



Edmund G. Brown Jr.  
GOVERNOR

# CALIFORNIA ARCHITECTS BOARD

PUBLIC PROTECTION THROUGH EXAMINATION, LICENSURE, AND REGULATION

## SUMMARY REPORT

### REGULATORY AND ENFORCEMENT COMMITTEE

April 29, 2015

California Architects Board  
2420 Del Paso Road, Suite 105, Sacramento, CA 95834

#### Committee Members Present

Matthew McGuinness, Chair  
Barry L. Williams, Vice Chair  
Robert De Pietro  
Robert Ho  
Gary McGavin (via teleconference in Pomona, CA)

#### Committee Members Absent

Fred Cullum  
Michael Merino  
Sheran Voigt

#### Board Staff Present

Doug McCauley, Executive Officer  
Vickie Mayer, Assistant Executive Officer  
Justin Sotelo, Program Manager, Administration/Enforcement  
Bob Carter, Architect Consultant  
Barry N. Williams, Architect Consultant  
Peter Merdinger, Enforcement Analyst  
Sonja Ruffin, Enforcement Analyst  
Kristin Walker, Enforcement Analyst  
Lily Low, Enforcement Technician  
Cecilia Sharp, Enforcement Technician

#### Guests

Kurt Cooknick, Director of Regulation and Practice, The American Institute of Architects, California Council (AIACC)  
Hattie Johnson, Retired Annuitant, Landscape Architects Technical Committee (LATC)

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**A. Welcome and Introductions**

Regulatory and Enforcement Committee (REC) Chair Matthew McGuinness introduced himself and called the meeting to order at 10:00 a.m. Mr. McGuinness welcomed everyone and requested self-introductions. Committee members, Board staff, and guests introduced themselves.

Gary McGavin announced he was unable to attend the meeting in Sacramento, and thanked Mr. McGuinness for allowing him to participate remotely via teleconference.

**B. Roll Call**

Vice Chair Barry L. Williams called the roll. Mr. Williams indicated Fred Cullum, Michael Merino, and Sheran Voigt were absent. A quorum was present.

**C. Public Comments**

Mr. McGuinness opened the floor for public comments. Kurt Cooknick reported AIACC has received complaints from its members and chapter executives regarding the quality of the continuing education courses being provided to architects. Mr. Cooknick indicated many courses are advertised as meeting the content requirements found in Business and Professions Code section (BPC) 5600.05(a)(3), but upon further review, do not appear to comply with the statute. Mr. Cooknick requested that an agenda item regarding continuing education (CE) courses be added to the next REC meeting, or a future Professional Qualifications Committee (PQC) meeting, if appropriate. Mr. Cooknick also indicated he would mention the issue at the next PQC meeting.

Mr. McGuinness asked how to ensure Mr. Cooknick's concerns are addressed at an upcoming REC meeting. Doug McCauley responded that the Board normally discusses possible agenda items during its Strategic Planning session. Mr. McGuinness informed Mr. Cooknick that the REC will take his request into consideration.

**D. Review and Approve April 24, 2014 REC Summary Report**

Mr. McGuinness asked if there were any questions, comments, or changes to the April 24, 2014 REC Summary Report. There were none.

*A motion was made by Robert De Pietro and seconded by Robert Ho to approve the April 24, 2014 REC Summary Report. Members De Pietro, Ho, McGavin, McGuinness, and Williams voted in favor of the motion. Members Cullum, Merino, and Voigt were absent. The motion passed 5-0.*

**E. Enforcement Program Update**

Justin Sotelo presented the Enforcement Program Update and highlighted items of interest to the REC that have occurred since its last meeting on April 24, 2014, including: 1) new Board member appointments; 2) the Board's pursuit of a negative Budget Change

Proposal; 3) the status of BreEZe, the Department of Consumer Affairs' (DCA) web-enabled program that supports applicant tracking, licensing, enforcement, and management capabilities; 4) CE audits and actions taken for noncompliance; and 5) a report on the architect consultants' appearance at the 2015 Annual Business Meeting of California Building Officials. He noted the Board's 2015-2016 Strategic Plan contains seven objectives assigned to the REC, four of which are included as Agenda Items F through I, and the remaining three objectives are addressed briefly in the Enforcement Program Update and will be addressed in more detail at a future REC meeting.

