California Architects Board

Board Meeting

September 29, 2016

Los Angeles, California

Edmund G. Brown Jr.
GOVERNOR

CALIFORNIA ARCHITECTS BOARD

PUBLIC PROTECTION THROUGH EXAMINATION, LICENSURE, AND REGULATION

NOTICE OF BOARD MEETING

September 29, 2016
10:30 a.m. to 3:00 p.m.
(or until completion of business)
HMC Architects (US Bank Tower)
633 West 5th Street, Third Floor, Conference Room 1
Los Angeles, CA 90071
(213) 542-8300 or (916) 575-7221 (Board)

The California Architects Board will hold a Board meeting, as noted above. The notice and agenda for this meeting and other meetings of the Board can be found on the Board's website: cab.ca.gov. Due to US Bank Tower's security procedures, attendees must present identification (containing a photograph) in the building lobby. For further information regarding this agenda, please see below or you may contact Mel Knox at (916) 575-7221.

The Board plans to webcast this meeting on its website at cab.ca.gov. Webcast availability cannot, however, be guaranteed due to limited resources or technical difficulties. The meeting will not be cancelled if webcast is not available. If you wish to participate or to have a guaranteed opportunity to observe, please plan to attend at a physical location. Adjournment, if it is the only item that occurs after a closed session, may not be webcast.

Agenda

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

B. President's Procedural Remarks and Board Member Introductory Comments

C. Public Comment on Items Not on Agenda
(The Board may not discuss or take action on any item raised during this public comment section, except to decide whether to refer the item to the Board's next Strategic Planning session and/or place the matter on the agenda of a future meeting [Government Code sections 11125 and 11125.7(a)].)

D. Review and Possible Action on June 9, 2016 and July 28, 2016 Board Meeting Minutes

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(Continued)

E. Executive Officer's Report
   1. Update on August 2016 Monthly Report on Board's Administrative/ Management; and Examination, Licensing and Enforcement Programs
   2. Board Member Liaison Reports on Organizations and Schools

F. Update and Possible Action on Legislation Regarding:
   1. Senate Bill (SB) 1132 (Galgiani) [Architect-in-Training]
   2. SB 1195 (Hill) [Board Actions: Competitive Impact]
   3. SB 1479 (Business, Professions and Economic Development) [Exam Eligibility – Integrated Degree Program]

G. National Council of Architectural Registration Boards (NCARB)
   1. Review and Possible Action on NCARB Mutual Recognition Arrangement Between Australia and New Zealand Architectural Licensing Authorities
   2. Update and Possible Action on NCARB Integrated Path to Architectural Licensure

H. Professional Qualifications Committee (PQC) Report
   1. Update on July 12, 2016, PQC Meeting
   2. Discuss and Possible Action on Recommendation Regarding 2015-16 Strategic Plan Objective to Evaluate the Profession in Order to Identify Entry Barriers for Diverse Groups

I. *North Carolina State Board of Dental Examiners v. Federal Trade Commission* Case Review – Department of Consumer Affairs Legal Counsel

J. Closed Session
   1. Review and Possible Action on June 9, 2016 and July 28, 2016 Closed Session Minutes
   2. Pursuant to Government Code Section 11126(e)(1), the Board will Confer with Legal Counsel to Discuss and Take Possible Action on Litigation Regarding *Marie Lundin vs. California Architects Board, et al.*, Department of Fair Employment and Housing, Case No. 585824-164724
   3. Pursuant to Government Code Section 11126(c)(3), the Board will Deliberate on Disciplinary Matters

K. Reconvene Open Session

L. Adjournment

Action may be taken on any item on the agenda. The time and order of agenda items are subject to change at the discretion of the Board President and may be taken out of order. The meeting will be adjourned upon completion of the agenda, which may be at a time earlier or later than posted in this notice. In accordance with the Bagley-Keene Open Meeting Act, all meetings of the Board are open to the public.

(Continued)

Government Code section 11125.7 provides the opportunity for the public to address each agenda item during discussion or consideration by the Board prior to the Board taking any action on said item. Members of the public will be provided appropriate opportunities to comment on any issue before the Board, but the Board President may, at his or her discretion, apportion available time among those who wish to speak. Individuals may appear before the Board to discuss items not on the agenda; however, the Board can neither discuss nor take official action on these items at the time of the same meeting [Government Code sections 11125 and 11125.7(a)].

The meeting is accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Mel Knox at (916) 575-7221, emailing mel.knox@dca.ca.gov, or sending a written request to the Board. Providing your request at least five business days before the meeting will help to ensure availability of the requested accommodation.

Protection of the public shall be the highest priority for the Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount. (Business and Professions Code section 5510.15)

CALL TO ORDER / ROLL CALL / ESTABLISHMENT OF A QUORUM

Roll is called by the Board Secretary or, in his/her absence, by the Board Vice President or, in his/her absence, by a Board member designated by the Board President.

Business and Professions Code section 5524 defines a quorum for the Board:

> Six of the members of the Board constitute a quorum of the Board for the transaction of business. The concurrence of five members of the Board present at a meeting duly held at which a quorum is present shall be necessary to constitute an act or decision of the Board, except that when all ten members of the Board are present at a meeting duly held, the concurrence of six members shall be necessary to constitute an act or decision of the Board.

Board Member Roster

Jon Alan Baker

Denise Campos

Tian Feng

Pasqual V. Gutierrez

Sylvia Kwan

Ebony Lewis

Matthew McGuinness

Robert C. Pearman, Jr.

Nilza Serrano

Barry Williams

PRESIDENT'S PROCEDURAL REMARKS AND BOARD MEMBER INTRODUCTORY COMMENTS

Board President Jon Baker or, in his absence, the Vice President will review the scheduled Board actions and make appropriate announcements.

PUBLIC COMMENT ON ITEMS NOT ON AGENDA

Members of the public may address the Board at this time. The Board President may allow public participation during other agenda items at their discretion.

(The Board may not discuss or take action on any item raised during this public comment section, except to decide whether to refer the item to the Board's next Strategic Planning session and/or place the matter on the agenda of a future meeting [Government Code sections 11125 and 11125.7(a)].)

REVIEW AND POSSIBLE ACTION ON JUNE 9, 2016 AND JULY 28, 2016 BOARD MEETING MINUTES

The Board is asked to review and take action on the minutes of the June 9, 2016 and July 28, 2016 Board meetings.

Attachments:
1. June 9, 2016 Board Meeting Minutes
2. July 28, 2016 Board Meeting Minutes

MINUTES

BOARD MEETING

CALIFORNIA ARCHITECTS BOARD

June 9, 2016

San Francisco, CA

A. CALL TO ORDER/ROLL CALL/ESTABLISHMENT OF QUORUM

Board President, Jon Alan Baker called the meeting to order at 10:45 a.m. and Board Secretary, Sylvia Kwan called roll.

Board Members Present
Jon Alan Baker, President
Matthew McGuinness, Vice President
Sylvia Kwan, Secretary
Denise Campos
Tian Feng (arrived at 10:50 a.m.)
Pasqual Gutierrez (arrived at 1:53 p.m.)
Robert C. Pearman, Jr.
Nilza Serrano
Barry Williams

Board Members Absent
Ebony Lewis

Guests Present
Michael J. Armstrong, Chief Executive Officer, National Council of Architectural Registration Boards (NCARB)
Kurt Cooknick, Director of Regulation and Practice, The American Institute of Architects, California Council (AIACC)
Katherine E. Hillegas, Director of Council Relations, NCARB
Seth Wachtel, Associate Professor, Department of Art + Architecture Chair, University of San Francisco (USF)
Paul W. Welch Jr., Executive Vice President, AIACC

Staff Present
Doug McCauley, Executive Officer
Vickie Mayer, Assistant Executive Officer
Marccus Reinhardt, Program Manager Examination/Licensing
Trish Rodriguez, Program Manager Landscape Architects Technical Committee (LATC)
Mel Knox, Administration Analyst
Kristin Walker, Enforcement Analyst
Robert Carter, Architect Consultant
Rebecca Bon, Staff Counsel, Department of Consumer Affairs (DCA)

Six members of the Board present constitute a quorum. There being seven present at the time of roll, a quorum was established.

B. PRESIDENT'S PROCEDURAL REMARKS AND BOARD MEMBER INTRODUCTORY COMMENTS

Mr. Baker 1) announced that Board members Ebony Lewis and Tian Feng have excused absences from the day's meeting, and that Pasqual Gutierrez is currently experiencing a flight delay and is expected to arrive sometime before adjournment; 2) recognized the passing of Dean Norman Millar of Woodbury School of Architecture, and announced the Board will adjourn in his honor; 3) recognized USF Associate Professor and Department Chair, Seth Wachtel, thanked him for arranging our meeting site, and announced that he will deliver a presentation under Agenda Item F; 4) recognized the presence of Michael Armstrong and Katherine Hillegas from NCARB; and 5) advised that all motions and seconds shall be repeated for the record, and votes on all motions would be taken by roll-call.

C. PUBLIC COMMENT ON ITEMS NOT ON AGENDA

There were no comments from the public.

D. REVIEW AND APPROVE MARCH 3, 2016 BOARD MEETING MINUTES

Mr. Baker asked for comments concerning the March 3, 2016, Board Meeting Minutes.

- **Nilza Serrano moved to approve the March 3, 2016, Board Meeting Minutes.**

  Denise Campos seconded the motion.

  Members Campos, Kwan, McGuinness, Pearman, Serrano, Williams, and President Baker voted in favor of the motion. The motion passed 7-0.

E. EXECUTIVE OFFICER'S REPORT

Doug McCauley reminded the Board that its September 29, 2016 meeting will be held in Los Angeles. Mr. McCauley updated the Board on the status of BreEZe, and informed that Justin Sotelo, Program Manager for the Board's Administration/Enforcement Units, will be separating from State service and recruitment efforts are underway to fill his position. Mr. McCauley also reported that two Special Editions of the Board's newsletter, *California Architects*, have been added to the annual publishing schedule.

Nilza Serrano expressed concern about the pass/fail rates in particular divisions of the Architect Registration Examination (ARE), namely, in the Construction Documents and Services division. Mr. McCauley indicated that Board liaisons will be sharing information about school-specific pass rates for comparison purposes as part of the Liaison Program. Mr. Baker noted that Ms. Serrano has highlighted the gap between education and practice, an area that is not widely emphasized in schools. Barry Williams opined that the Construction Documents and Services division may be somewhat fundamental in the classroom, and stated that internship programs are better positioned to help prepare students in this area. Mr. Baker indicated that the ARE is still rigorous and that examination developers work very hard to maintain the standard for passing.

Mr. McCauley reported that the Board is applying 25 percent of its resources toward continuing education (CE) enforcement cases. He also reported that the trend in the Board's number of complaints received, closed, and pending, as well as case-aging outcomes, are quite positive. Mr. McCauley explained the nature of the Board's budget and its distinction versus corporate and non-profit state budgets. He also explained the Board's Budget Report, Fund Condition, and Budget, Expenditures and Revenue documentation provided to the Board in the meeting packet. Denise Campos enquired about why the Architect Consultant Contract line item in the Board's budget reflects zero dollars for fiscal year (FY) 2014-15. Mr. McCauley explained that the expense is budgeted via a different line-item, and explained the architect consultant contract procurement process. Mr. McGuinness asked if the Board's positive trend in actual expenditures beginning in FY 2012-13 is expected to continue, to which Mr. McCauley stated that indicators suggest the trend will continue. Mr. McCauley explained that the trend in actual expenditures from 2009 to 2012 is relatively flat due to control factors that kept expenditures in check (i.e., mandated furloughs, prohibitions on external contracting).

F. PRESENTATION ON UNIVERSITY OF SAN FRANCISCO'S ARCHITECTURE AND COMMUNITY DESIGN PROGRAM AND DEPARTMENT OF ART + ARCHITECTURE BY SETH WACHTEL, DEPARTMENT CHAIR, ASSOCIATE PROFESSOR

Mr. Wachtel gave a presentation on the Department of Art and Architecture at the USF. His presentation covered:

1. The history of the Architecture and Community Design Program;
2. Where graduates are employed and where they have gone to pursue higher education;
3. Majors and Minors;
4. General education requirements of the program;
5. Program elements and sequence of major courses; and
6. The several coursework opportunities in architecture design studios.

Ms. Kwan asked if there are plans to create graduate programs in architecture at USF. Mr. Wachtel stated that there are no immediate plans for graduate programs in architecture, but that he is an advocate for such programs, as well as for National Architectural Accrediting Board accreditation at USF. Mr. Baker asked if USF has plans to expand architecture students' exposure to more technical aspects of practice management (e.g., building systems, technology, and construction types) and to integrate them into design courses. Mr. Wachtel stated that those integration efforts are underway in USF's architecture design studios.

G. UPDATE AND POSSIBLE ACTION ON LEGISLATION REGARDING ASSEMBLY BILL (AB) 507 (OLSEN) [BREEZE], SENATE BILL (SB) 1479 (BUSINESS, PROFESSIONS, & ECONOMIC DEVELOPMENT) [EXAM ELIGIBILITY – INTEGRATED DEGREE PROGRAM], AND SB 1195 (HILL) [BOARD ACTIONS: COMPETITIVE IMPACT]

Mr. McCauley updated the Board on three legislative items; none of which, he informed, require action from the Board. He reported that AB 507 (Olsen) is proposed legislation that would require annual submission of a report to the Legislature and the Department of Finance regarding the BreEZe system. Mr. McCauley also reported that the bill's author has concluded it is premature in the BreEZe life-cycle to require the kind of comprehensive reporting reflected in AB 507. He advised that the author has opted not to move the bill forward.

Mr. McCauley reported that SB 1479 (Business, Professions, & Economic Development) contains the Board-sponsored amendment which clarifies language regarding integrated degree programs that was added to the Architects Practice Act (Act) via the Sunset Review bill last year. He explained that the bill updates Business and Professions Code (BPC) section 5550.2, which would permit the Board to grant early eligibility to take the ARE for students enrolled in an NCARB-accepted integrated degree program. Mr. McCauley reported that SB 1479 is now in the Assembly.

Mr. McCauley explained that SB 1195 (Hill), the Legislature's response to the United States Supreme Court's North Carolina Dental Board v. Federal Trade Commission case, would grant the DCA Director authority to review any board decision or other action to determine whether it unreasonably restrains trade. He further explained that this case concerns antitrust immunity for boards, and that a key component in the Court's opinion is whether there is sufficient "active state supervision" of board actions. Mr. McCauley reported that the SB 1195 was referred to the Senate's inactive file in anticipation of amendments.

H. NATIONAL COUNCIL OF ARCHITECTURAL REGISTRATION BOARDS (NCARB)

Mr. Armstrong and Ms. Hillegas provided the Board with a presentation regarding ARE 5.0, the Architectural Experience Program (AXP), the first cohort of Integrated Path to Architectural Licensure (IPAL) schools, Model Law, new benefits to the NCARB Certificate, and the 2016 Annual Business Meeting resolutions and presentations.

Mr. Feng asked if the time allotted to take ARE 5.0 is similar to that of ARE 4.0. Ms. Hillegas informed that the total seat time for ARE 5.0 is reduced by approximately eight hours. Mr. Armstrong explained that the elimination of ARE 4.0's graphic vignettes has reduced the examination time. Ms. Kwan asked about the difference between case studies and vignettes. Mr. Baker explained that case studies, which are a new component to ARE 5.0, allow NCARB to test a candidate's ability to understand the integrated nature of architecture. He asked Mr. Armstrong if NCARB believes the five-year Rolling Clock policy to still be relevant. Mr. Armstrong explained NCARB's study on *The Pace of Change in the Architectural Profession and its Impact on Examination Practices*, which evaluated its Rolling Clock policy. He reported that the study was inconclusive and did not provide clarity on how the examination should match the pace of change in the profession; therefore, the Board of Directors decided to keep the Rolling Clock policy at five years.

Mr. Armstrong explained the elements of the new AXP. Ms. Kwan shared her experience of having two unlicensed principals at her firm with vast experience, and asked about the major requirements to submit an E-portfolio as part of the AXP. Mr. Armstrong stated that details are still being finalized, but that program experts will discuss the E-portfolio at the upcoming Annual Meeting in Seattle. Ms. Hillegas noted that the AXP is for people with experience greater than five years. Mr. Armstrong opined that the new AXP will also be viewed as a positive step for diversity and gender equity in the profession.

Mr. Armstrong announced that an additional three schools have been accepted by NCARB to join the original cohort of 14 IPAL schools, including a second Woodbury University program.

Mr. Armstrong reviewed the agenda of the upcoming Annual Business Meeting in Seattle, and explained the substance of each 2016 NCARB Resolutions that will be acted upon. Mr. Baker

asked for clarity about the Mutual Recognition Arrangement with Australia and New Zealand, to which Mr. Armstrong confirmed that, if Resolution 2016-01 passes, Australians and New Zealanders will not need to complete the Broadly Experienced Foreign Architect (BEFA) program in the same way that Canadians currently do not need to complete the BEFA program. Ms. Kwan asked how many jurisdictions currently require an architect to complete CE as a condition of maintaining one's license, to which Ms. Hillegas replied 46. Ms. Hillegas informed that regulatory and statutory information about all 54 jurisdictions have been compiled by her office and is accessible to the Board if it wishes to study how various issues are managed in other jurisdictions. Ms. Campos asked if NCARB will consider increasing ARE fees at the Annual Business Meeting, to which Mr. Armstrong informed that NCARB has committed to not increase ARE fees for another three years. Mr. Armstrong stated that the E-portfolio review will not have as large of a fee associated with it. Mr. Williams asked if there is a minimum duration requirement for employment experience to count toward AXP, to which Mr. Armstrong explained that minimum duration requirements were removed in order to give candidates credit for experience in any way they are able to obtain it.

