifications-Based Selection (QBS) process. He noted that the remedy AIACC was reviewing was to add a statute to the Act that would make it a violation for an architect to respond to a procurement process where cost data is being requested in the early phases of QBS. He added that the Board was interested in this issue as a number of architect members do public projects and are involved with the QBS projects.

Mr. McCauley stated that AIACC introduced legislation (Senate Bill 1424 Harman) without Board input. He indicated that the bill failed on a party line vote in the Senate Business and Professions Committee. He added that the only group that opposed the bill was Professional Engineers in California Government, which is the union that represents architects and engineers in State government.

Mr. McCauley indicated if there is a jurisdiction that was not following the QBS process, the right of appeal would be the city council or city manager that has oversight of that entity. He stated that it is really not a Practice Act issue. He noted that AIACC's view of the issue with respect to the legislation is that it would provide a useful tool so if there was a Request for Qualifications (RFQ) that requested cost data, the architect could advise the jurisdiction that he could not respond to the RFQ because he would be in violation of the Act.

Mr. McCauley explained that the Board must follow-up on any complaints it receives. He noted that if a firm pursues an RFQ that requests cost data and prevails, and the firm that did not get the work files a complaint against the winning firm, should the Board issue a citation against the winning firm? He indicated that he did not know whether this bill would be introduced again and suggested that the issue be monitored.

Ms. Newton stated that if taxpayer resources were going to be expended to this issue, she would rather see the money go to an educational effort and some form of enforcement action against the entity violating the law. Mr. McCauley indicated that the Board's President and Vice President agreed with Ms. Newton's sentiment concerning education.

A motion was made by Phyllis Newton and seconded by Robert George that it recommend to the Board that this issue be monitored. The motion passed 5-0.

H. Update on Response to Certified Access Specialist Institute's Questions on Architects Practice Act

Mr. Carter noted that CASI sent the Board several questions following receipt of an opinion from the Legislative Counsel regarding instruments of service. He explained that the Board did not agree with the Legislative Counsel's opinion. He noted that CASI's president is an architect and he was asked by his members whether they had to stamp and sign their reports and have written contracts as architects when providing CASp services. He stated that the Board made specific responses to CASI's three questions and the letter was sent. He explained that the Board's position was that any services provided by an architect, whether CASp related or not, are the instruments of their service. He added that as evidence of responsible control of those documents, an architect would stamp and sign them as well as execute a written agreement. Mr. Carter explained that a CASp inspects and reports on American With Disabilities Act (ADA) or Title 24 violations, i.e., a door is not wide enough, the ramp is at an incorrect slope, etc., which are services that can be provided by both licensed and unlicensed CASps. He noted, however, that only licensees can make a recommendation to reconcile the ADA or Title 24 violation for non-exempt buildings.

Mr. George stated that he appreciated the effort that went into developing the response to CASI's questions. He stated that he now has a better understanding of this issue. Mr. Carter noted that CASI has not responded to the Board's letter.

I. Update on California Commission on Disability Access

Mr. McCauley indicated that staff had invited a speaker from the California Commission on Disability Access (CCDA), but had not received a reply. He noted that he wanted to share information regarding CCDA because it has jurisdiction over many accessibility related issues. He stated that one of the items includes the Board's requirement for continuing education concerning disability access. He added it also has authority to review legislative bills and take positions on bills regarding accessibility. Mr. McCauley indicated that he would continue to pursue a speaker from CCDA.

Ms. Voigt asked if there were any public comment. There being none, the meeting adjourned at 11:15 a.m.