Mr. Sotelo informed the REC that it was suggested to consider long-term succession planning for the Board's architect consultants at the Board's Strategic Planning session in December 2014, and as a result, an objective was included in the Board's 2015-2016 Strategic Plan to pursue the recruitment of an additional architect consultant to ensure continuity and effectiveness in the Board's Enforcement Program. Mr. Sotelo explained the Board currently contracts with two architect consultants through the formal request for proposal process, and those contracts expire in June 2016 and January 2017. He advised that Senate Bill (SB) 541 (Price) (Chapter 339, Statutes of 2011) established BPC 40, which streamlined the process for the boards and bureaus within DCA to contract with expert consultants. He stated DCA delegates its authority to boards and bureaus to contract with subject matter experts for examination development purposes and enforcement-related matters. Mr. Sotelo reported Board staff is currently reviewing these types of contracts, and will present an update to the REC at its next meeting.

Mr. Sotelo reported that the Board's 2015-2016 Strategic Plan contained an objective assigned to the REC to monitor AIACC legislation requiring the architect of record to perform mandatory construction observation to promote consumer protection. He indicated it is the Board's understanding that this legislation will not be pursued until 2016, and Mr. Cooknick responded affirmatively. Mr. McGavin stated that he has seen more design-build projects where the architects provide schematic design services and then turn the projects over to contractors to obtain the permits and proceed with construction without their involvement at all, and asked if this legislation would conflict with that practice. Mr. Cooknick replied that the architect would not be providing construction inspection, but instead, would review the access components after the project is finalized for comparison to the approved set of plans, and provide a list of deficiencies and deviations to the owner. Mr. Cooknick stated AIACC is looking to ensure, with respect to the access components only, that the architect is given the opportunity to verify what he or she designed was actually constructed.

Robert De Pietro asked why the proposed mandatory construction observation would not apply to the entire project, as the architect will be also be held liable for any deficiencies in other parts of the building. He opined that access components have taken a considerable amount of an architect's attention, and noted the CE requirement for architects is concentrated solely on disability access requirements. Mr. Cooknick replied that a more comprehensive requirement is not feasible at this time.

Bob Carter stated in previous conversations regarding this proposed legislation, the issue was determining if this construction observation could be mandatory, or if would be

optional. Mr. Carter also asked if the architect could obtain a letter from the owner acknowledging that the architect is not responsible for any deviations from the approved set of plans if the owner waived the inspection. Mr. Cooknick responded that trial attorneys have indicated that such hold harmless indemnifications would be considered invalid. Mr. Carter stated the property owner has the right to restrict access to his or her property from the architect, civil engineer, or anyone else. Mr. Cooknick stated the architect would be able to draft a letter to the owner acknowledging that the service has been refused, and the letter would provide judicial guidance. Mr. McGuinness reiterated that the proposed legislation will be discussed at a later time, and suggested the REC move on to other items.

Mr. McCauley summarized the Sunset Review process, and noted this was the fourth time the Board went through the process. He stated the Board submitted its Sunset Review Report to the Legislature on October 31, 2014, and the Board's Sunset Review hearing was conducted on March 18, 2015 in a joint session with the Assembly Committee on Business and Professions and the Senate Committee on Business, Professions, and Economic Development. Mr. McCauley stated that only two questions were asked, and they were regarding the process for determining content for the California Supplemental Examination (CSE), and possible causes for the noncompliance rate on continuing education audits. He informed the REC that the Board's responses were satisfactory, and Assembly Bill 177 (Bonilla) [Authority: Extension], the bill to extend the Board's Sunset date for the Board and LATC, was approved by the Assembly on its consent calendar, and is moving forward.

Mr. McGuinness noted the noncompliance rate with the CE requirement was approximately 15% and inquired about the noncompliance rates for other DCA boards and bureaus. Mr. McCauley responded that staff would need to research those rates. Vickie Mayer stated the rate is comparable to other boards. Mr. Cooknick asked if there was a breakdown between those who understood the CE requirement and failed to comply, versus those who are located out-of-state and may not be familiar with the requirement. He stated that he had spoken with some people who were unclear on the requirement, including a licensee from Texas who had overlooked the requirement. Ms. Mayer responded that the Board's computer system does not separately track enforcement actions taken against in-state and out-of-state licensees. She advised the REC that the information regarding the coursework requirement is included with the license renewal application, available on the Board's website, and was featured in the Board's newsletters. Ms. Mayer also noted that the coursework requirement has been in effect for three renewal cycles.