- **Tian Feng moved to support NCARB Resolutions 2016-01, 2016-02, 2016-03, 2016-04, 2016-05, 2016-06, 2016-07, 2016-08, 2016-09, and 2016-10.**

  Matthew McGuinness seconded the motion.

  Members Campos, Feng, Gutierrez, Kwan, McGuinness, Pearman, Serrano, Williams, and President Baker voted in favor of the motion. The motion passed 9-0.

I. REVIEW AND POSSIBLE ACTION ON 2016/17 INTRA-DEPARTMENTAL CONTRACT WITH OFFICE OF PROFESSIONAL EXAMINATION SERVICES (OPES) FOR CALIFORNIA SUPPLEMENTAL EXAMINATION (CSE) DEVELOPMENT

Marccus Reinhardt informed the Board that its current Intra-Departmental Contract with the DCA's OPES for development of the CSE will expire on June 30, 2016, and advised that a new contract is needed. He directed the Board's attention to the new contract with OPES in the meeting packet for continued examination development for FY 2016/17 and asked the Board to review and take action.

- **Nilza Serrano moved to approve the Intra-Departmental Contract with OPES for examination development for FY 2016/17.**

  Pasqual Gutierrez seconded the motion.

  Members Campos, Feng, Gutierrez, Kwan, McGuinness, Pearman, Serrano, Williams, and President Baker voted in favor of the motion. The motion passed 9-0.

J. REGULATORY AND ENFORCEMENT COMMITTEE (REC) REPORT

Mr. McGuinness updated the Board on the activities of the REC at its April 28, 2016 meeting. He reported that the REC discussed SB 1132 (Galgiani) and, subsequently, recommended a position to "oppose" AIACC's Architect-in-Training (AIT) title proposal. He also reported that the REC discussed the Strategic Plan objective to identify and pursue needed statutory and regulatory changes so that laws and regulations are in alignment with current architectural

practice to promote the public health, safety, and welfare. Mr. McGuinness indicated that the REC accepted staff's recommendation to add a: 1) statement identifying the ownership and/or reuse of documents prepared by the architect, and 2) notification to the client that the architect is licensed by the Board, to the proposed language to amend the written contract requirement. He noted that staff is currently developing proposed language for BPC 5536.22 to include these two additional elements, which will be presented to the REC for consideration at its next meeting in the fall. Mr. McGuinness also informed that the REC received updates regarding its Strategic Plan objectives to 1) pursue methods to obtain multiple collection mechanisms to secure unpaid citation penalties, 2) pursue recruitment of an additional architect consultant to ensure continuity and effectiveness in the Board's Enforcement Program, and 3) monitor AIACC legislation requiring architect of record to perform mandatory construction observation to promote consumer protection.

Kristin Walker informed the Board that one of its current architect consultant contracts expires on June 30, 2016. Ms. Walker reported that a Request for Proposal (RFP) for architect consultant services for the next three FYs (2016/17 through 2018/19) was released on March 9, 2016, and advertised on the Department of General Services' (DGS) website. She announced that, following the evaluation process, Robert L. Carter was selected as the awardee of the contract. Ms. Walker reported that the DCA Contracts Unit prepared a contract which was forwarded to the DGS for approval, and asked the Board to review and take action on the architect consultant contract which was approved by DGS.

Mr. Feng asked if there are reserve architect consultant contracts in place, to which Ms. Walker explained that the Board currently contracts with two architect consultants; the other architect consultant contract expires on January 31, 2017.

- **Nilza Serrano moved to ratify the Architect Consultant Contract with Robert L. Carter for architect consultant services for FYs 2016/17 through 2018/19.**

  Matthew McGuinness seconded the motion.

  Members Campos, Feng, Gutierrez, Kwan, McGuinness, Pearman, Serrano, Williams, and President Baker voted in favor of the motion. The motion passed 9-0.

Paul Welch and Kurt Cooknick addressed the Board in support of SB 1132 and AIACC's AIT title proposal. Mr. Welch expressed disappointment about the REC's recommendation to oppose the AIT title proposal, and summarized the issue of titling candidates in California from the perspective of AIA. Mr. Welch noted the long history of healthy relations between the Board and AIACC, and noted this a rare occasion when there is not mutual support of a bill. He stated that AIACC attempted to resolve some of the Board's concerns about costs and enforcement through the simplicity of SB 1132. Mr. Welch explained that the first prerequisite for a candidate to use the AIT title is to be authorized by the Board to begin testing for the ARE. The second prerequisite, he stated, is that a candidate must be under the direct supervision of an architect. Mr. Welch noted that the current form of the bill gives the decision to use AIT to the candidate, but that an amendment will soon be offered to transfer the decision to use AIT to the firm; the firm may, if it wishes, use AIT for its employees who qualify. He opined that this amendment would help resolve the Board's questions about who can authorize use of AIT. Mr. Welch indicated that more amendments can be included in the future if needed. He also

offered to defend the importance of having the AIT title in California to the Legislature during the next Sunset Review. Mr. Welch asked the Board to support SB 1132.

Mr. Feng asked if AIACC has data available about which title unlicensed professionals desire most. Mr. Cooknick stated that a survey was indeed conducted and the title "intern" was the least liked title, while the AIT title was the most liked. He said the data can be provided to the Board.

Robert Pearman asked for clarity about one of the proposed amendments to SB 1132, to which Mr. McCauley explained that the amendment was introduced by AIACC as an attempt to minimize any potential financial impact. Mr. McCauley advised that the amendment will not be inserted into the bill. Mr. Pearman observed that the Board must be able to track because if there is a violation, the Board must assess whether it is a misdemeanor. He opined there could be confusion about what the Board must do. Mr. Welch stated that the Board already has provisions around unlicensed practice, and that if an individual violates the requisites for using AIT then they are in violation of the Act.

Mr. McGuinness commented on the speed at which AIACC is advancing this proposed legislation. He explained that the Board directed the REC to reconsider AIACC's proposal after REC recommended opposing it; the Board asked AIACC to provide the REC with information to help it better understand and consider AIACC's proposal. Instead, AIACC introduced legislation and misrepresented the Board's position to the Legislature. He expressed disappointment that the REC and Board had not yet received fundamental information it needs to identify an actual reason for creating an AIT titling program.

Mr. Welch indicated that documentation was indeed provided to staff for the recent March and April 2016 Board and REC meetings. He opined that correspondence from the Board to the Legislature which stated that the Board had not been provided with documentation from AIACC about the AIT proposal was an unfair characterization.

Ms. Serrano asked for clarification about proposed time limits associated with the use of AIT. Mr. Cooknick explained that a time limit was proposed in alignment with the Board's Rolling Clock policy, but was removed after further consideration. He further explained that once authorization from the Board to begin testing for the ARE has occurred, candidates are partially eligible to use AIT; the other eligibility factor is the candidate's employer must consent. Mr. Cooknick also stated that: 1) use of AIT is only valid so long as the candidate is working under the supervision of a licensed architect in a firm; and 2) candidates are prohibited from using the AIT title outside of that firm.

Mr. Baker clarified that AIACC's amended proposal does not authorize candidates as individuals to use the AIT title; instead, a candidate's employer may use it in marketing materials. He reiterated the Board's primary concern about AIACC's proposal, which is lack of information about how to implement the proposed AIT program. Mr. Baker stated that the Board, for instance, still does not know who will report to the Board that an employer has bestowed the AIT title on an employee. He stressed the Board's duty to protect consumers and to enforce regulations that are in the Act. If a candidate's employer has decided the candidate may use the AIT title, Mr. Baker explained, at some point, since the Board would be responsible for the enforcement component, someone must tell the Board that the employer has authorized the candidate to use the title. He stated that if AIACC considers these kinds of implementation logistics, it will tell the Board: 1) how to make the proposed AIT program work successfully,

2) the impact the program will have on staff workload, and 3) how the Executive Officer (EO) will defend the program to the DCA and the Legislature when the Board requests additional funding or staff for program implementation.

Mr. Welch again reminded the Board of its long history of working with the AIACC, and that, in the past, the Board had identified ways to help AIACC implement proposals. He stated that this occasion is different because the Board is asking for AIACC to consider enforcement procedures, which it does not have access to. Mr. Welch agreed that, if the program is to be successful, the Board's concerns must be resolved. Mr. Baker stated that the CE program is a good example of the need to resolve the Board's concerns because the CE program is an unfunded mandate that has siphoned 25% of the Board's enforcement activities away from other enforcement efforts. He opined that areas more important to consumer protection are not getting the same level of attention. To mitigate this risk, Mr. Baker proposed that AIACC develop comprehensive proposed AIT program details. For instance, he asked, if there is a violation of the use of AIT, would the Board fine the firm or would the Board fine the individual? Mr. Baker asked, if the firm bestows the title on the individual, is the firm now responsible for that individual complying with the Act? He indicated that, after one year of conversation with AIACC about this particular issue, the Board still does not know basic answers to basic questions from what AIACC has presented. Mr. Baker suggested that AIACC develop answers to these questions before creating a program, imposing it on the State, and expecting the Board to enforce it. He spoke about his contact with a Board member from another jurisdiction that does allow "intern architect." Mr. Baker reported that the jurisdiction does nothing to implement its intern title program; it does not enforce anything.

Ms. Kwan asked Mr. Armstrong for NCARB's perspective about intern titling at the State and national level. Mr. Armstrong explained that NCARB has decided that the issue of intern titling is strictly jurisdictional. Ms. Hillegas stated that approximately 30 jurisdictions regulate some form of a title for an intern (i.e., AIT, intern architect) in statute. Mr. Armstrong clarified that there are 24 jurisdictions that use NCARB's model law (intern architect or architect intern). He reported that six jurisdictions use another title; of those, two jurisdictions use "intern," and four jurisdictions use "AIT." Mr. Armstrong reported that another 24 jurisdictions use no title at all. Officially, he stated, NCARB is indifferent to California's decision on the matter; it is strictly a jurisdictional issue.

Mr. Feng asked how AIACC would propose for the Board to regulate the AIT program if enacted. Mr. Cooknick stated that the Board will not regulate the title. Instead, he explained, AITs will only come to the Board's attention when they engage in prohibited behavior. For instance, Mr. Cooknick noted, misusing the AIT title would be the same as misusing the title Architect; "Architect," in every variation, is a misuse. Mr. Feng reminded Mr. Cooknick that an AIT is not an architect, and that the Board is only mandated to regulate architects. Mr. Welch indicated that AIACC is seeking to change statute in that regard.

Mr. Baker recognized that AIACC's constituency may feel strongly about this topic. He opined that Board members probably do not oppose the concept of AIACC's AIT proposal, but are struggling with how the proposal will actually work. Mr. Baker expressed his desire for AIACC to delay SB 1132 and work with the Board to make the implementation of the proposed AIT proposal rational, logical, and effective. Mr. Cooknick explained that AIACC's proposal, which was provided to the REC, is deemed incomplete because it is not yet comprehensive. He stated that, in his 20 years of working with the Board, he has never presented a fully comprehensive

proposal to advance an idea. Mr. Cooknick cited AB 1144 (Chapter 313, Statutes of 2002) [Business Entity Reporting] as an example of when the Board staff and AIACC worked together successfully to write and develop legislation.

Mr. Welch indicated that AIACC will submit its amendments and will need to consider immediate next steps since SB 1132 is due to be heard next in the Assembly. He expressed concern that the AIT proposal may be delayed by two years before it can again be reintroduced to the Legislature. Ms. Serrano expressed disappointment that AIACC, in her opinion, is strong-arming the Board by having introduced legislation without first addressing the Board's concerns about the AIT proposal. She suspected that SB 1132 may be a covert attempt to enhance firms' abilities to charge consumers higher rates for services. Mr. Welch assured the Board that SB 1132 is not about charging higher rates for services. He explained that AIACC was told by Senate Appropriations Committee staff that it concluded there would be no substantial cost to the bill, and that it would be more appropriate for policy committees to make the determination about cost.
Mr. McCauley explained that the Board has seemingly not been convinced that AIACC's AIT title proposal will actually solve a problem. He further explained the Board's view that its request for a "comprehensive" proposal was not met by AIACC's half-page description of the issue without accompanying data. Mr. McCauley stated that AIACC's proposal would not need to be presented to the REC four times and to the Board three times if the proposal was indeed comprehensive. He also noted that, yes, the Board and AIACC's impact is greater when both organizations work well together, but both organization's missions are different and distinct (protecting the public vs. promoting the profession); it would be a serious problem if AIACC and the Board agreed 100 percent on every issue. Mr. McCauley opined that the AIT title proposal appears to be an issue where, perhaps, the Board and AIACC do not agree. He stated that disagreements are appropriate and do not mean the relationship between AIACC and the Board is unhealthy.

Mr. Gutierrez recalled that the AIACC, when it proposed the concept years ago, did not want to create a title that could be used forever. He stated that, if the Board is to create regulation in the Act, the value of this title is missing. Mr. Gutierrez further stated that controls and mechanisms must be clear when considering something this important. He expressed his desire for the Board and AIACC to have a special meeting to address each other's concerns with SB 1132.
Mr. Gutierrez voiced his desire for amendments to SB 1132 that address all concerns so that emerging professionals may operate in a supportive practice environment.

Mr. Williams shared the view of his students at California Polytechnic State University, San Luis Obispo about intern titling. Mr. Williams reported that the AIT title was not widely supported (approximately two supporters out of a class of 40) when compared to other titles (e.g., project manager, designer). He expressed the importance of creating an effective proposal; one where potential needs and benefits outweigh potential problems and costs.

Mr. Baker asked if AIACC is willing to delay SB 1132 long enough to work through the logistics of implementing an AIT proposal and to develop a comprehensive proposal. He opined there may be support for the proposal if the Board knows how it works. Mr. Welch stated that many great intentions are delayed, and, therefore, although he would like to be respectful of the Board's conversation, he could not guarantee it. He also stated that he would have no problem with meeting with the Board again at a special meeting. Ms. Kwan expressed support for a special meeting to develop a comprehensive AIT title proposal with NCARB.

- **Matthew McGuinness moved to oppose SB 1132 (Galgiani).**

  Nilza Serrano seconded the motion.

Mr. McGuinness stated that his opposition to the current legislation is rooted in the hope that it will be delayed long enough to give the Board an opportunity to have positive effect on AIACC's proposal.

Jon Baker moved to amend the motion to oppose SB 1132 (Galgiani) unless amended to the satisfaction of the REC after having worked with AIACC on expanding the scope of the AIT title proposal's implementation.

Matthew McGuinness accepted the amendment to the motion.

Nilza Serrano seconded the amendment to the motion.

Members Campos, Feng, Gutierrez, Kwan, McGuinness, Pearman, Serrano, Williams, and President Baker voted in favor of the motion. The motion passed 9-0.

Mr. Baker reiterated his hope for the REC and AIACC to work together to resolve this issue, and for the Board to consider REC's recommendation at a special Board meeting before September 2016.

K. LANDSCAPE ARCHITECTS TECHNICAL COMMITTEE (LATC) REPORT

Trish Rodriguez provided the Board with an update on the activities at the May 24, 2016 LATC meeting. Ms. Rodriguez reported that representatives from the American Society of Landscape Architects (ASLA) attended the meeting and provided a presentation on the Sustainable Sites Initiative.

Ms. Rodriguez informed that LATC's Strategic Plan contains an objective to "assess whether any revisions are needed to the regulations, procedures, and instructions for expired license requirements." She explained the LATC's relicensure process, and advised that under LATC's current provisions, an individual who has let their landscape architect license lapse for more than three years but fewer than five years may submit a request for re-licensure without retaking the Landscape Architect Registration Examination (LARE). The review process, Ms. Rodriguez explained, requires an applicant for re-licensure to submit a portfolio for the LATC's review that demonstrates their knowledge and skills in landscape architecture; the review will then determine whether the applicant must take and pass any required sections of the LARE in addition to the CSE prior to becoming eligible to renew their license. She advised that LATC staff assessed the Board's relicensure process and 16 other boards' processes. Subsequently, Ms. Rodriguez reported, the Committee directed staff to draft proposed language to amend the LATC's relicensure procedures, to require an individual whose license has expired for fewer than five years to pay any accrued fees, and to require the holder of a license that has expired for more than five years to reapply for licensure and retake the CSE. She reported that the Committee recommended amending BPC 5680.1 and 5680.2, and repealing California Code of Regulations (CCR) 2624 and 2624.1 in a way that would bring the LATC relicensure procedures into alignment with the Board's relicensure procedures. Ms. Rodriguez asked the Board to review

and take action on the proposed language to amend BPC 5680.1 and 5680.2, and to repeal CCR 2624 and 2624.1.

Mr. Feng asked if the LATC is concerned about ethical or disciplinary reasons for why a landscape architect license has lapsed. Ms. Rodriguez advised that the LATC has no such concern as disciplinary issues are considered separately.

- **Matthew McGuinness moved to approve the proposed language to amend BPC sections 5680.1 and 5680.2, and proposed regulations to repeal CCR sections 2624 and 2624.1, and delegate authority to the EO to adopt the proposed changes provided no adverse comments are received during the public comment period and make minor technical or non-substantive changes to the language, if needed.**

  Tian Feng seconded the motion.