Mr. Sotelo reminded the REC that the Board approved its recommendation, and proposed language, to add: 1) a description of the project and address; and 2) a procedure to accommodate contract changes, to the written contract requirements at the June 12, 2014 Board meeting. Mr. Sotelo announced that the Board will pursue legislation in 2016 to amend BPC 5536.22 to include the proposed additional written contract provisions per the Strategic Plan objective.

**F. Discuss and Possible Action on Strategic Plan Objective to Review the Board’s Occupational Analysis of the Architect Profession to Identify Marketplace Trends That Impact Consumer Protection**

Mr. Sotelo presented this agenda item. He stated the Board conducted its Occupational Analysis (OA) of the CSE in 2014, and noted the OA process is conducted every five to seven years as required by BPC 139 to assess current architectural practice in California and develop a new and updated test plan to drive the content on the CSE. Mr. Sotelo indicated the Board conducted its last OA in 2007. Mr. Sotelo stated the OA process also includes a review of the Architect Registration Examination (ARE) and a linkage study. Mr. Sotelo stated the ARE review has been completed and the linkage study should be completed within the next few months. Mr. Sotelo also stated the Board will have an updated CSE test plan at the conclusion of the OA process.

Mr. Sotelo indicated the Board, at its Strategic Planning session in December 2014, added an objective to the 2015-2016 Strategic Plan to review the OA and identify marketplace trends that impact consumer protection. Mr. Sotelo stated the objective is a work in progress, but Board staff suggested the REC consider delegating the review of the Board’s OA to a working group. Mr. Sotelo indicated Board staff will consult with the facilitator from the Office of Professional Examination Services (OPES) regarding the best approach to address this objective, and the architect consultants and staff will assist the working group in reviewing and analyzing the OA based upon the input received from OPES. Mr. Sotelo asked if there were any questions or comments.

Mr. McGavin volunteered to serve on the working group, and stated this type of task is one of his specialties. Mr. McGuinness thanked Mr. McGavin, and suggested the working group also include a current Board member. Mr. McGuinness requested that Mr. B. L. Williams consider serving as a member of the working group, and he accepted.

*A motion was made by Robert Ho and seconded by Robert De Pietro to appoint Gary McGavin and Barry L. Williams to a working group to review the Board’s Occupational Analysis of the Architect Profession and identify marketplace trends that impact consumer protection. Members De Pietro, Ho, McGavin, McGuinness, and Williams voted in favor of the motion. Members Cullum, Merino, and Voigt were absent. The motion passed 5-0.*

Mr. B. L. Williams inquired about the potential timeframe for reviewing the OA with the working group. Mr. McCauley replied it was dependent upon the availability of the facilitator from OPES, but with the next REC meeting planned for the fall, the working group would likely examine the OA in July or August.

**G. Discuss and Possible Action on Strategic Plan Objective to Modify and Expand Reports to Board Members Regarding Enforcement Activities to Identify the Most Common Violations and Disciplinary Actions**

Mr. Sotelo presented this agenda item. Mr. Sotelo stated the Board, during its Strategic Planning session in December 2014, identified an objective to modify and expand the

reports to Board members regarding enforcement activities to identify the most common violations and disciplinary actions. Mr. Sotelo added Board staff has internally assessed its current reports, past reports, as well as reports used by other DCA boards and bureaus. Mr. Sotelo indicated Board staff is requesting the REC's feedback on the report content and format, and will present different models to the REC for its consideration at its next meeting.

Mr. McCauley stated there are a number of factors he would like to see captured in the new reports, including caseload and, more importantly, case aging. Mr. McCauley recalled the past problems that other boards experienced with backlogs and case aging, and stated case aging is possibly the primary factor to consider as it captures how long it takes the Board to address consumers' concerns. Mr. McCauley indicated there are multiple ways to portray that information, not just quantitatively as it appears in the current Monthly Report distributed to Board members. Mr. McCauley directed the REC to multiple examples of qualitative and quantitative data from previous Board packets and meeting packets for the Contractors State License Board (CSLB) and the Board for Professional Engineers, Land Surveyors, and Geologists. Mr. McCauley stated Board staff would like to develop a new report model that includes case aging, caseload, and the statistics from the current monthly report.