  Members Campos, Feng, Gutierrez, Kwan, McGuinness, Pearman, Serrano, Williams, and President Baker voted in favor of the motion. The motion passed 9-0.

Ms. Rodriguez reported that, in 2013, the LATC's budgetary fund condition reflected a balance of 19.5 months of unencumbered funds. To address the fund balance, she explained that the LATC implemented a permanent $200,000 reduction in expenditure authority beginning with FY 2015/16 and temporarily reduced license renewal fees from $400 to $220 for the period July 1, 2015 to June 30, 2017. Ms. Rodriguez advised that in order to reduce the license renewal fees for another cycle, a regulatory change to amend CCR section 2649(f) would be needed. She informed that, at the May 24, 2016 LATC meeting, the Committee approved a recommendation to temporarily reduce license renewal fees from $400 to $220 for the period July 1, 2017 through June 30, 2019. Ms. Rodriguez asked the Board to review and take action on the Committee's recommendation.

Ms. Kwan enquired about why the LATC Analysis of Fund Condition with Fee Reduction document shows Months in Reserve for FY 2019/20 at a low 0.1. Ms. Rodriguez explained that the 2019/20 balance is a worst-case scenario projection, not actual. She indicated that the Committee will again discuss fees at its next Strategic Planning session.

- **Nilza Serrano moved to approve the proposed regulations to amend CCR section 2649(f), and delegate authority to the EO to adopt the regulation provided no adverse comments are received during the public comment period and make minor technical or non-substantive changes to the language, if needed.**

  Barry Williams seconded the motion.

  Members Campos, Feng, Gutierrez, Kwan, McGuinness, Pearman, Serrano, Williams, and President Baker voted in favor of the motion. The motion passed 9-0.

L. CLOSED SESSION

The Board went into closed session to:

1) Consider action on the Closed Session Minutes of the March 3, 2015 Board meeting;

2) Confer with legal counsel on litigation regarding *Marie Lundin vs. California Architects Board, et al*., Department of Fair Employment and Housing, Case No. 585824-164724;
3) Consider action on three Proposed Decisions;
4) Consider action on one Default Decision and Order;
5) Consider action on one Proposed Stipulated Settlement; and
6) Conduct the annual evaluation of its Executive Officer.

M. RECONVENE OPEN SESSION

The Board reconvened open session.

N. ADJOURNMENT

The meeting adjourned at 4:52 p.m.

MINUTES

BOARD MEETING

CALIFORNIA ARCHITECTS BOARD

July 28, 2016

Sacramento and Various Teleconference Locations

A. CALL TO ORDER/ROLL CALL/ESTABLISHMENT OF A QUORUM

Board President, Jon Alan Baker called the meeting to order at 2:03 p.m. and Board Secretary, Sylvia Kwan called roll.

Board Members Present
Jon Alan Baker, President
Matthew McGuinness, Vice President
Sylvia Kwan, Secretary
Denise Campos
Tian Feng
Pasqual Gutierrez
Ebony Lewis
Robert C. Pearman, Jr.
Nilza Serrano
Barry Williams

Guests Present
Mark Christian, Director of Legislative Affairs, The American Institute of Architects, California Council (AIACC)
Kurt Cooknick, Director of Regulation and Practice, AIACC
Yeaphana LaMarr, Legislative Analyst, Division of Legislative & Regulatory Review, Department of Consumer Affairs (DCA)
Linda Panattoni, Legislative Advocate, California Legislative Coalition for Interior Design (CLCID)
Neeraj Paul

Staff Present
Doug McCauley, Executive Officer
Marccus Reinhardt, Program Manager Examination/Licensing
Trish Rodriguez, Program Manager Landscape Architects Technical Committee
Mel Knox, Administration Analyst
Kristin Walker, Enforcement Analyst
Robert Carter, Architect Consultant
Rebecca Bon, Staff Counsel, DCA
Shela Barker, Attorney, DCA

Six members of the Board present constitute a quorum. There being ten present at the time of roll, a quorum was established.

B. PUBLIC COMMENT ON ITEMS NOT ON AGENDA

There were no comments from the public.

C. DISCUSS AND POSSIBLE ACTION ON RECOMMENDATION CONCERNING SENATE BILL 1132 (GALGIANI) [ARCHITECTS-IN-TRAINING] AND THE AMERICAN INSTITUTE OF ARCHITECTS, CALIFORNIA COUNCIL'S ARCHITECT-IN-TRAINING TITLE CHANGE PROPOSAL

Doug McCauley reminded the Board that, at the June 9, 2016, meeting, it approved a motion to oppose Senate Bill (SB) 1132 unless sufficiently amended to provide more detail as to implementation; specifically, enforcement-related implementation details. Mr. McCauley informed that Board President Baker appointed a working group consisting of members Matthew McGuinness, Pasqual Gutierrez, and Ms. Kwan to review possible amendments to the bill and make a recommendation to the Board. He added that representatives from AIACC were invited to participate with the group. Mr. McCauley reported that staff conducted additional research in preparation for the working group meeting, including the review of title provisions for three large states: Florida, New York, and Texas. In addition, he reported that staff analyzed the provisions for all states that authorize the use of a special title for candidates. Mr. McCauley noted that the most common features of such title provisions are: 1) possession of a professional degree in architecture; 2) current enrollment and active participation in the Architectural Experience Program (AXP); 3) employment under the responsible control of a licensed architect; and 4) the title may only be used in conjunction with such employment. He indicated that these features are largely consistent with current National Council of Architectural Registration Boards (NCARB) Model Law. Mr. McCauley also reported that four potential models that could be specified in SB 1132 were identified by staff and considered by the working group: 1) "Firm" - would allow firms to authorize the use of the title; 2) "Regulatory" - would establish an active role for the Board; 3) "NCARB" - would be based on current NCARB Model Law; and 4) "Candidate" - would authorize all active candidates in the examination process to use the title. He reported that the working group ultimately recommended that SB 1132 be amended to: 1) authorize individuals who are actively participating in AXP to use the title "architect-in-training," but no other abbreviations or derivatives of that title; 2) prohibit the use of the title to independently offer or provide services to the public; 3) allow the Board to disclose an individual's authorization to use the title to the public; 4) delineate penalty provisions for misuse of the title; and 5) include a sunset provision. Mr. McCauley then advised the Board of several options concerning SB 1132: 1) take a support position; 2) take an oppose position; 3) maintain current oppose unless amended position; 4) support with possible amendment; or 5) take a neutral/watch position. He opined a neutral/watch position to be most appropriate and practical for the Board.

Mr. McGuinness, Chair of the working group, informed the Board that the group's recommendation contains the least potential for enforcement and monitoring problems. Mr. McCauley explained each of the group's proposed amendments to SB 1132, while Mr. Gutierrez provided the Board with a brief overview of how the group arrived at each of those proposed amendments as reflected in attachment six of Agenda Item C.

Neeraj Paul asked if under the proposed amendment she would be able to use the Architect-in-Training title once she begins AXP even though her degree is not National Architectural Accrediting Board-accredited. Mr. McCauley answered in the affirmative and explained that the

type of degree, or even whether one has no degree at all, is irrelevant; the trigger for use of Architect-in-Training title entirely depends on whether a candidate is enrolled in AXP.

Mr. Baker asked whether a candidate must discontinue use of the Architect-in-Training title once the number of required AXP hours has been completed. Mr. McCauley answered in the affirmative; the candidate will no longer be able to use the title once AXP has concluded for that individual. Mr. Baker asked whether the working group expressed concern about the potential for an individual to intentionally delay AXP progress in an effort to extend his or her eligibility to use the Architect-in-Training title. Messrs. McCauley and McGuinness noted some concern about the potential for individuals to engage in such questionable behavior, but added that the risk was deemed minimal. Mr. Gutierrez explained why the working group found it appropriate to link the use of the Architect-in-Training title to the AXP. Tian Feng asked if the Board will be responsible for enforcing the use of the title, to which Mr. McCauley answered in the affirmative. Nilza Serrano asked about the time limit for one's use of the Architect-in-Training title, to which Mr. Baker replied that the use of the title is dependent on the time it takes for one to accrue 3,740 hours of AXP credit. Ms. Serrano also inquired about who will monitor the program to ensure that Architects-in-Training are compliant and that the title is properly used. Mr. Baker noted that the proposed framework provided by the working group does not specify whether use of the title is individual-driven, firm-driven, or regulatory-driven; however, in each case, the Board will be required to disclose information to the public upon request, and there are penalties for misuse of the title. Mr. McCauley explained that the only monitoring mechanism will be through the enforcement process, which will impact the Board's Enforcement Unit. He informed that when the Board receives complaints from consumers, the Board is obligated to investigate. Mr. McCauley stated that the Board does not know whether the proposed framework is the perfect solution for a particular problem because nothing yet has been vetted with data. He also indicated that the Board does not know how many candidates will use the title, and, therefore, cannot estimate the impact of the framework on the Enforcement Unit. Ms. Serrano asked how the proposed framework for use of the Architect-in-Training title will benefit the consumer. Mr. McCauley explained that an Architect-in-Training should not interface with consumers because Architects-in-Training would be prohibited from using the title to market their services, even in exempt areas of practice. He stated that he could not identify how extensive the consumer benefit would be. Robert C. Pearman, Jr. asked about firms' control of the use of the Architect-in-Training title and communication to the public. Mr. McCauley indicated that, presumably, firms will control what an Architect-in-Training communicates to the public. Mr. Pearman also asked if there is a requirement for individuals or firms to report to the Board for purposes of maintaining a roster of candidates who use the title. Mr. McCauley confirmed there is no such requirement.

In response to Ms. Serrano's questions, Mr. Gutierrez added that credit for hours worked in AXP may only be claimed in six-month increments. He explained how the framework encourages professional mentorship, and how any monitoring component will be linked directly to the Board's enforcement activities. Mr. Gutierrez also explained that benefits to the consumer may include: 1) recognition for emerging professionals, and 2) identification of those who are completely engaged in their pathway toward licensure. Mr. Feng opined that professional encouragement and recognition is more about individual benefit than it is about consumer benefit. Mr. Baker observed that the recommended framework does not contain a mechanism for work authorization by employer, nor does it address whether the Board must keep Architect-in-Training records of any kind for enforcement purposes. Mr. McCauley explained that the working group attempted to streamline the framework as much as possible in an effort to avoid

its integration into the Board's business management system; changes to the system would present significant challenges. Mr. Baker asked if one may simply begin using the Architect-in-Training title when he or she feels the criteria has been met. Mr. McCauley answered affirmatively and advised that the Board has no statutory authority to regulate firms or take action if a firm did anything inappropriate with the title. Mr. Gutierrez added that regulation is not needed for this title to exist, but that violations may result in administrative action including, but not limited to, citation, discipline, or denial of a license.

Mr. Baker asked if the Board may legally enable people to use the Architect-in-Training title without monitoring its usage outside of responding to complaints. He expressed concern that the Board may violate its obligation to protect consumers in the absence of a way to monitor the title's use. Rebecca Bon advised the Board that it is obligated to enforce the laws and regulations in the Architects Practice Act (Act). Ms. Bon also advised the Board that it cannot ignore certain aspects of the Act, and clarified that the Legislature is considering an enactment to create the title, not the Board. Mr. Baker asked if the Board can legally implement the proposed framework, to which Ms. Bon advised that, should the proposed framework be enacted, the Board must do so.

Ms. Serrano expressed her view that the average consumer will not know the difference between an architect and a person working under architect supervision. Ebony Lewis agreed with Ms. Serrano's comments and stated that, as a consumer, she would view an Architect-in-Training as a person who is in training, on the pathway to licensure, and is able to practice architecture. Mr. Gutierrez stated that the Board will not pursue architects to see if they are meeting obligations; the Board will only respond to misbehavior when complaints are filed. He clarified that an Architect-in-Training could not practice architecture, but, instead, executes tasks assigned to him or her by a licensed architect. An Architect-in-Training, Mr. Gutierrez added, may only use the title for recognition.

Mr. Baker expressed his desire to know that the Board, as a consumer protection board, may regulate the Architect-in-Training title. Mr. McCauley opined that the Board will need clear statutory authority and subsequent regulation to regulate the title (i.e., require candidates to complete a registration form which will be submitted to the Board for tracking and processing purposes). Ms. Bon concurred. Mr. Baker asked if the Board should engage in monitoring and tracking of Architects-in-Training in the absence of legislative authority and direction. Mr. McCauley opined that if a monitoring and tracking component is desired by the Board then it would need to be specified in the bill. He explained that the Board could require mandates (e.g., registration forms and fees) but the Board must decide whether it should do so and how regulatory it should be. Mr. McCauley noted that the Working Group intentionally structured the framework to make it as least impactful on the Board's operations as possible. Denise Campos reminded the Board that 12 other states use the title, and that the words "in-Training" communicate to the consumer that a person is not yet an architect. Mr. McCauley advised the Board that Business and Professions Code (BPC) section 5536 (Confusingly Similar standard) is the core provision the Board will observe when considering enforcement action for misuse of the title.

Mr. Baker acknowledged the opinions of the interior designer community. Linda Panattoni conveyed to the Board CLCID's concerns. Ms. Panattoni desired to know what demand is present that creates a need for an Architect-in-Training title. She opined that any additional title will create more confusion with interior design professionals, consumers, building officials, and

other agencies. Ms. Panattoni opined that no benefit to the consumer is apparent. She also explained that use of the term "Architect" in any way is unlawful without the proper education, experience, and examination to do so. Ms. Panattoni noted that an Architect-in-Training title will dilute the degree of professionalism in the interior designer community.

Mr. Feng stated he is not yet convinced that there is a direct consumer benefit to creating the Architect-in-Training title. Mr. McGuinness explained that the working group found that professional mentorship is endangered, and that the recommended framework is one step toward cultivating an environment for professional mentorship. He reported that consumer benefit was not a major theme of the working group's discussions. Ms. Kwan reported that the working group considered four potential models that could be specified in SB 1132; each of which, she recalled, were imperfect. Ms. Kwan explained that the group, therefore, developed the proposed framework using a hybrid model and felt comfortable with the inclusion of a Sunset provision for the Board, at a future date, to assess whether use of the Architect-in-Training title is a success or failure. Mr. Gutierrez added that the proposed framework supports the Board's position on Integrated Path to Architectural Licensure, and promotes licensure by identifying individuals who are dedicated professionals.

- **Pasqual Gutierrez moved to support SB 1132 (Galgiani) if amended with the following proposed language regarding use of the Architect-in-Training title based on the working group's recommended framework:**

    a) A person may use the title "architect-in-training" while enrolled in the NCARB AXP as specified in Division 2 of Title 16 of the California Code of Regulations.

    b) No abbreviations or derivatives of the title "architect-in-training" may be used.

    c) A person may not use the title "architect-in-training" to independently offer or provide services to the public.

    d) Notwithstanding any other provision, the Board shall disclose a person's authorization to use the title "architect-in-training" to members of the public upon request.

    e) Use of the title "architect-in-training" in violation of this section may constitute unprofessional conduct and subject the user to administrative action including, but not limited to, citation, discipline, or denial of a license.

    f) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.

    Denise Campos seconded the motion.

Mr. Baker questioned whether BPC 5500.2 is an appropriate reference for the proposed framework. Mr. McCauley indicated that the framework's reference will be adjusted, as needed and properly integrated into existing law.

Members Campos, Feng, Gutierrez, Kwan, Lewis, McGuinness, Pearman, Serrano, Williams, and President Baker voted in favor of the motion. The motion passed 10-0.

D. FINDING OF NECESSITY

Shela Barker informed the Board that, per California Government Code section 11125.4(c), California's Bagley-Keene Open Meeting Act requires the Board to make a finding regarding the necessity of holding a Special Meeting and the waiver of the usual 10-days' advance notice requirement for board meetings. Ms. Barker explained that specific facts must be provided to support the finding.

- **Nilza Serrano moved to find that: 1) providing 10-days' advance notice of this meeting would pose a substantial hardship on the Board in that the Board would be deprived of the timely ability to discuss, deliberate and take a position on pending litigation that could substantially impact the Board and its operations; and 2) the Board's next meeting is not set until September 29, 2016, and the matter to be discussed and deliberated upon was not known prior to the last Board meeting on June 9, 2016.**

  Robert C. Pearman, Jr. seconded the motion.

  Members Campos, Feng, Gutierrez, Kwan, Lewis, McGuinness, Pearman, Serrano, Williams, and President Baker voted in favor of the motion. The motion passed 10-0.

E. CLOSED SESSION

The Board went into closed session to confer with legal counsel on litigation regarding *Marie Lundin vs. California Architects Board, et al*., Department of Fair Employment and Housing, Case No. 585824-164724.

F. ADJOURNMENT

The meeting adjourned at 4:10 p.m.

EXECUTIVE OFFICER'S REPORT

1. Update on August 2016 Monthly Report on Board's Administrative/Management; and Examination, Licensing and Enforcement Programs

2. Board Member Liaison Reports on Organizations and Schools

Edmund G. Brown Jr.
GOVERNOR

CALIFORNIA ARCHITECTS BOARD

PUBLIC PROTECTION THROUGH EXAMINATION, LICENSURE, AND REGULATION

MEMORANDUM

DATE: September 14, 2016

TO: Board Members

FROM: Doug McCauley, Executive Officer

SUBJECT: Monthly Report

The following information is provided as an overview of Board activities and projects as of August 31, 2016.