Mr. De Pietro stated CSLB has a goal of closing consumer complaints within 270 days of receipt, but noted case aging depends on the complexity of the case. Mr. McCauley agreed and indicated 270 days is also the Board's goal and a common goal for many other boards and bureaus within DCA. Mr. McCauley stated some cases are simple and may be closed in under 30 days, while other cases involving multiple parties may take much longer.

Mr. McGuinness stated at its Strategic Planning session, it was important for the Board to understand what individuals were being charged with, and requested Board staff consider ways to condense that information and include it in the new report format. Mr. McCauley stated the information was included in the Board's Sunset Review Report, and indicated Board staff would break it down and quantify it. Mr. De Pietro opined that the most common violations may be the most important information, as it will identify the problems that need to be addressed.

Mr. McGuinness asked if any of the REC members would like to make a motion. Mr. McCauley replied a motion was not necessary at this point, as Board staff was only seeking feedback to develop a new report format to present to the REC at its next meeting.

**H. Discuss and Possible Action on Strategic Plan Objective to Pursue Methods to Obtain Multiple Collection Mechanisms to Secure Unpaid Citation Penalties**

Mr. McCauley presented this agenda item. He noted the Board has collected approximately 62% of the administrative fines it assessed during the past three fiscal years, and although it is higher than many boards, the Board strives to continually improve its citation collection methods. Mr. McCauley stated the telephone disconnect

program is a possible tool, and noted it previously applied only to landline telephones and advertisements appearing in the Yellow Pages, but has now been modernized to include all advertisements and extends the disconnect program to cell phones. He added this program may act as a deterrent and encourage payment.

Mr. McCauley stated the Board previously pursued a contract with a collection agency; however, the agency needed the individuals' social security numbers (SSNs) to effectively collect the outstanding fines. He noted CSLB is currently pursuing the authority to collect SSNs, but it is a controversial issue due to privacy and data security concerns. He informed the REC that the Board presented the idea of obtaining the authority to release SSNs to collection agencies to the Legislature in its Sunset Review Report, but was cautioned to weigh the privacy issues associated with the release of the information. Mr. McCauley stated the Board will continue to explore other options, including "license leveraging" through other DCA boards and bureaus, and strengthening the Board's written communications to have a strong effect on the recipients of the letters.

Mr. McGuinness asked if the Board is able to crosscheck with the Department of Motor Vehicles. Mr. McCauley acknowledged it has been discussed although the legislative odds of accomplishing it are minimal, but indicated Board staff will conduct further research. Mr. McGuinness asked if the money collected from administrative fines goes into the Board's budget. Mr. McCauley replied it does, but while the administrative fines are intended to be punitive, the fines are not designed to fund an enforcement program, and it would be inappropriate to do so. Mr. De Pietro asked if there were problems with some people who cannot afford to pay the fines in full, and noted the meeting packet includes information regarding payment plans. Mr. McCauley replied that payment plans may increase the amount of fines collected. Mr. De Pietro suggested adding a payment plan option to the collection letters distributed to those who have not paid their citations. Mr. McCauley replied that Board staff will review all of the collection letters. Hattie Johnson clarified that payment plans are provided for citations and disciplinary actions upon request.

Mr. Cooknick asked if the Employment Development Department has a mechanism to send a letter to an employer and garnish wages for failure to pay the administrative fines, and if the failure to pay the fine was a criminal act. Mr. Cooknick further stated he does not support using Board resources, and more specifically, licensees' fees, to chase fines the Board may never recover, and questioned the current amount of outstanding citation fines owed to the Board. Mr. McGuinness and Ms. Mayer responded with estimates of over \$50,000.