ADMINISTRATIVE/MANAGEMENT

Board The Board met on July 28, 2016, via teleconference. The meetings scheduled for the remainder of the year are as follows: September 29 (Los Angeles) and December 15–16 (Sacramento). The December meeting will include a Strategic Planning session. See the Calendar of Events at the end of this report for other upcoming meetings.

BreEZe The Department of Consumer Affairs (DCA) has been working with Accenture, LLP to design, configure, and implement an integrated, enterprise-wide enforcement case management and licensing system called BreEZe. This system supports DCA's highest priority initiatives of job creation and consumer protection by replacing aging legacy business systems with an industry-proven software solution that utilizes current technologies to facilitate increased efficiencies for DCA board and bureau licensing and enforcement programs. More specifically, BreEZe supports applicant tracking, licensing, license renewal, enforcement, monitoring, cashiering, and data management capabilities. Additionally, the system is web-based which allows the public to file complaints and search licensee information and complaint status via the Internet. It also allows applicants and licensees to submit applications, license renewals, and make payments online. BreEZe is being deployed department-wide via three separate releases. Release 1 was implemented on October 9, 2013; Release 2 was implemented on January 19, 2016; and Release 3 is planned to begin development in 2016. The Board is currently part of Release 3. The State Auditor recommended that DCA conduct a cost-benefit analysis for Release 3 boards and bureaus.

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Absent any contrary finding in that analysis, DCA plans to bring the remaining boards and bureaus into BreEZe, but likely will do so in smaller groups. Additionally, DCA is collaborating with the Release 3 boards and bureaus and the California Department of Technology in preparing a project plan for the remaining boards and bureaus. A Project Approval Lifecycle Framework outlining four stages (business analyis, alternative analysis, solution development, and project readiness and approval), was provided to Executive Officers and board presidents on September 7, 2016. DCA will conduct a formal cost benefit analysis. Part of this formal evaluation includes a gap analysis of all existing BreEZe functionality as delivered at the completion of Release 2, in comparison to the Release 3 boards and bureaus' business needs and current systems' functionality. The cost benefit analysis/feasibility study will determine the strategy to be utilized; and, whether a vendor, state staff, or a combination thereof will be implementing Release 3.

Budget Staff is scheduled to meet with the DCA Budget Office on September 27, 2016, to reassess the Board's fund condition related to a Strategic Plan objective assigned to the Board's Executive Committee to analyze the fees to determine whether they are appropriate. An update will be provided to the Executive Committee at its December 1, 2016, meeting.

Communications Committee The next Communications Committee meeting is scheduled for November 10, 2016, in Sacramento.

Executive Committee The next Executive Committee meeting is scheduled for December 1, 2016, via teleconference.

Legislation Senate Bill (SB) 1132 (Galgiani) [Architect-in-Training] is an American Institute of Architects, California Council (AIACC) proposal to create and define a special title for candidates for licensure. Specifically, it would create the "architect-in-training" title for a person who has received Board confirmation of eligibility for the Architect Registration Examination (ARE) and is employed under the direct supervision of an architect. At its July 28, 2016, Board meeting, the Board voted to support SB 1132 if amended with proposed language to, instead, require enrollment in the Architectural Experience Program (AXP) to use the architect-in-training title. The bill was subsequently amended to include the Board's amendments. SB 1132 has been ordered to engrossing and enrolling, and will be presented to the Governor.

SB 1195 (Hill) [Board Actions: Competitive Impact] would grant the DCA Director authority to review any board decision or other action to determine whether it unreasonably restrains trade. This bill is the Legislature's response the North Carolina Dental Board v. Federal Trade Commission case. This case is regarding antitrust immunity for boards, and a key component in the holding is whether there is sufficient "active state supervision" of board actions. This bill addresses that issue by expanding the Director's authority and specifying the elements for the reviews. The Director's review would assess whether the action or decision reflects a clearly articulated and affirmatively expressed state law, and is the result of the board's exercise of ministerial or discretionary judgment. In addition, Director would assess whether the anticompetitive effects of the action or decision are clearly outweighed by the benefit to the public. SB 1195 has been in the Senate inactive file since June 2, 2016.

SB 1479 [Business, Professions and Economic Development (BP&ED)] [Exam Eligibility] contains the Board-sponsored amendment which clarifies language regarding integrated degree programs that was added to the Architects Practice Act (Act) via the Sunset Review bill last year. The bill updates BPC 5550.2, which permits the Board to grant early eligibility to take the ARE for students enrolled in a National Council of Architectural Registration Boards (NCARB)-accepted integrated degree program. SB 1479 has been ordered to engrossing and enrolling, and will be presented to the Governor.

BPC 5536.22 (Written Contract) is a proposal submitted by the Board to BP&ED for possible inclusion in an omnibus bill. The amendment to BPC 5536.22 seeks to clarify that the following elements are needed in architects' written contracts with clients for professional services: 1) a description of the project; 2) the project address; and 3) a description of the procedure to accommodate contract changes. BP&ED staff determined that this proposal is substantive and, as such, will need to be included in another bill. At its April 28, 2016, meeting, the Regulatory and Enforcement Committee (REC) accepted staff's recommendation to also include: 1) a statement identifying the ownership and/or reuse of documents prepared by the architect; and 2) a notification to the client that the architect is licensed by the Board, in the amendment to BPC 5536.22. Staff are currently developing proposed language for BPC 5536.22 to include these two additional elements, which will be presented to the REC for consideration at its next meeting in the fall.

Liaison Program Liaisons last provided reports at the March 3, 2016, Board meeting on assigned organizations and schools that were not reported on at the December 10, 2015, Board meeting. The next liaison reports are scheduled for the September 29, 2016, Board meeting; reminders were sent to the liaisons on July 27, 2016.

Newsletter A special edition of *California Architects* newsletter was published August 4, 2016. The next issue is scheduled for publication in September.

Personnel Recruitment efforts are underway to fill the half-time Office Technician position in the Enforcement Unit.

Training The following employees have been scheduled to participate in upcoming training:

9/8/2016	DCA Retirement Workshop (Lily Hudson, Janine, Greg, Sonja, and Peter)
9/13-15/16	Rulemaking Under the California Administrative Procedures Act (Greg)
9/20/16	New Employee Orientation (Alicia)
9/20/16	Excel 2010 Level 1 (Cecilia and Jared)
9/21/16	Dealing with Difficult People (Janine, Cecilia and Jared)
10/11/16	Excel Pivot Table (Jeff, Tim, Greg, Gabe and Wayne)
10/12/16	Outlook 2010 (Jared)
10/13/16	Interviewing Techniques (Alicia, Kristin, and Wayne)
10/19/16	Resolving Conflict at Work (Cecilia and Gabe)
10/19/16	Excel 2010 Level 2 (Cecilia, Jared, and Wayne)

Twitter The Board currently has 962 followers, up from 731 followers this time one year ago.

Website In August, the Board's website was updated to include a special edition of *California Architects* newsletter and a building department resource for consumers which includes links to every California county and incorporated city.

EXAMINATION AND LICENSING PROGRAMS

Architect Registration Examination (ARE) The results for ARE divisions taken by California candidates between July 1, 2016, and July 31, 2016, are available immediately below.

DIVISION	NUMBER OF DIVISIONS	TOTAL PASSED		TOTAL FAILED	
		# Divisions	Passed	# Divisions	Failed
Building Design & Construction Systems	77	43	56%	34	44%
Building Systems	70	37	53%	33	47%
Construction Documents & Services	176	84	48%	92	52%
Programming, Planning, & Practice	131	60	46%	71	54%
Schematic Design	41	26	63%	15	37%
Site Planning & Design	120	65	54%	55	46%
Structural Systems	66	38	58%	28	42%

The results for ARE divisions taken by California candidates compared to all NCARB candidates for 2015 are shown below:

2015

DIVISION	CALIFORNIA CANDIDATES			ALL NCARB CANDIDATES			DIFFERENCE
	Total	Passed	%	Total	Passed	%	
Programming, Planning & Practice	1,127	650	58%	7,099	4,524	64%	-6%
Site Planning & Design	998	628	63%	6,493	4,345	67%	-4%

Building Design & Construction Systems	1,506	805	53%	9,588	5,594	58%	-5%
Structural Systems	1,325	768	58%	8,822	5,284	60%	-2%
Building Systems	1,083	760	70%	6,424	4,949	77%	-7%
Construction Documents & Services	1,363	789	58%	7,816	5,163	66%	-8%
Schematic Design	883	585	66%	6,173	4,087	66%	0%

ARE 5.0 Approved by the NCARB Board of Directors in June 2013, ARE 5.0 (the latest version of the ARE) will be launching on November 1, 2016, and consist of six standalone divisions that more closely align with current architectural practice and technology.

Each ARE 5.0 division will continue using multiple-choice, check-all-that-apply, and quantitative fill-in-the-blank item types, but will also add hot spot and drag-and-place item types and case studies to replace the graphic vignettes. NCARB stated that the new item types allow for testing at higher levels of cognition through analytical, synthetic, and evaluative exercises — which will be more like what an architect does as part of regular practice. A series of short videos for the new item types is available for viewing on YouTube.

In late August 2016 NCARB released the *Architect Registration Examination 5.0 Guidelines*, which was followed on September 8, 2016 by the *ARE 5.0 Handbook*. These guidelines and handbook contain all the pertinent information candidates will need to take the ARE. Board staff is continuing to monitor NCARB communications for the latest information regarding ARE 5.0.

California Supplemental Examination (CSE) CSE development is an ongoing process. The Intra-Agency Contract Agreement (IAC) with the Office of Professional Examination Services (OPES) for examination development expires on June 30, 2017. Development of the CSE based upon the 2014 CSE Test Plan will commence in late 2016.

CSE Results: In August, the computer-delivered CSE was administered to 48 candidates, of which 32 (67%) passed and 16 (33%) failed. The CSE has been administered to 119 candidates during FY 2016/2017, of which 85 (71%) passed and 34 (29%) failed. During FY 2015-2016, the computer-delivered CSE was administered to 976 candidates, of which 661 (68%) passed, and 315 (32%) failed.

NCARB Architectural Experience Program On June 29, 2016, NCARB, as part of an industry-wide push to retire the term "intern," renamed its Intern Development Program the AXP. NCARB also implemented the last phase of its two-part alignment/streamline process. Now AXP requires candidates to document 3,740 hours in 6 simplified areas that cover all phases of architectural practice rather than the former 17 experience areas. NCARB also overhauled the experience settings and eliminated Setting S with the release of the new AXP Guidelines.

NCARB Integrated Path to Architectural Licensure (IPAL) In September 2013, NCARB convened its Licensure Task Force to explore potential avenues to licensure by analyzing the

essential components (education, experience, and examination) and determining where efficiencies can be realized in order to streamline the process. NCARB formally announced its endorsement for the concept of integrated programs on May 30, 2014.

At the Board's March 12, 2015, meeting, Woodbury University and NewSchool of Architecture & Design (NSAD) provided the Board with detailed presentations that explained their respective integrated approach. Then on August 31, 2015, NCARB announced the names of the first 13 National Architectural Accrediting Board (NAAB) accredited programs accepted to participate in the IPAL. Three of the accepted programs are in California (NSAD, University of Southern California, and Woodbury University).

NCARB also established a new Integrated Path Evaluation Committee (IPEC) to oversee the ongoing work of this initiative. The IPEC will coach accepted programs, promote engagement with state boards regarding the necessary statutory or regulatory changes to incorporate integrated path candidates, and oversee the acceptance of future programs. On November 5, 2015, the University of Kansas in Lawrence was added to the list of IPAL accepted schools.

At its December 10, 2015, meeting, the Board was asked to consider granting early ARE eligibility to students enrolled in any NAAB-accredited program. The Board expressed its intent to monitor the performance of IPAL programs prior to making any decision with respect to extending early eligibility to other accredited programs.On January 1, 2016, BPC 5550.2 became operative and authorizes the Board to grant candidates enrolled in an IPAL program early eligibility to take the ARE. The Board subsequently sponsored an amendment (contained within SB 1479) to clarify the language of BPC 5550.2. SB 1479 has been ordered to engrossing and enrolling, and will be presented to the Governor.

During the Board's March 3, 2016, meeting, each of the three California NCARB-accepted schools provided an update on their respective approach to integration. On June 17, 2016, NCARB announced four additional programs that have been accepted to join the original cohort, including a second Woodbury University program in California.

Professional Qualifications Committee (PQC) The next PQC meeting has not yet been scheduled.

Regulation Amendments *California Code of Regulations (CCR) Section CCR 118.5 (Examination Transfer Credit) and 119.8 (Examination Transition Plan - ARE 4.0 to ARE 5.0)* – In early 2013, the NCARB BOD voted unanimously to approve the development of ARE 5.0, the next version of the examination. In May 2014, NCARB released information about the transition from ARE 4.0 to ARE 5.0. Additionally, NCARB is making some adjustments, such as the dual delivery of ARE 4.0 and ARE 5.0 for at least 18 months, and the option for candidates to "self-transition" to ARE 5.0. Staff developed proposed regulatory language to amend CCR 118.5 to allow transfer credit for those passed ARE divisions, and add CCR 119.8 to allow candidates to transition to and obtain credit for ARE 5.0. The Board approved the proposed regulatory language to amend CCR 118.5 and add CCR 119.8 at its September 10, 2015, meeting and delegated authority to the Executive Officer (EO) to adopt the regulations, provided no adverse

comments are received during the public comment period, and, if needed, to make minor technical or non-substantive changes.

Following is a chronology, to date, of the processing of the Board's regulatory proposal for CCR 118.5 and 119.8:

September 10, 2015	Proposed regulatory language approved by the Board
September 22, 2015	Notice of Proposed Changes in the Regulations submitted to Office of Administrative Law (OAL)
October 2, 2015	Notice of Proposed Changes in the Regulations published by OAL
November 16, 2015	Public hearing, no comments received
December 9, 2015	Final rulemaking file submitted to DCA Legal Office and Division of Legislative and Policy Review
May 6, 2016	Final rulemaking file submitted to Agency for approval
June 16, 2016	Final rulemaking file approved by Agency
June 26, 2016	Final rulemaking file submitted to Division of Finance (DOF)
August 19, 2016	Final rulemaking file approved by DOF
August 26, 2016	Final rulemaking file submitted to OAL for approval

CCR 109 (Filing of Applications) - NCARB released a new edition of the *IDP Guidelines* which implements the first phase of the overhaul. Specifically, this requires interns to only document the core hour requirement to complete the program. This reduces the total length of the required experience from 5,600 hours to 3,740. Staff developed proposed regulatory language to amend CCR 109 to reflect the new edition of the guidelines. The Board approved the proposed regulatory language at its September 10, 2015, meeting and delegated authority to the EO to adopt the regulation, provided no adverse comments are received during the public comment period, and, if needed, to make minor technical or non-substantive changes.

Following is a chronology, to date, of the processing of the Board's regulatory proposal for CCR 109:

September 10, 2015	Proposed regulatory language approved by the Board
September 29, 2015	Notice of Proposed Changes in the Regulations submitted to OAL
October 9, 2015	Notice of Proposed Changes in the Regulations published by OAL
November 23, 2015	Public hearing, no comments received
December 23, 2015	Final rulemaking file submitted to DCA Legal Office and Division of Legislative and Policy Review
April 20, 2016	Final rulemaking file submitted to Agency for approval
May 19, 2016	Final rulemaking file approved by Agency
May 24, 2016	Final rulemaking file submitted to OAL for approval
June 16, 2016	Final rulemaking file approved by OAL
October 1, 2016	Effective date of regulatory change

ENFORCEMENT PROGRAM

Architect Consultants Building Official Contact Program: Architect consultants were available on-call to Building Officials in August when they received six telephone, email, and/or personal contacts. These types of contacts generally include discussions regarding the Board's policies and interpretations of the Act, stamp and signature requirements, and scope of architectural practice.

Education/Information Program: Architect consultants are the primary source for responses to technical and/or practice-related questions from the public and licensees. In August, there were 23 telephone and/or email contacts requesting information, advice, and/or direction. Licensees accounted for six of the contacts and included inquiries regarding written contract requirements, out-of-state licensees seeking to do business in California, scope of practice relative to engineering disciplines, and questions about stamp and signature requirements.

One of the architect consultant contracts expires on January 31, 2017. Staff prepared a Request for Proposal (RFP) for consultant services for three years (February 1, 2017 through January 31, 2020) and submitted it to DCA's Contracts Unit for review on August 23, 2016. Once the RFP is released, it will be advertised on the Internet under the State Contracts Register. The proposals received in response to the RFP will be evaluated and scored through a two-phase process. The second phase of the evaluations includes an oral interview.

Enforcement Actions

Robert E. Burkhart (Aptos) The Board issued a one-count modified citation that included a $250 administrative fine to Burkhart, architect license number C-29991, for alleged violations of BPC 5536.22(a)(3) and (5) (Written Contract). The action alleged that Burkhart failed to include his architect license number and a description of the procedure to be used by either party to terminate the contract in his written contracts to provide preliminary design drawings and permit-construction drawings for a project located in Boulder Creek, California, and failed to execute the contract for permit-construction drawings prior to commencing that work. Burkhart paid the fine, satisfying the citation. The citation became final on July 14, 2016.