Mr. Cooknick inquired about the process after the Board issues a citation, and asked if the individuals ever appear before the Board. Mr. McCauley replied that they do not appear before the Board unless they requested an "informal conference" per the Architects Practice Act. Mr. McCauley stated the citation is issued based upon the evidence collected during the investigation. Mr. Carter clarified that after the citation is served upon the individual, he or she has the right to appeal to an informal conference and/or formal hearing before an administrative law judge (ALJ). Mr. Carter stated the

Board staff makes the determination during the investigation to issue a citation with an administrative fine. Mr. Carter stated an individual has the opportunity to appear before the Executive Officer in an informal conference to present any additional information or evidence for consideration, and the citation may be upheld, modified, or dismissed. He further stated if the respondent asks for a formal hearing, the case is forwarded to a Deputy Attorney General to represent the Board before an ALJ, who will render a proposed decision for the Board to either adopt or non-adopt.

Mr. Cooknick stated there has to be some way to obtain leverage after someone has failed to pay the fine, but he does not understand why the Board spends licensees' money chasing these fines. Mr. McGuinness replied the Board needs to pursue the citation fines in order to take punitive action against the respondents. Mr. Carter noted the legitimate bad actors simply do not care and view these citations as a cost of doing business. Ms. Mayer stated unlicensed activity could also be pursued through criminal action, but noted that many district attorneys are unwilling to prosecute those cases.

Mr. B. L. Williams questioned how many of these individuals hold other occupational licenses, and asked if the Board is able to form a reciprocal agreement with the other DCA boards and bureaus. Mr. McCauley stated this option may be feasible after the implementation of BreEZe. He also agreed that at some point, the Board is chasing money that will never be paid. Mr. McCauley reported that he contacted the DCA Executive Office and asked if they would be willing to create a collections department to be used by all DCA boards and bureaus, as it would prevent the concerns regarding the release of SSNs. Mr. McGuinness questioned if the Board decides to write off the unpaid citations at some point. Ms. Mayer responded the citation is disclosed to the public for five years, but noted it is not about the money, but the principle of requiring these individuals to comply with their citations as a consumer protection agency. Mr. McCauley thanked the REC for its input, and indicated staff will further explore these options and present an update at the next meeting.

**I. Update and Possible Action on Strategic Plan Objective to Monitor National Council of Architectural Registration Boards Action on Title for Interns to Ensure Appropriate Consumer Protection**

Mr. McCauley presented this agenda item. He advised the topic of intern titling was one of the main issues discussed at AIACC's Academy for Emerging Professionals meeting on January 23, 2015. Mr. McCauley noted the REC meeting packet contains a letter from AIACC to Board President Jon Baker, which outlines the AIACC's request that the Board consider amending the Architects Practice Act to allow individuals currently pursuing licensure to use the title "architectural intern."

Mr. McCauley stated the goal of AIACC's request is to provide recognition to individuals who are currently involved in the licensure process. Mr. McCauley stated the proposal includes a time limit for the use of the title "architectural intern," as well as a restriction on using the title to pursue work in the exempt area of practice. Mr. McCauley explained that a Future Title Task Force (FTTF) was formed by the National Council of Architectural Registration Boards (NCARB) to examine the titles used throughout the

duration of an architect's career, from education through retirement. He advised the FTTF completed its initial recommendations and presented them for consideration at the NCARB Board of Directors meeting on April 23-25, 2015. Mr. McCauley stated at this point, NCARB has not released anything regarding the FTTF's conclusions. Mr. McCauley suggested the REC review the work completed by the FTTF so it can give full and appropriate consideration to AIACC's proposal. Mr. McCauley asked Mr. Cooknick to provide additional commentary regarding AIACC's proposal.

Mr. Cooknick stated in addition to the proposed restrictions mentioned by Mr. McCauley, individuals using the title "architectural intern" would need to demonstrate that they are on the path to licensure by creating an NCARB record and obtaining eligibility for the ARE. He noted the final criteria for using the title has not been determined, but individuals will not be permitted to use the title just because they hope to become licensed one day. Mr. Cooknick stated those using the title would ideally be on track to complete the licensure process within five years, but cautioned that the proposal may create additional enforcement activity due to misuse of the title, or using the title beyond the proposed five-year period.