Robert York Crockett (Beverly Hills) The Board issued a one-count citation that included a $1,000 administrative fine to Crockett, architect license number C-19399, for an alleged violation of BPC 5536(a) (Practice Without License or Holding Self Out as Architect). The action alleged that while Crockett's license was expired, he executed an "AIA Document B155 Standard Form of Agreement Between Owner and Architect for a Small Project." The Agreement contained the words "Architect" and "Architectural" and Crockett was listed as the "Architect." He also signed his name on the signature line under the heading, "Architect." Crockett paid the fine, satisfying the citation. The citation became final on July 28, 2016.

Christopher Thanh Ngo (Garden Grove) The Board issued a three-count citation that included a $3,000 administrative fine to Ngo, dba C.T.N. Design Group, an unlicensed individual, for alleged violations of BPC 5536(a) (Practice Without License or Holding Self Out as Architect). The action alleged that on or about April 26, 2014, Ngo provided an agreement to his client offering layout site plans, floor plans, and elevations for a residential project located in

Rosemead, California. The agreement included "Architectural Plans" and "Architectural Details" as part of the services Ngo would provide. On or about July 24, 2014, Ngo provided a contract to another client offering layout site plans, floor plans, and elevations for a residential project located in Temple City, California. The contract included "Architectural back checks" and an "Architectural plan" as part of the services Ngo would provide and contained the term "Architecture" under the "Liability/Responsibility" clause. On or about August 27, 2015, Ngo provided a business card and an agreement to a third client offering layout site plans, floor plans, and elevations for a residential project located in Topanga, California. The business card contained the term "Architectural" and the agreement included "Architectural Plans" as part of the services Ngo would provide. The citation became final on July 21, 2016.

Oscar M. Sanchez (Lakewood) The Board issued a one-count citation that included a $1,000 administrative fine to Sanchez, dba Ideal Designs, an unlicensed individual, for alleged violations of BPC 5536(a) (Practice Without License or Holding Self Out as Architect). The action alleged that Sanchez' company, Ideal Designs, initiated an agreement with his client offering to provide architectural drawings for an existing property to be subdivided into two properties located in or around Long Beach, California. The agreement included "Architectural drawings" and "Architectural Details" as part of the services Sanchez would provide. In addition, on or about June 1, 2016, the Internet revealed that Sanchez was listed on the website linkedin.com under the "Architecture & Planning" category and was identified as an "Architect." Sanchez' company, Ideal Designs, was listed on the website yelp.com under the "Architects" category. Sanchez identified himself as an "architect" in an interview and listed his contact email as "oscararchitect_id@yahoo.com" on the website beachbusinesscenter.com. Sanchez was also identified as a "local architect" and stated that he has a "decade working in architecture" on the website womensinvestclub.com. The citation became final on July 20, 2016.

Michael Song (Long Beach) The Board issued a one-count citation that included a $750 administrative fine to Song, architect license number C-32566, for an alleged violation of BPC 5600.05(b) (License Renewal Process; Audit; False or Misleading Information on Coursework on Disability Access Requirements). The action alleged that Song failed to maintain records of completion of the required coursework for two years from the date of license renewal and failed to make those records available to the Board for auditing upon request. The citation became final on July 13, 2016.

Earle Edward Weiss (Mill Valley) The Board issued a three-count citation that included a $1,500 administrative fine to Weiss, architect license number C-22416, for alleged violations of BPC 5536(a) (Practice Without License or Holding Self Out as Architect), 5536.22(a)(5) (Written Contract), and 5584 (Negligence). The action alleged that while Weiss' license was expired, he executed a written contract to remodel an existing convent in San Francisco, California. The contract was on "E.E. Weiss Architects, Inc." letterhead, described the "Proposed Architectural Services" to be performed, contained the words "Architectural" and "Architect(s)" throughout, included Weiss' signature next to the title "Architect," and did not contain a termination clause. Weiss also failed to confirm the height of an existing entry deck to the convent, thereby designing a ramp that would not satisfy accessibility design standards. The citation became final on July 14, 2016.

Enforcement Statistics	Current Month August 2016	Prior Month July 2016	FYTD 2016-17	5-FY Avg 2011-12-2015-16
Complaints				
Received/Opened (Reopened):	22 (0)	23 (0)	45 (0)	295 (3)
Closed:	32	23	55	303
Average Days to Close:	158 days	130 days	146 days	130 days
Pending:*	72	82	77	106
Average Age of Pending:*	142 days	156 days	149 days	164 days
Citations				
Issued:	3	1	4	40
Pending:*	13	11	12	11
Pending AG:* †	7	6	7	3
Final:	1	6	7	36
Disciplinary Actions				
Pending AG:*	5	4	5	3
Pending DA:*	0	0	0	2
Final:	0	2	2	2
Continuing Education (§5600.05)**				
Received/Opened:	3	0	3	68
Closed:	0	0	0	68
Pending:*	4	1	3	26
Settlement Reports (§5588)**				
Received/Opened:	2	3	5	29
Closed:	2	1	3	35
Pending:*	11	11	11	11

* *FYTD data is presented as a monthly average of pending cases.*
** *Also included within "Complaints" information.*
† *Also included within "Pending Citations."*

Most Common Violations The majority of complaints received are filed by consumers for allegations such as unlicensed practice, professional misconduct, negligence, and contract violations, or initiated by the Board upon the failure of a coursework audit.

During FY 2016-17 (as of August 31, 2016) 7 citations with administrative fines became final with 14 violations of the provisions of the Act and/or Board regulations. Below are the most common violations that have resulted in enforcement action during the current FY:

- BPC 5536(a) and/or (b) - Practice Without License or Holding Self Out as Architect [42.8%]
- BPC 5536.22(a) - Written Contract [14.4%]
- BPC 5579 - Fraud in Obtaining License [7.1%]
- BPC 5584 - Negligence or Willful Misconduct [7.1%]
- BPC 5586 - Disciplinary Action by a Public Agency [7.1%]
- BPC 5600.05(a)(1) and/or (b) - License Renewal Process; Audit; False or Misleading Information on Coursework on Disability Access Requirements [7.1%]
- Other Violations [14.4%]

Regulation Amendments *CCR 154 (Disciplinary Guidelines)* - The Board's 2013 and 2014 Strategic Plans included an objective to review and update the Board's *Disciplinary Guidelines*. The REC reviewed recommended updates to the Board's *Disciplinary Guidelines* in 2013 and 2014. Additionally, at the request of the REC, staff consulted with a representative of AIACC to address a proposed modification to the "Obey All Laws" condition of probation. The representative concurred with the revision and indicated that there was no issue with the proposal. Staff then consulted with the REC Chair who agreed to provide the *Disciplinary Guidelines* with recommended revisions to the Board for consideration at its December 2014 meeting due to the target date established for the Strategic Plan objective. At its December 2014 meeting, the Board approved the proposed revisions to the *Disciplinary Guidelines* and authorized staff to proceed with a regulatory proposal to amend CCR 154 in order to incorporate the revised *Disciplinary Guidelines* by reference. Staff prepared the required regulatory documents for the Board's review and approval at its June 10, 2015, meeting. The Board approved the proposed regulatory language to amend CCR 154 at its June 10, 2015, meeting and delegated the authority to the EO to adopt the regulation, provided no adverse comments are received during the public comment period, and to make minor technical or non-substantive changes, if needed.

At its August 6, 2015 meeting, the Landscape Architects Technical Committee (LATC) reviewed recommended updates to LATC's *Disciplinary Guidelines* based on the revisions made to the Board's *Guidelines*. Following the meeting, legal counsel advised LATC staff that additional research may be necessary regarding Optional Conditions 9 (CSE) and 10 (Written Examination) in LATC's *Guidelines*. LATC staff subsequently discussed the issues regarding Optional Conditions 9 and 10 with legal counsel on September 30, 2015. Board staff reviewed legal counsel's comments as they relate to the Board's *Disciplinary Guidelines*, and determined the Board's *Guidelines* would also need to be amended. On October 21, 2015 Board and LATC staff sent proposed edits to these conditions to legal counsel for review. Legal counsel notified Board and LATC staff on November 12, 2015, that the proposed edits were acceptable, but substantive, and would require approval by the Board.

On November 25, 2015, legal counsel further advised staff to include the current version of the Board's Quarterly Report of Compliance form (1/11) as "Attachment A" in the Board's *Disciplinary Guidelines*, as this method was previously approved by OAL for the 2000 edition of the *Guidelines*. At its December 10, 2015, meeting, the Board reviewed and approved the additional recommended revisions to the Board's *Disciplinary Guidelines* and the proposed regulation to amend CCR 154, and delegated the authority to the EO to adopt the regulation, provided no adverse comments are received during the public comment period, and to make minor technical or non-substantive changes to the language, if needed. Staff prepared the proposed regulatory package for DCA legal counsel's review and approval on March 15, 2016. On April 8, 2016, legal counsel advised staff that further substantive changes were necessary prior to submission to OAL. Staff is currently developing recommended revisions to the *Guidelines* in response to legal counsel's concerns, and will present those revisions to the REC for review and consideration at its next meeting in the fall.

Regulatory and Enforcement Committee (REC) The next REC meeting is planned for the fall.

LANDSCAPE ARCHITECTS TECHNICAL COMMITTEE (LATC)

LATC ADMINISTRATIVE/MANAGEMENT

Committee The next LATC meeting is scheduled for October 12, 2016, at Woodbury University in San Diego.

Training The following employees have been scheduled to participate in upcoming training:

9/13/16-9/15/16	OAL Rulemaking (Tremaine)
9/20/16	Excel 2010 – Level 1 (Stacy)
9/21/16	Dealing with Difficult People (Kourtney)
9/27/16	Concur Travel (Stacy)
10/5/16	Non-IT Contracts (Stacy)
10/11/16	Excel Pivot Table (Kourtney and Matt)
10/19/16	Excel 2010 – Level 2 (Stacy)
10/26/16	Word 2010 – Level 1 (Stacy)
12/6/16	Word 2010 – Level 2 (Stacy)
12/20/16	Research, Analysis and Problem Solving (Tremaine)

Website In August, staff published the updated "Licensee Search" lists and proposed regulatory change to CCR 2615 (Form of Examinations) to the website.

LATC EXAMINATION PROGRAM

California Supplemental Examination (CSE) BPC 139 requires that an Occupational Analysis (OA) be conducted every five to seven years. An OA was completed by OPES for the LATC in 2014. The Test Plan developed from the 2014 OA is being used during content development of the CSE. The CSE development is based on an ongoing analysis of current CSE performance and evaluation of examination development needs. The prior IAC with OPES for examination development expired on June 30, 2016. Staff worked with OPES on the development of a new IAC for FY 2016/17, which was approved by the Committee at its May 24, 2016, meeting. Upon execution of the IAC with OPES, the LATC began recruiting subject matter experts to participate in examination development workshops to focus on item writing and examination construction. Monthly examination development workshops began on August 25, 2016 and will conclude on December 2, 2016.

Landscape Architect Registration Examination (LARE) The most recent LARE administration was held on August 1-13, 2016. The next LARE administration will be held on December 5-17, 2016, and the candidate application deadline is October 21, 2016. Test results are released five-six weeks following the last day of administration.

Regulation Amendments *CCR 2615 (Form of Examinations) – Reciprocity Requirements* - At its meeting on February 10, 2015, LATC directed staff to draft proposed regulatory language to specifically state that California allows reciprocity to individuals who are licensed in another jurisdiction, have ten years of practice experience, and have passed the CSE. At the LATC

meeting on November 17, 2015, the Committee approved proposed amendments to CCR 2615(c)(1), and recommended that the Board authorize LATC to proceed with a regulatory change. At its December 10, 2015, meeting, the Board approved the regulatory changes and delegated authority to the EO to adopt the corresponding regulations to amend CCR 2615 provided no adverse comments are received during the public comment period and make minor technical or non-substantive changes to the language, if needed.

Following is a chronology, to date, of the processing of LATC's regulatory proposal for CCR 2615:

November 17, 2015	Proposed regulatory language approved by the LATC
December 10, 2015	Proposed regulatory language approved by the Board
August 2, 2016	Notice of Proposed Changes in the Regulations submitted to OAL
August 12, 2016	Notice of Proposed Changes in the Regulations published by OAL
September 27, 2016	Public hearing scheduled

CCR 2620(a)(13), Expand Eligibility Requirements to Allow Credit for Teaching Under a Licensed Landscape Architect – At the LATC meeting on February 10, 2015, the Committee agreed that up to one year of experience/training credits should be granted for teaching under the supervision of a licensed landscape architect. At the May 13, 2015, LATC meeting, the Committee approved the proposed language to amend CCR section 2620 by adding subsection (a)(13) which provides one year of teaching credit under the supervision of a landscape architect in a degree program as specified in CCR 2620(a)(1), (2), and (4). At the August 6, 2015, LATC meeting, the Committee recommended that the Board authorize LATC to proceed with a regulatory change. At its September 10, 2015, meeting, the Board approved the regulatory changes and delegated authority to the EO to adopt the regulation to amend CCR 2620 provided no adverse comments are received during the public comment period and make minor technical or non-substantive changes to the language, if needed.

Following is a chronology, to date, of the processing of LATC's regulatory proposal for CCR 2620:

August 6, 2015	Proposed regulatory language approved by the LATC
September 10, 2015	Proposed regulatory language approved by the Board
October 9, 2015	Notice of Proposed Changes in the Regulations published by OAL
November 30, 2015	Public hearing, no comments received
March 24, 2016	Final rulemaking file submitted to DCA Legal Office and Division of Legislative and Policy Review
June 10, 2016	Final rulemaking file submitted to Agency for approval
July 25, 2016	Final rulemaking file approved by Agency
August 2, 2016	Final rulemaking file submitted to OAL for approval

CCR 2620.5 (Requirements for an Approved Extension Certificate Program) – LATC established the original requirements for an approved extension certificate program based on university accreditation standards from the Landscape Architectural Accreditation Board (LAAB). These requirements are outlined in CCR 2620.5. In 2009, LAAB implemented changes to their university accreditation standards. Prompted by the changes made by LAAB,

LATC drafted updated requirements for an approved extension certificate program and recommended that the Board authorize LATC to proceed with a regulatory change. At the December 15-16, 2010, Board meeting, the Board approved the regulatory change and delegated authority to the EO to adopt the regulations to amend CCR 2620.5 provided no adverse comments are received during the public comment period and make minor technical or non-substantive changes to the language, if needed. The regulatory proposal to amend CCR 2620.5 was published by the OAL on June 22, 2012.

In 2012, the LATC appointed the University of California Extension Certificate Program Task Force, which was charged with developing procedures for the review of the extension certificate programs, and conducting reviews of the programs utilizing the new procedures. The Task Force held meetings on June 27, 2012, October 8, 2012, and November 2, 2012. As a result of these meetings, the Task Force recommended additional modifications to CCR 2620.5 to further update the regulatory language with LAAB guidelines and LATC goals. At the November 14, 2012, LATC meeting, LATC approved the Task Force's recommended modifications to CCR 2620.5, with an additional edit. At the January 24-25, 2013, LATC meeting, LATC reviewed public comments regarding the proposed changes to CCR 2620.5 and agreed to remove a few proposed modifications to the language to address the public comments. The Board approved adoption of the modified language for CCR 2620.5 at their March 7, 2013, meeting.

On July 17, 2013, a Decision of Disapproval of Regulatory Action was issued by OAL. The disapproval was based on OAL's determination that the regulatory package did not meet the necessity standard of Government Code section 11349.1, subdivision (a)(1). Government Code section 11349, subdivision (a) defines "necessity" as demonstrating the need for the regulatory change through evidence not limited to facts, studies, and expert opinion. Based on OAL's disapproval, staff worked with DCA legal counsel and the Task Force Chair to refine the proposed language and identify appropriate justification that would meet OAL's requirements.

In May 2014, the LATC Special Projects Analyst prepared draft language for CCR 2620.5 incorporating legal counsel's recommendation that regulatory language be added to address the application, approval, denial, and annual review processes. On December 8, 2014, staff was advised by LAAB that the accreditation standards are scheduled to be reviewed and updated beginning with draft proposals in the spring of 2015. LAAB anticipated adopting new standards in early 2016. On December 30, 2014 staff met with the Task Force Chair to discuss proposed changes to CCR 2620.5 and the probability that new LAAB accreditation standards will be implemented in 2016. Staff also met with DCA legal counsel on January 14, 2015 to discuss justifications to proposed changes and again on January 28, 2015 to further review edits and justifications.

Proposed regulatory language was presented to the LATC at its February 10-11, 2015 meeting. At this meeting, the Committee approved the appointment of a new working group to assist staff in substantiating recommended standards and procedures in order to obtain OAL approval. Linda Gates and Christine Anderson, former LATC members and University of California extension program reviewers, were appointed to the working group.

On June 5, 2015, LAAB confirmed that they are in the process of updating their Standards and Procedures for the Accreditation of Landscape Architecture Programs. The process included a public call for input and commentary that took place in the fall of 2014. LAAB met in the summer of 2015 to draft revisions to the Standards. In the fall of 2015, additional public input and comments were received.

On October 8, 2015, LATC received a copy of LAAB's proposed revisions which included several suggested changes to curriculum requirements. LATC staff began incorporating the proposed changes and drafting new proposed language that included many of LATC's previously submitted modifications to CCR 2620.5. LAAB implemented its new Accreditation Standards and Procedures in March 2016, which identified a few additional changes to curriculum requirements that staff is incorporating into the proposed amendments to CCR 2620.5. LATC's working group will review the new Standards and Procedures and provide sufficient justification to meet OAL requirements and Government Code sections 11349 and 11349.1 which will be presented for consideration to the LATC.

Following is a chronology, to date, of the processing of LATC's regulatory proposal for CCR 2620.5:

November 22, 2010	Proposed regulatory language approved by LATC
December 15, 2010	Proposed regulatory language approved by Board
June 22, 2012	Notice of Proposed Changes in the Regulations published by OAL (Notice re-published to allow time to notify interested parties)
August 6, 2012	Public hearing, no public comments received
November 30, 2012	40-Day Notice of Availability of Modified Language posted on website
January 9, 2013	Written comment (one) received during 40-day period
January 24, 2013	Modified language to accommodate public comment approved by LATC
February 15, 2013	Final rulemaking file submitted to DCA's Legal Office and Division of Legislative and Policy Review
March 7, 2013	Final approval of modified language by Board
May 31, 2013	Final rulemaking file submitted to OAL for approval
July 17, 2013	Decision of Disapproval of Regulatory Action issued by OAL
August 20, 2013	LATC voted not to pursue a resubmission of rulemaking file to OAL
February 21, 2014	Staff worked with Task Force Chair to draft justifications for proposed changes
February 10, 2015	LATC approved the appointment of a new working group to assist staff
October 8, 2015	LATC received LAAB's suggested revisions to curriculum requirements
March 2016	LAAB implemented its new Accreditation Standards and Procedures*

**Staff has analyzed the new standards and procedures and is researching program approval requirements to develop recommendations for consistency among various education requirements.*

Strategic Plan Objectives LATC's Strategic Plan for 2015–2016 contains numerous objectives. Below is a summary of objectives currently in-work:

Create and Disseminate Consumer's Guide - to educate the public on the differences between landscape architects, landscape contractors, and landscape designers. At its November 17, 2015, LATC meeting, staff presented to the Committee a draft of the *Consumer's Guide to Hiring a Landscape Architect,* which is based on the Board's *Consumer's Guide to Hiring an Architect.*

The Committee reviewed the guide and directed staff to continue revisions by adding information conveyed through the Department of Water Resources' Independent Technical Panel regarding water conservation measures and techniques; and a table illustrating the differences and requirements between landscape architects, designers, and contractors. Following discussion, the Committee agreed to create a subcommittee to complete revisions to the guide. At its February 10, 2016, meeting, the Committee reviewed the guide and recommended additional information regarding drought conditions and the Model Water Efficient Landscape Ordinance to be included in the guide. LATC agreed to review the revised draft at its next meeting in May to allow time for the subcommittee and staff to incorporate the recommended edits. Staff presented the revised guide to the Committee at its May 24, 2016, meeting. The Committee voted to approve the presented draft of the *Consumer's Guide to Hiring a Landscape Architect* for publication. Staff is working with DCA Publications to design and print the new guide for distribution. Completion of this task will address the Strategic Plan objective to "create and disseminate printed document(s) to educate the public on the differences between landscape architects, landscape contractors, and landscape designers."

Expand Credit for Education Experience - to include degrees in related areas of study, i.e., urban planning, environmental science or horticulture, etc., to ensure that equitable requirements for education are maintained. At the November 17, 2015, LATC meeting, the Committee directed staff to agendize this objective at its next meeting. At its meeting on February 10, 2016, the Committee agreed to table the objective until its upcoming strategic planning session.

Review Expired License Requirements (CCR 2624 and 2624.1) - to assess whether any revisions are needed to the regulations, procedures, and instructions for expired license requirements. At the August 6, 2015 LATC meeting, the Committee reviewed the procedures and expired license requirements contained in BPC 5680.2 (License Renewal – Three Years After Expiration) and CCR 2624 and 2624.1, and directed staff to assess whether the Board's procedures and requirements should be considered for use by LATC. At the November 17, 2015, LATC meeting, the Committee reviewed re-licensure requirements of various state landscape architect licensing boards and three DCA licensing boards, and directed staff to research relicensure procedures for additional state boards and agendize this objective at its next meeting. At its meeting on February 10, 2016, the Committee directed staff to draft proposed language to amend the LATC's relicensure procedures to require an individual whose license has been expired for less than five years to pay any accrued fees, and to require the holder of a license that has expired for more than five years to reapply for licensure and retake the CSE. At its meeting on May 24, 2016, the Committee voted to amend BPC 5680.2 and repeal CCR 2624 and 2624.1. Prior to the meeting, staff discovered BPC 5680.1 included language that would also need to be amended. It was noted to the Committee that BPC 5680.1 would be included when presented to the Board for its consideration. At its June 9, 2016, meeting, the Board voted to amend BPC 5680.1 and 5680.2 and repeal CCR 2624 and 2624.1. Staff worked with DCA legal counsel to draft the amendment of BPC 5680.1 and 5680.2. Once the amendments to BPC 5680.1 and 5680.2 are enacted, staff will prepare the rulemaking file to repeal CCR 2624 and 2624.1.

LATC ENFORCEMENT PROGRAM

Disciplinary Guidelines As part of the Strategic Plan established by LATC at the January 2013 meeting, LATC set an objective of collaborating with the Board in order to review and update

LATC's *Disciplinary Guidelines*. At its December 2014 meeting, the Board approved the proposed updates to their *Disciplinary Guidelines* and authorized staff to proceed with the required regulatory change in order to incorporate the revised *Disciplinary Guidelines* by reference. At its February 10, 2015, meeting, LATC approved proposed revisions to its *Disciplinary Guidelines* based on the recent Board approval for their *Guidelines*. Staff provided the revised *Disciplinary Guidelines* to the new Deputy Attorney General Liaison for review. He suggested several amendments, which staff added to the *Guidelines*. The amended *Disciplinary Guidelines* and proposed regulatory package was approved by LATC at its August 6, 2015, meeting and by the Board at their September 10, 2015, meeting.

On October 21, 2015, staff sent DCA legal counsel suggested edits to the Optional Conditions section in the *Disciplinary Guidelines* for review. DCA legal counsel notified staff on November 12, 2015, that the edited portions were sufficient and substantive, and would require approval by the Board. On November 25, 2015, DCA legal counsel further advised staff to include the current version of the Board's Quarterly Report of Compliance form (1/11) as "Attachment A" in the *Disciplinary Guidelines*. At its December 10, 2015, meeting, the Board approved the revised *Disciplinary Guidelines* and the proposed regulation to amend CCR 2680, and delegated the authority to the EO to adopt the regulation, provided no adverse comments are received during the public comment period, and to make minor technical or non-substantive changes to the language, if needed. Staff prepared the proposed regulatory package for DCA legal counsel's review and approval on March 15, 2016. On April 8, 2016, legal counsel advised staff that further substantive changes were necessary prior to submission to OAL.* Board staff is currently developing recommended revisions to the *Guidelines* in response to legal counsel's concerns, and will present those revisions to the REC for review and consideration at its next meeting in the fall. Once approved, LATC staff will update its *Guidelines* to include approved changes to be considered by the LATC.

Following is a chronology, to date, of the processing of the regulatory proposal for CCR 2680:

August 5, 2015	Proposed regulatory changes approved by LATC
September10, 2015	Proposed regulatory changes approved by Board
December 10, 2015	Proposed regulatory changes approved by Board (including DCA legal counsel recommended edits)

**Staff is working with DCA legal counsel and developing recommended revisions for the Guidelines, to be presented to the REC in the fall.*

Enforcement Statistics	Current Month August 2016	Prior Month July 2016	FYTD 2016/17	5-FY Avg 2011/12 – 2015/16
Complaints				
Received/Opened (Reopened):	1 (0)	2 (0)	3 (0)	26 (0)
Closed:	1	3	4	36
Average Days to Close:	32 days	189 days	150 days	360 days
Pending:*	7	7	7	
Average Age (Pending):*	114 days	87 days	114 days	301 days
Citations				
Issued:	0	1	1	3

Pending:*	0	1	0	2
Pending AG:* †	0	0	0	2
Final:	1	1	2	2
Disciplinary Actions				
Pending AG:*	0	1	0	1
Pending DA:*	0	0	0	0
Final:	1	1	0	1
Settlement Reports (§5678)**				
Received/Opened:	1	0	1	1
Closed:	0	2	2	1
Pending:*	2	1	2	1

* *FYTD data is presented as a monthly average of pending cases.*
** *Also included within "Complaints" information.*
† *Also included within "Pending Citations."*

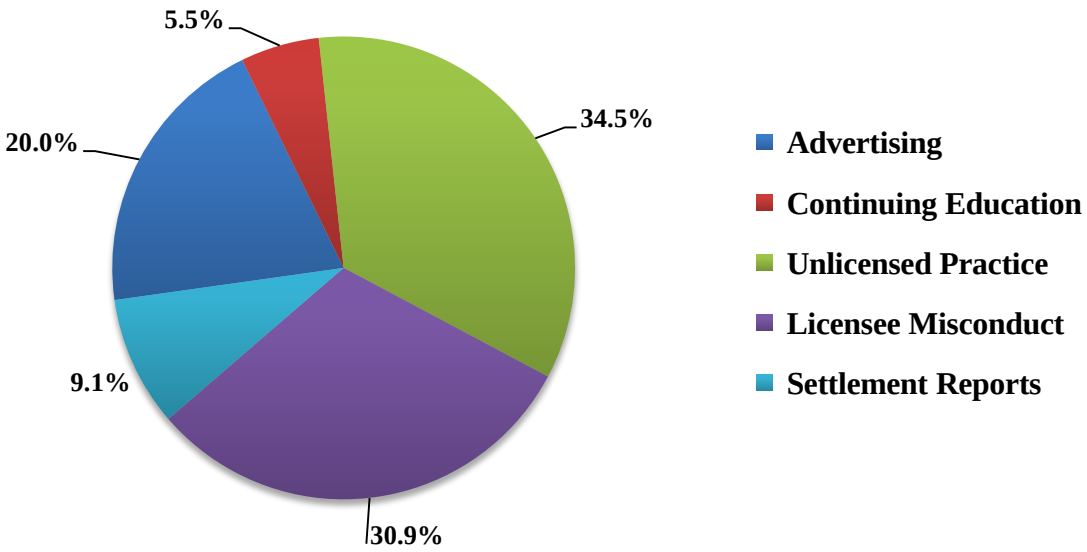
CALENDAR OF EVENTS

<u>September</u>		
5	*Labor Day*	*Office Closed*
29	Board Meeting	Los Angeles
<u>October</u>		
12	LATC Meeting	San Diego
21-24	American Society of Landscape Architects Annual Meeting	New Orleans, LA
<u>November</u>		
10	Communications Committee Meeting	Sacramento
11	*Veterans Day*	*Office Closed*
24–25	*Thanksgiving Holiday*	*Office Closed*
<u>December</u>		
1	Executive Committee Meeting	Teleconference
15–16	Board Meeting & Strategic Planning Session	Sacramento
26	*Christmas Observed*	*Office Closed*

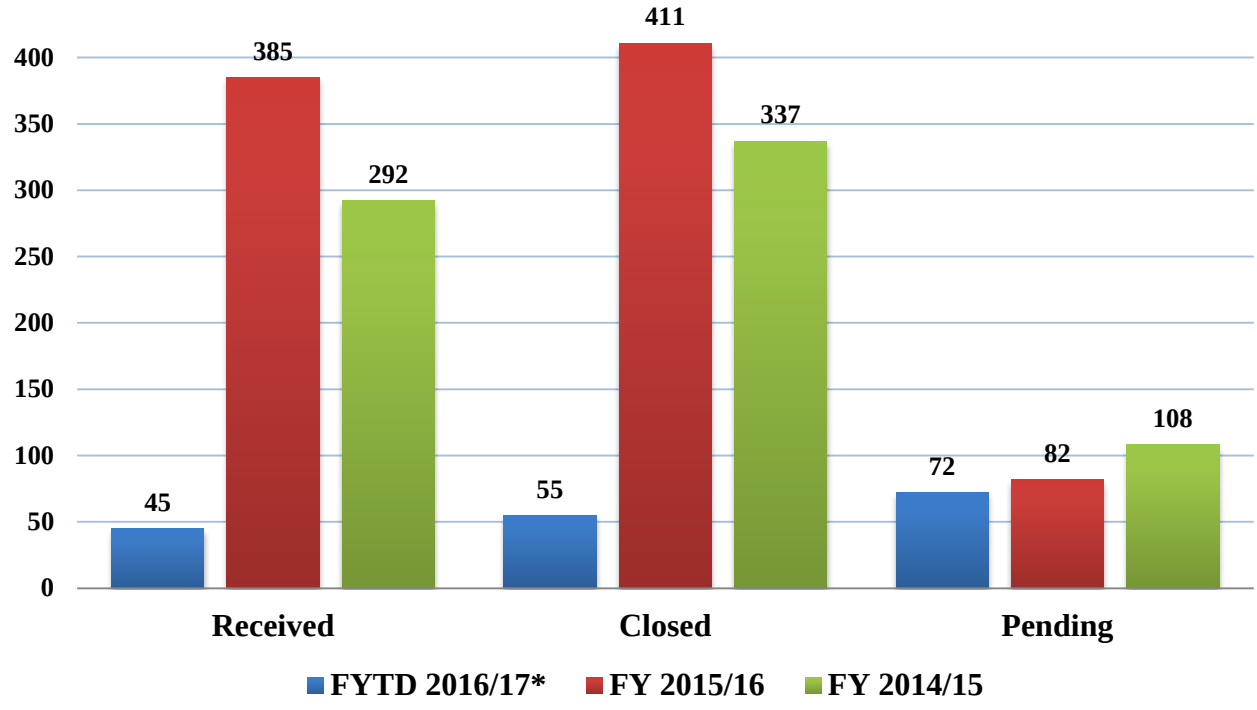
Agenda Item E.1
Attachment

ENFORCEMENT PROGRAM REPORT

Types of Complaints Received FYTD 2016/17*

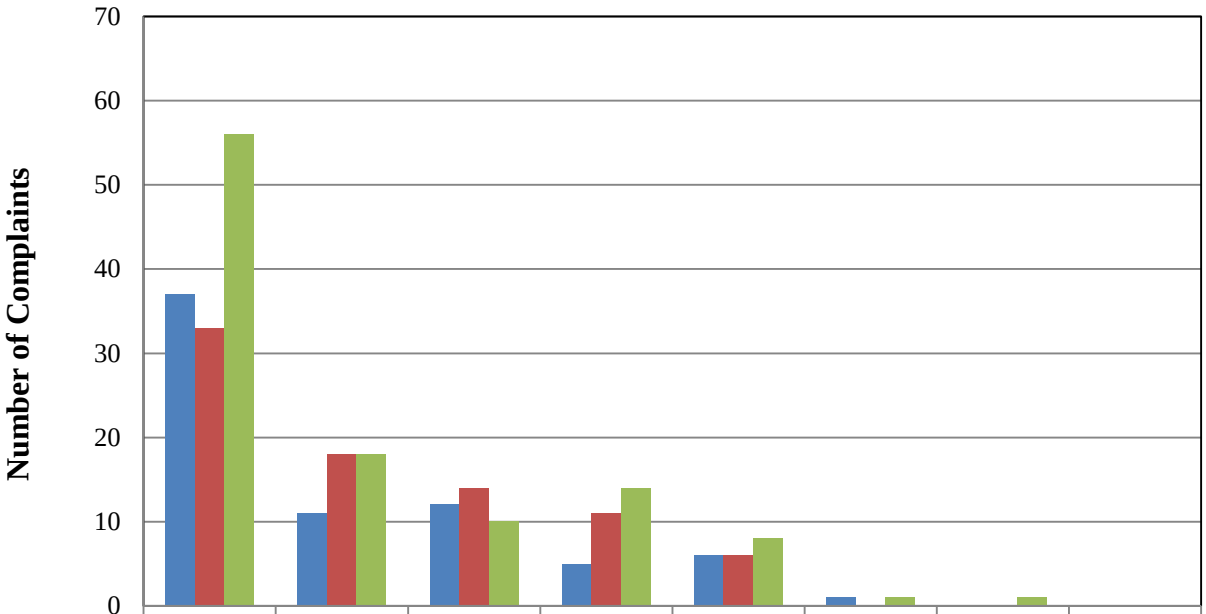


Complaints Received, Closed, and Pending by FY



* FYTD reflects data as of August 31, 2016.

Comparison of Age of Pending Complaints by FY



	0 - 90 Days	91 - 180 Days	181 - 270 Days	271 - 364 Days	1 - 2 Years	2 - 3 Years	3 - 4 Years	4+ Years
FYTD 2016/17*	37	11	12	5	6	1	0	0
FY 2015/16	33	18	14	11	6	0	0	0
FY 2014/15	56	18	10	14	8	1	1	0

* FYTD reflects data as of August 31, 2016.

Closure of Complaints by FY

Type of Closure	FYTD 2016/17*	FY 2015/16	FY 2014/15
Cease/Desist Compliance	20	56	9
Citation Issued	4	77	62
Complaint Withdrawn	2	6	2
Insufficient Evidence	0	20	13
Letter of Advisement	19	158	185
No Jurisdiction	2	14	11
No Violation	5	62	40
Referred for Disciplinary Action	1	4	6
Other (i.e., Duplicate, Mediated, etc.)	2	14	9

* FYTD reflects data as of August 31, 2016.