Mr. McGuinness questioned if AIACC's proposal is a result of the length of time it takes to become a licensed architect, and if it seeks to create a secondary title due to need for a status on the path to licensure, as that was his interpretation. Mr. Cooknick responded it is to provide recognition for people who are positioned to become licensed and benefit from differentiating themselves from others. Mr. Cooknick stated there are employees in firms with a tremendous amount of responsibility who cannot use titles besides project manager and job captain, and are looking for recognition for being on the path to licensure. Mr. Cooknick reiterated the proposal is about recognition, not the amount of time it takes to become licensed.

Mr. B. L. Williams opined the title "architectural intern" would be beneficial to graduates who enter architectural firms and would encourage them to pursue licensure. Robert Ho questioned if the proposal was an effort to elevate the architectural profession by aligning it with the medical field, but noted the title "architectural intern" may pose an enforcement problem. Mr. B. L. Williams asked if the individuals using the title would be working under a licensed architect. Mr. Cooknick responded affirmatively. Mr. Ho asked if the individuals were required to be participating in NCARB's Intern Development Program. Mr. Cooknick indicated there would be exceptions, such as unemployed interns. Mr. De Pietro questioned what would happen in an instance where an intern was not working for an architect due to the economic downturn, and asked if the timeframe would start over. Mr. Cooknick responded that the five-year period keeps running. Mr. De Pietro stated those individuals would be at a disadvantage due to the economy.

Mr. Carter stated the management and enforcement aspects of the title had not been addressed, and questioned what would prevent these individuals who offer work on the outside from using the title "architectural intern." Mr. Carter stated a percentage of firms may internally misuse the titles "project architect" and "architectural designer" to address image issues, but problems will occur when those individuals try to use the title

“architectural intern” to sell their abilities directly to consumers. Mr. Cooknick noted this type of conduct is already occurring. Mr. Carter stated based on this conduct, the Board should not allow the title “architectural intern.” Mr. Cooknick asked about the percentage of enforcement actions for unlicensed practice that are issued to individuals on the path to licensure. Mr. Carter estimated approximately 20% of enforcement actions are against candidates. Mr. Cooknick asked if candidates had more to lose. Mr. Carter replied that candidates must satisfy their citations prior to licensure. Barry N. Williams opined that the title “architectural intern” is confusing to the consumer. Mr. Carter commented that upon receipt of a complaint, the Board would need to ask the consumer if the unlicensed “architectural intern” was working as a member of an architectural firm or independently. Mr. Carter opined that the profession needs to avoid being in the business of titles, and noted BPC 5536(a) specifically prohibits unlicensed individuals from putting out any device that might indicate he or she is an architect or qualified to engage in the practice of architecture, including the title “architectural designer.”

Mr. B. N. Williams stated the Board’s goal is to protect consumers, and opined the Board would not be protecting consumers by permitting this title. Mr. De Pietro questioned if the title “architectural intern” was driven by NCARB’s recommendation or a specific need for the title in California. Mr. Carter replied that it came from AIACC’s Academy for Emerging Professionals. Mr. De Pietro noted NCARB is recommending the title in its current *Legislative Guidelines and Model Law*. Mr. McCauley replied at this point, NCARB is not an advocate for this title, but its position may change depending on the outcome of the FTTF. Mr. McCauley stated the title would ultimately become an enforcement issue, but noted there is a philosophical component to provide recognition for those on the path to licensure. Mr. McCauley also stated the title may be a disincentive as the current lack of a title may be a motivator to obtain a license. Mr. McGuinness stated the title “architectural intern” weakens the term “architect” because interns do not have the same legal responsibilities of licensees, but are able to use the title, and does not see how it benefits the public. Mr. De Pietro commented if there is not a problem with the current statute, then why try to change it. Mr. B. L. Williams replied the proposed title is to provide acknowledgement. Mr. McGuinness questioned why these individuals could not just say they are on the path to licensure. Mr. Ho noted he appreciates the intent to give recognition to these individuals and parallel the medical profession, but opined the Board should not pursue it further. Mr. B. L. Williams replied that from the eyes of the consumer, he agrees with Mr. Ho’s opinion.

***A motion was made by Robert Ho and seconded by Barry L. Williams to recommend to the Board that it should not further consider the title “architectural intern.” Members De Pietro, Ho, McGavin, McGuinness, and Williams voted in favor of the motion. Members Cullum, Merino, and Voigt were absent. The motion passed 5-0.***

## **J. Adjournment**

The meeting adjourned at 12:08 p.m.