Disciplinary and Enforcement Actions by FY

Action	FYTD 2016/17*	FY 2015/16	FY 2014/15
Disciplinary Cases Initiated	1	4	5
Pending Disciplinary Cases	5	6	6
Final Disciplinary Orders	2	4	1
Final Citations	7	65	47
Administrative Fines Assessed	$9,500	$79,750	$78,000

* FYTD reflects data as of August 31, 2016.

Most Common Violations by FY

During FY 2016/17 (as of August 31, 2016), 7 citations with administrative fines became final with 14 violations of the provisions of the Architects Practice Act and/or Board regulations. The most common violations that resulted in enforcement action during the current and previous two fiscal years are listed below.

Business and Professions Code Section (BPC) or California Code of Regulations Section (CCR)	FYTD 2016/17*	FY 2015/16	FY 2014/15
BPC 5536(a) and/or (b) – Practice Without License or Holding Self Out as Architect	42.9%	24.5%	41.8%
BPC 5536.1(c) – Unauthorized Practice	0%	4.1%	5.1%
BPC 5536.22 (a) – Written Contract	14.3%	3.1%	5.1%
BPC 5584 – Negligence or Willful Misconduct	7.1%	5.1%	2.5%
BPC 5600.05(a)(1) and/or (b) – License Renewal Process; Audit; False or Misleading Information on Coursework on Disability Access Requirements**	7.1%	52.0%	31.6%
CCR 160(b)(2) – Rules of Professional Conduct	0%	7.1%	5.1%

* FYTD reflects data as of August 31, 2016.

** Assembly Bill 1746 (Chapter 240, Statutes of 2010) became effective January 1, 2011 and amended the coursework provisions of BPC 5600.05 by requiring an audit of license renewals beginning with the 2013 renewal cycle and adding a citation and disciplinary action provision for licensees who provide false or misleading information.

BOARD MEMBER LIASION REPORTS ON ORGANIZATIONS AND SCHOOLS

The Board's Liaison Program is designed to ensure that the Board exchanges information with key entities. Liaisons are assigned to organizations and schools, and are responsible for: 1) establishing and maintaining contact with these entities, and 2) biannually reporting back to the Board on the activities and objectives. Attached is a listing of the liaison assignments.

At the June 10, 2015 meeting, the Board agreed to modify the liaison reporting schedule beginning in 2016 for reports to be delivered biannually during the fall and spring months to coincide with the academic calendar. At the December 10, 2015 Board meeting, members also agreed that: 1) an additional category of talking points concerning community colleges shall be added, and 2) a standardized summary template shall be developed and used by liaisons.

At this meeting, liaisons are asked to provide the Board with an update on the activities and objectives of their assigned organizations and schools.

Attachment:
2016 Liaison Program Organization & School Assignments

CALIFORNIA ARCHITECTS BOARD
2016 Liaison Program
Organization & School Assignments

ORGANIZATION ASSIGNMENTS	
American Council of Engineering Companies, California Brad Diede, Executive Director bdiede@acec-ca.org (916) 441-7991	**Doug McCauley**
American Institute of Architects, California Council Kurt Cooknick, Director of Regulation and Practice kcooknick@aiacc.org (916) 642-1706	**Jon Baker**
Associated General Contractors of California Thomas Holsman, Chief Executive Officer holsmant@agc-ca.org (916) 371-2422 / (916) 371-2352	**Matt McGuiness**
Association of Collegiate Schools of Architecture Michael Monti, Ph.D., Executive Director mmonti@acsa-arch.org (202) 785-2324 x7	**Pasqual Gutierrez**
Board for Professional Engineers, Land Surveyors & Geologists Richard Moore, P.L.S., Executive Officer ric.moore@dca.ca.gov (916) 263-2234	**Doug McCauley**
California Building Officials Bob Latz, Chief Building Official bobl@csgengr.com (916) 492-2275	**Doug McCauley & Bob Carter**
Contractors State License Board Cindi Christenson, Registrar of Contractors cindi.christenson@cslb.ca.gov (916) 255-4000	**Doug McCauley & Bob Carter**
Council of Landscape Architectural Registration Boards Joel Albizo, Executive Director jalbizo@clarb.org (703) 949-9460	**Trish Rodriguez**
National Council of Examiners on Engineering and Surveying Jerry Carter, Chief Executive Officer jcarter@ncees.org (800) 250-3196 x5470	**Sylvia Kwan**
Urban Land Institute Elliot Stein, Executive Director elliot.stein@uli.org (415) 268-4093	**Sylvia Kwan**

CALIFORNIA ARCHITECTS BOARD
2016 Liaison Program
Organization & School Assignments

SCHOOL ASSIGNMENTS (NAAB – ACCREDITED)	
Academy of Art University Mimi Sullivan, Executive Director msullivan@accademyart.edu (415) 274-2222	**Sylvia Kwan**
California College of the Arts Jonathan Massey, Director jmassey@cca.edu (415) 703-9516	**Sylvia Kwan**
California Polytechnic State University, San Luis Obispo Christine Theodoropoulos, AIA, PE, Dean theo@calpoly.edu (805) 756-5916	**Barry Williams**
California State Polytechnic University, Pomona Michael Woo, Dean mwoo@csupomona.edu (909) 869-2667	**Pasqual Gutierrez**
NewSchool of Architecture and Design Gregory Marick, President gmarik@newschoolarch.edu (619) 684-8777	**Jon Baker**
Southern California Institute of Architecture (SCIARC) Eric Owen Moss, Director directors_office@sciarc.edu (310) 839-1199	**Barry Williams**
University of California, Berkeley Tom Buresh, Chair buresh@berkeley.edu (510) 642-4942	**Tian Feng**
University of California, Los Angeles David Rouffeve, Interim Dean rouffeve@arts.ucla.edu (310) 206-6465	**Denise Campos**
University of Southern California Qingyun Ma, Dean archdean@usc.edu (213)740-2083	**Ebony Lewis**
Woodbury University Norman Millar, AIA, Dean norman.millar@woodbury.edu (818) 252-5121	**Pasqual Gutierrez**

CALIFORNIA ARCHITECTS BOARD
2016 Liaison Program
Organization & School Assignments

SCHOOL ASSIGNMENTS (COMMUNITY COLLEGES)	
Bakersfield College Jason Dixon, Chair, Industrial Drawing and Architecture jadixon@bakersfieldcollege.edu (661) 395-4080	**Pasqual Gutierrez**
Cerritos College, Norwalk Nick Real, Instructional Dean yreal@cerritos.edu (562) 860-2451 x2903	**Nilza Serrano**
Chabot College, Hayward Adrian Huang, Chair, Architecture School of the Arts ahuang@chabotcollege.edu (510) 723-7410	**Tian Feng**
Citrus College, Glendora Jim Lancaster, Dean, Architectural Drafting Department jlancaster@citruscollege.edu (626) 852-6403	**Ebony Lewis**
City College of San Francisco Andrew Chandler, Chair, Architecture Department achandle@ccsf.edu (415) 452-5086	**Matt McGuinness**
College of Marin, Kentfield Bill Abright, Chair, Fine/Visual Arts Department bill.abright@marin.edu (415) 457-8811 x7483	**Sylvia Kwan**
College of San Mateo Laura Demsetz, Advisor, Architecture Department demsetz@smccd.edu (650) 574-6617	**Matt McGuinness**
College of the Desert, Palm Desert Bert Bitanga, Architecture/Environ. Design Advisor dbitanga@collegeofthedesert.edu (760) 776-7236	**Barry Williams**
College of the Sequoias, Visalia Rolando Gonzalez, AIA, Professor of Architecture rolandog@cos.edu (559) 730-3758	**Barry Williams**
Cosumnes River College, Sacramento John Ellis, Professor, Architecture Department ellisjd@crc.losrios.edu (916) 691-7237	**Sylvia Kwan**

CALIFORNIA ARCHITECTS BOARD
2016 Liaison Program
Organization & School Assignments

Cuesta College, San Luis Obispo John Stokes, Engineering and Technology Division Chair jstokes@cuesta.edu (805) 546-3100 x2115	**Barry Williams**
Diablo Valley College, Pleasant Hill Daniel Abbott, Chair, Architecture/Engineering Department dabbott@dvc.edu (925) 969-2368	**Tian Feng**
East Los Angeles College, Monterey Park Michael Hamner, Chair, Architecture Department hamnerm@elac.edu (323) 265-8839	**Ebony Lewis**
Fresno City College Ronald Cerkueira, Chair, Digital Design & Manufacturing ron.cerkueira@fresnocitycollege.edu (559) 442-4600 x8738	**Barry Williams**
Glendale Community College Dave Martin, Chair, Architecture Department dmartin@glendale.edu (818) 240-5528	**Denise Campos**
Los Angeles City College Gayle Partlow, Chair, Art & Architecture Department partlogm@lacitycollege.edu (323) 953-4000 x2510	**Nilza Serrano**
Los Angeles Valley College, Van Nuys Michael Avila, Chair, Technology Department avilama@lavc.edu (818) 947-2561	**Ebony Lewis**
Mt. San Antonio College, Walnut Ignacio Sardinas, Chair, Architecture Program isardinas@mtsac.edu (909) 274-4805 Robert Perkins, Co-Chair, Architecture Program rperkins@mtsac.edu (909) 274-4388	**Pasqual Gutierrez**
Orange Coast College, Costa Mesa Rose Kings, Program Coordinator, Technology Division rkings@occ.cccd.edu (714) 432-5623	**Nilza Serrano**
Rio Hondo College, Whittier Mike Slavich, Dean, Career & Tech Ed. Division mslavich@riohondo.edu (562) 463-7368	**Denise Campos**

CALIFORNIA ARCHITECTS BOARD
2016 Liaison Program
Organization & School Assignments

San Bernardino Valley College Judy Jorgensen, Professor, Architecture Department jjorgens@sbccd.cc.ca.us (909) 387-1609	**Pasqual Gutierrez**
San Diego Mesa College Ian Kay, Co-Chair, Architecture Program iankay@sdccd.edu (619) 388-2260	**Jon Baker**
Southwestern College, Chula Vista Bill Homyak, M.S., Architecture Department Chair whomyak@swccd.edu (619) 421-6700 x5371	**Jon Baker**
Ventura College Ralph Fernandez, Lead Instructor, Architecture Department rfernandez@vcccd.edu (805) 654-6398	**Nilza Serrano**
West Valley College, Saratoga Soroush Ghahramani, Chair, Architecture & Engineering. soroush.ghahramani@westvalley.edu (408) 741-4097	**Matt McGuinness**

UPDATE AND POSSIBLE ACTION ON LEGISLATION REGARDING:
1. **SENATE BILL (SB) 1132 (GALGIANI) [ARCHITECT-IN-TRAINING]**
2. **SB 1195 (HILL) [BOARD ACTIONS: COMPETITIVE IMPACT]**
3. **SB 1479 (BUSINESS, PROFESSIONS, & ECONOMIC DEVELOPMENT) [EXAM ELIGIBILITY – INTEGRATED DEGREE PROGRAM]**

The following bills are of interest to the Board, and are being provided for informational purposes.

SB 1132 (Galgiani) [Architect-in-Training]

SB 1132 (Galgiani) [Architect-in-Training] is an American Institute of Architects, California Council proposal to create and define a special title for candidates for licensure. As introduced, it would have created the "architect-in-training" title for a person who has received Board confirmation of eligibility for the Architect Registration Examination (ARE) and is employed under the direct supervision of an architect. At its July 28, 2016, Board meeting, the Board voted to support SB 1132 if amended with proposed language to, instead, require enrollment in the Architectural Experience Program to use the architect-in-training title. SB 1132 was subsequently amended to include the Board's amendments, and is on the Governor's desk.

SB 1195 (Hill) [Board Actions: Competitive Impact]

SB 1195 (Hill) would grant the Department of Consumer Affairs Director authority to review any board decision or other action to determine whether it unreasonably restrains trade. This bill is the Legislature's response to the North Carolina Dental Board v. Federal Trade Commission case. This case is regarding antitrust immunity for boards, and a key component in the holding is whether there is sufficient "active state supervision" of board actions. This bill addresses that issue by expanding the Director's authority and specifying the elements for the reviews. The Director's review would assess whether the action or decision reflects a clearly articulated and affirmatively expressed state law, and is the result of the board's exercise of ministerial or discretionary judgment. In addition, Director would assess whether the anticompetitive effects of the action or decision are clearly outweighed by the benefit to the public. SB 1195 was referred to the Senate inactive file. Similar legislation will likely be introduced when the Legislature reconvenes in January.

SB 1479 [Business, Professions, and Economic Development (BP&ED)] [Exam Eligibility – Integrated Degree Program]

SB 1479 (BP&ED) contains the Board-sponsored amendment which clarifies language regarding integrated degree programs that was added to the Architects Practice Act via the Sunset Review bill last year. The bill updates BPC 5550.2, which permits the Board to grant early eligibility to take the ARE for students enrolled in a National Council of Architectural Registration Boards (NCARB)-accepted integrated degree program. The amendment incorporates a general reference to the Integrated Path to Architectural Licensure initiative to prevent any issues with the name of NCARB's program. SB 1479 is on the Governor's desk.

Attachments:
1. SB 1132 (Galgiani) [Architect-in-Training]
2. SB 1195 (Hill) [Board Actions: Competitive Impact]
3. SB 1479 (BP&ED) [Exam Eligibility – Integrated Degree Program]

Senate Bill No. 1132

Passed the Senate August 30, 2016

_____

Secretary of the Senate

Passed the Assembly August 22, 2016

_____

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day of _____, 2016, at _____ o'clock ___M.

_____

Private Secretary of the Governor

CHAPTER _____

An act to add and repeal Section 5500.2 of the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

SB 1132, Galgiani. Architects: architects-in-training.

The Architects Practice Act provides for licensing and regulation of persons engaged in the practice of architecture by the California Architects Board, which is within the Department of Consumer Affairs, and defines the term "architect" for those purposes. That act requires an applicant for licensure as an architect to, among other things, take an examination. Existing regulations require an applicant for licensure to take the Architect Registration Examination.

This bill would authorize a person to use the title "architect-in-training" while he or she is enrolled in the National Council of Architectural Registration Boards' Architectural Experience Program, as specified. The bill would prohibit the use of an abbreviation or derivative of that title and would prohibit a person from using that title to independently offer or provide services to the public. The bill would authorize the board to disclose a person's authorization to use that title to a member of the public upon request. The bill would provide that the use of that title in violation of these provisions may constitute unprofessional conduct and subject the user of the title to administrative action, including, but not limited to, citation. The bill would repeal this provision on January 1, 2020.

The people of the State of California do enact as follows:

SECTION 1. Section 5500.2 is added to the Business and Professions Code, to read:

5500.2. (a) A person may use the title "architect-in-training" while he or she is enrolled in the National Council of Architectural Registration Boards' Architectural Experience Program as specified in Division 2 of Title 16 of the California Code of Regulations.

(b) An abbreviation or derivative of the title "architect-in-training" shall not be used.

(c) A person shall not use the title "architect-in-training" to independently offer or provide services to the public.

(d) Notwithstanding any other law, the board may disclose a person's authorization to use the title "architect-in-training" to a member of the public upon request.

(e) The use of the title "architect-in-training" in violation of this section may constitute unprofessional conduct and subject the user of the title to administrative action, including, but not limited to, citation, discipline, and denial of a license.

(f) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.

Approved _____, 2016

_____

Governor

AMENDED IN SENATE JUNE 1, 2016

AMENDED IN SENATE APRIL 6, 2016

SENATE BILL No. 1195

Introduced by Senator Hill

February 18, 2016

An act to amend Sections 109, 116, 153, 307, 313.1, 2708, 4800, 4804.5, ~~4825.1,~~ 4830, ~~and 4846.5~~ *4846.5, 4904, and 4905* of, and to add Sections ~~4826.3, 4826.5, 4826.7,~~ *109.5, 4826.5,* 4848.1, and 4853.7 to, the Business and Professions Code, and to amend Sections ~~825, 11346.5, 11349, and 11349.1~~ *825 and 11346.5* of the Government Code, relating to professional ~~regulation, and making an appropriation therefor.~~ *regulations.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1195, as amended, Hill. Professions and vocations: board ~~actions: competitive impact.~~ *actions.*

(1) Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs, and authorizes those boards to adopt regulations to enforce the laws pertaining to the profession and vocation for which they have jurisdiction. Existing law makes decisions of any board within the department pertaining to setting standards, conducting examinations, passing candidates, and revoking licenses final, except as specified, and provides that those decisions are not subject to review by the Director of Consumer Affairs. Existing law authorizes the director to audit and review certain inquiries and complaints regarding licensees, including the dismissal of a disciplinary case. Existing law requires the director to annually report to the chairpersons of certain committees of the Legislature information regarding findings from any audit, review, or

monitoring and evaluation. Existing law authorizes the director to contract for services of experts and consultants where necessary. Existing law requires regulations, except those pertaining to examinations and qualifications for licensure and fee changes proposed or promulgated by a board within the department, to comply with certain requirements before the regulation or fee change can take effect, including that the director is required to be notified of the rule or regulation and given 30 days to disapprove the regulation. Existing law prohibits a rule or regulation that is disapproved by the director from having any force or effect, unless the director's disapproval is overridden by a unanimous vote of the members of the board, as specified.

This bill would instead authorize the director, upon his or her own initiative, and require the director, upon the request of ~~a consumer or licensee,~~ *the board making the decision or the Legislature,* to review ~~a~~ *any nonministerial market-sensitive* decision or other action, except as specified, of a board within the department to determine whether it ~~unreasonably restrains trade~~ *furthers state law* and to approve, disapprove, *request further information,* or modify the board decision or action, as specified. The bill would require the director to *issue and* post on the department's Internet Web site his or her final written decision and the reasons for the decision within 90 days from receipt of the ~~request of a consumer or licensee.~~ *request for review or the director's decision to review the board decision. The bill would prohibit the executive officer of any board, committee, or commission within the department from being an active licensee of any profession that board, committee, or commission regulates.* The bill would, commencing on March 1, 2017, require the director to annually report to the chairs of specified committees of the Legislature information regarding the director's disapprovals, modifications, or findings from any audit, review, or monitoring and evaluation. The bill would authorize the director to seek, designate, employ, or contract for the services of independent antitrust experts for purposes of reviewing board actions for unreasonable restraints on trade. The bill would also require the director to review and approve any regulation promulgated by a board within the department, as specified. ~~The bill would authorize the director to modify any regulation as a condition of approval, and to disapprove a regulation because it would have an impermissible anticompetitive effect.~~ *The bill would authorize the director, for a specified period of time, to approve, disapprove, or require modification of a proposed rule or regulation on the ground that it does not further state law.* The

bill would prohibit any rule or regulation from having any force or effect if the director does not approve the ~~regulation because it has an impermissible anticompetitive effect.~~ *rule or regulation and prohibits any rule or regulation that is not approved by the director from being submitted to the Office of Administrative Law.*

(2) Existing law, until January 1, 2018, provides for the licensure and regulation of registered nurses by the Board of Registered Nursing, which is within the Department of Consumer Affairs, and requires the board to appoint an executive officer who is a nurse currently licensed by the board.

This bill would instead prohibit the executive officer from being a licensee of the board.

(3) The Veterinary Medicine Practice Act provides for the licensure and registration of veterinarians and registered veterinary technicians and the regulation of the practice of veterinary medicine by the Veterinary Medical Board, which is within the Department of Consumer Affairs, and authorizes the board to appoint an executive officer, as specified. Existing law repeals the provisions establishing the board and authorizing the board to appoint an executive officer as of January 1, 2017. That act exempts certain persons from the requirements of the act, including a veterinarian employed by the University of California or the Western University of Health Sciences while engaged in the performance of specified duties. That act requires all premises where veterinary medicine, dentistry, and surgery is being practiced to register with the board. That act requires all fees collected on behalf of the board to be deposited into the Veterinary Medical Board Contingent Fund, which continuously appropriates fees deposited into the fund. That act makes a violation of any provision of the act punishable as a misdemeanor.

This bill would extend the operation of the board and the authorization of the board to appoint an executive officer to January 1, 2021. The bill would authorize a veterinarian ~~and~~ *or* registered veterinary technician who is under the direct supervision of a *licensed* veterinarian ~~with a current and active license~~ to compound a drug for ~~anesthesia, the prevention, cure, or relief of a wound, fracture, bodily injury, or disease of an animal in a premises currently and actively registered with the board, as specified. The bill would authorize the California State Board of Pharmacy and the board to ensure compliance with these requirements.~~ *animal use pursuant to federal law and regulations promulgated by the board and would require those regulations to, at*

a minimum, address the storage of drugs, the level and type of supervision required for compounding drugs by a registered veterinary technician, and the equipment necessary for safe compounding of drugs. The bill would instead require veterinarians engaged in the practice of veterinary medicine employed by the University of California or by the Western University of Health Sciences ~~while~~ *and* engaged in the performance of specified duties to be licensed as a veterinarian in the state or ~~hold~~ *be issued* a university ~~license issued by the board.~~ *license, as specified.* The bill would ~~require an applicant~~ *authorize an individual to apply* for *and be issued* a university license ~~to meet~~ *if he or she meets* certain requirements, including ~~that the applicant passes a specified exam.~~ *paying an application and license fee. The bill would require a university license, among other things, to automatically cease to be valid upon termination or cessation of employment by the University of California or the Western University of Health Sciences.* The bill would also prohibit a premise registration that is not renewed within 5 years after its expiration from being renewed, restored, reissued, or reinstated; however, the bill would authorize a new premise registration to be issued to an applicant if no fact, circumstance, or condition exists that would justify the revocation or suspension of the registration if the registration was issued and if specified fees are paid. ~~By requiring additional persons to be licensed and pay certain fees that would go into a continuously appropriated fund, this bill would make an appropriation.~~ *This bill would provide that the Veterinary Medical Board Contingent Fund is available for expenditure only upon an appropriation by the Legislature.* By requiring additional persons to be licensed under the act that were previously exempt, this bill would expand the definition of an existing crime and would, therefore, result in a state-mandated local program.

(4) ~~Existing law,~~ *The Government Claims Act,* except as provided, requires a public entity to pay any judgment or any compromise or settlement of a claim or action against an employee or former employee of the public entity if the employee or former employee requests the public entity to defend him or her against any claim or action against him or her for an injury arising out of an act or omission occurring within the scope of his or her employment as an employee of the public entity, the request is made in writing not less than 10 days before the day of trial, and the employee or former employee reasonably cooperates in good faith in the defense of the claim or action. *That act prohibits*

the payment of punitive or exemplary damages by a public entity, except as specified.

This bill would require a public entity to pay a judgment or settlement for treble damage antitrust awards against a member of a regulatory board for an act or omission occurring within the scope of his or her employment as a member of a regulatory board. *The bill would specify that treble damages awarded pursuant to a specified federal law for violation of another federal law are not punitive or exemplary damages within the Government Claims Act.*

(5) The Administrative Procedure Act governs the procedure for the adoption, amendment, or repeal of regulations by state agencies and for the review of those regulatory actions by the Office of Administrative Law. ~~That act requires the review by the office to follow certain standards, including, among others, necessity, as defined.~~ That act requires an agency proposing to adopt, amend, or repeal a regulation to prepare a notice to the public that includes specified information, including reference to the authority under which the regulation is proposed.

This bill would ~~add competitive impact, as defined, as an additional standard for the office to follow when reviewing regulatory actions of a state board on which a controlling number of decisionmakers are active market participants in the market that the board regulates, and requires the office to, among other things, consider whether the anticompetitive effects of the proposed regulation are clearly outweighed by the public policy merits. The bill would authorize the office to designate, employ, or contract for the services of independent antitrust or applicable economic experts when reviewing proposed regulations for competitive impact. The bill would require state boards on which a controlling number of decisionmakers are active market participants in the market that the board regulates, when preparing the public notice, to additionally include a statement that the agency has evaluated the impact of the regulation on competition and that the effect of the regulation is within a clearly articulated and affirmatively expressed state law or policy.~~ *also require a board within the Department of Consumer Affairs to submit a statement to the office that the Director of Consumer Affairs has reviewed the proposed regulation and determined that the proposed regulation furthers state law.*

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: ~~yes~~ *no*. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 109 of the Business and Professions Code is amended to read:

109. (a) The ~~director~~ *decisions of any of the boards comprising the department with respect to passing candidates and revoking or otherwise imposing discipline on licenses shall not be subject to review by the director and are final within the limits provided by this code that are applicable to the particular board.*

(b) The director may initiate an investigation of any allegations of misconduct in the preparation, administration, or scoring of an examination which is administered by a board, or in the review of qualifications which are a part of the licensing process of any board. A request for investigation shall be made by the director to the Division of Investigation through the chief of the division or to any law enforcement agency in the jurisdiction where the alleged misconduct occurred.

~~(b) (1)~~

(1) The director may intervene in any matter of any board where an investigation by the Division of Investigation discloses probable cause to believe that the conduct or activity of a board, or its members or ~~employees~~ *employees,* constitutes a violation of criminal law.

(2) The term "intervene," as used in paragraph (1) *of this section* may include, but is not limited to, an application for a restraining order or injunctive relief as specified in Section 123.5, or a referral or request for criminal prosecution. For purposes of this section, the director shall be deemed to have standing under Section 123.5 and shall seek representation of the Attorney General, or other appropriate counsel in the event of a conflict in pursuing that action.

(c) The director may, upon his or her own initiative, and shall, upon request by ~~a consumer or licensee,~~ *the board making the decision or the Legislature,* review any *nonministerial market-sensitive* board *action or* decision ~~or other action to~~

~~determine whether it unreasonably restrains trade. Such a review shall proceed as follows:~~ *by the board to determine whether it furthers state law. Market-sensitive actions or decisions are those that create barriers to market participation and restrict competition including, but not limited to, examination passage scores, advertising restrictions, price regulation, enlarging or restricting scope of practice qualifications for licensure, and a pattern or program of disciplinary actions affecting multiple individuals that creates barriers to market participation. If the board action or decision is determined to be a market-sensitive action or decision, the director shall review the board action or decision to determine whether that action or decision furthers a clearly articulated and affirmatively expressed state policy. Review under this subdivision shall serve to cease implementation of the market-sensitive action or decision until the review is finalized and the action or decision is found to further state law.*

~~(1) The director shall assess whether the action or decision reflects a clearly articulated and affirmatively expressed state law. If the director determines that the action or decision does not reflect a clearly articulated and affirmatively expressed state law, the director shall disapprove the board action or decision and it shall not go into effect.~~

~~(2) If the action or decision is a reflection of clearly articulated and affirmatively expressed state law, the director shall assess whether the action or decision was the result of the board's exercise of ministerial or discretionary judgment. If the director finds no exercise of discretionary judgment, but merely the direct application of statutory or constitutional provisions, the director shall close the investigation and review of the board action or decision.~~

~~(3) If the director concludes under paragraph (2) that the board exercised discretionary judgment, the director shall review the board action or decision as follows:~~

~~(A) The~~

(1) Any review by the director *under this subdivision* shall ~~conduct~~ *include* a full *substantive* review of the board action or decision ~~using~~ *based upon* all *the* relevant ~~facts, data, market conditions,~~ *facts in the record provided by the board and any additional information provided by the director, which may include data,* public comment, studies, or other documentary evidence

pertaining to ~~the market impacted by~~ the board's action or ~~decision and determine whether the anticompetitive effects of the action or decision are clearly outweighed by the benefit to the public. The director may seek, designate, employ, or contract for the services of independent antitrust or economic experts pursuant to Section 307. These experts shall not be active participants in the market affected by the board action or decision.~~ *decision.*

~~(B) If the board action or decision was not previously subject to a public comment period, the director shall release the subject matter of his or her investigation for a 30-day public comment period and shall consider all comments received.~~

~~(C) If the director determines that the action or decision furthers the public protection mission of the board and the impact on competition is justified, the director may approve the action or decision.~~

~~(D) If the director determines that the action furthers the public protection mission of the board and the impact on competition is justified, the director may approve the action or decision. If the director finds the action or decision does not further the public protection mission of the board or finds that the action or decision is not justified, the director shall either refuse to approve it or shall modify the action or decision to ensure that any restraints of trade are related to, and advance, clearly articulated state law or public policy.~~

(2) The director shall take one of the following actions:

(A) Approve the action or decision upon determination that it furthers state law.

(B) Disapprove the action or decision if it does not further state law. If the director disapproves the board action or decision, the director may recommend modifications to the board action or decision, which, if adopted, shall not become effective until final approval by the director pursuant to this subdivision.

(C) Modify the action or decision to ensure that it furthers state law.

(D) Request further information from the board if the record provided is insufficient to make a determination that the action or decision furthers state law. Upon submission of further information from the board and any information provided by the director, the director shall make a final determination to approve, disapprove, or modify the board's action or decision.

~~(4)~~

(d) The director shall issue, and post on the department's Internet Web site, his or her final written decision ~~approving, modifying, or disapproving~~ *on* the *board* action or decision with an explanation of the reasons *that action or decision does or does not further state law* and *the* rationale behind the director's decision within 90 days from receipt of the ~~request from a consumer or licensee.~~ *board's or Legislature's request for review or the director's decision to review the board action or decision.* Notwithstanding any other law, the decision of the director shall be final, except if the state or federal constitution requires an appeal of the director's decision.

~~(d)~~

(e) The review set forth in ~~paragraph (3) of~~ subdivision (c) shall not apply ~~when an individual seeks~~ *to the* review of *any* disciplinary *action* or ~~other action pertaining solely to that individual.~~ *any other sanction or citation imposed by a board upon a licensee.*

~~(e)~~

(f) The director shall report to the Chairs of the Senate Business, Professions, and Economic Development Committee and the Assembly Business and Professions Committee annually, commencing March 1, 2017, regarding his or her disapprovals, modifications, or findings from any audit, review, or monitoring and evaluation conducted pursuant to this section. That report shall be submitted in compliance with Section 9795 of the Government Code.

~~(f) If the director has already reviewed a board action or decision pursuant to this section or Section 313.1, the director shall not review that action or decision again.~~

(g) This section shall not be construed to affect, impede, or delay any disciplinary actions of any board.

SEC. 2. Section 109.5 is added to the Business and Professions Code, to read:

109.5. The executive officer of any board, committee, or commission within the department shall not be an active licensee of any profession that board, committee, or commission regulates.

~~SEC. 2.~~

SEC. 3. Section 116 of the Business and Professions Code is amended to read:

116. (a) The director may audit and review, upon his or her own initiative, or upon the request of a consumer or licensee, inquiries and complaints regarding licensees, dismissals of disciplinary cases, the opening, conduct, or closure of investigations, informal conferences, and discipline short of formal accusation by any board or bureau within the department.

(b) The director shall report to the Chairs of the Senate Business, Professions, and Economic Development Committee and the Assembly Business and Professions Committee annually, commencing March 1, 2017, regarding his or her findings from any audit, review, or monitoring and evaluation conducted pursuant to this section. This report shall be submitted in compliance with Section 9795 of the Government Code.

~~SEC. 3.~~

SEC. 4. Section 153 of the Business and Professions Code is amended to read:

153. The director may investigate the work of the several boards in his *or her* department and may obtain a copy of all records and full and complete data in all official matters in possession of the boards, their members, officers, or employees.

~~SEC. 4.~~

SEC. 5. Section 307 of the Business and Professions Code is amended to read:

307. The director may contract for the services of experts and consultants where necessary to carry out this chapter and may provide compensation and reimbursement of expenses for those experts and consultants in accordance with state law.

~~SEC. 5.~~

SEC. 6. Section 313.1 of the Business and Professions Code is amended to read:

313.1. (a) Notwithstanding any other law to the contrary, no rule or regulation and no fee change proposed or promulgated by any of the boards, commissions, or committees within the department, shall take effect pending compliance with this section.

(b) The director shall be formally notified of and shall review, in accordance with the requirements of Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code, the requirements in subdivision (c) of Section 109, and this section, all of the following:

(1) All notices of proposed action, any modifications and supplements thereto, and the text of proposed regulations.

(2) Any notices of sufficiently related changes to regulations previously noticed to the public, and the text of proposed regulations showing modifications to the text.

(3) Final rulemaking records.

(4) All relevant ~~facts,~~ *facts in the rulemaking record, which may include* data, public comments, ~~market conditions, studies,~~ or other documentary evidence pertaining to the ~~market impacted by the proposed regulation. This information shall be included in the written decision of the director required under paragraph (4) of subdivision (c) of Section 109.~~ *proposed regulation to determine whether it furthers state law. If the regulation does not further state law, it shall not be approved.*

(c) The submission of all notices and final rulemaking records to the director and the director's approval, as authorized by this section, shall be a precondition to the filing of any rule or regulation with the Office of Administrative Law. The Office of Administrative Law shall have no jurisdiction to review a rule or regulation subject to this section until after the director's review and approval. The filing of any document with the Office of Administrative Law shall be accompanied by a certification that the board, commission, or committee has complied with the requirements of this section.

(d) Following the receipt of any final rulemaking record subject to subdivision (a), the director shall have the authority for a period of 30 days to ~~approve~~ *approve, disapprove, or require modification of* a proposed rule or regulation ~~or disapprove a proposed rule or regulation~~ on the ground that it is injurious to the public health, safety, or ~~welfare,~~ *welfare* or ~~has an impermissible anticompetitive effect. The director may modify a rule or regulation as a condition of approval. Any modifications to regulations by the director shall be subject to a 30-day public comment period before the director issues a final decision regarding the modified regulation. If the director does not approve the rule or regulation within the 30-day period, the rule or regulation shall not be submitted to the Office of Administrative Law and the rule or regulation shall have no effect.~~ *does not further state law. If the director does not approve the rule or regulation within the 30-day period, the rule or*

regulation shall not be submitted to the Office of Administrative Law and the rule or regulation shall have no effect.

(e) Final rulemaking records shall be filed with the director within the one-year notice period specified in Section 11346.4 of the Government Code. If necessary for compliance with this section, the one-year notice period may be extended, as specified by this subdivision.

(1) In the event that the one-year notice period lapses during the director's 30-day review period, or within 60 days following the notice of the director's disapproval, it may be extended for a maximum of 90 days.

(2) If the director approves the final rulemaking record, the board, commission, or committee shall have five days from the receipt of the record from the director within which to file it with the Office of Administrative Law.

(3) If the director disapproves a rule or regulation, it shall have no force or ~~effect unless, within 60 days of the notice of disapproval, (A) the disapproval is overridden by a unanimous vote of the members of the board, commission, or committee, and (B) the board, commission, or committee files the final rulemaking record with the Office of Administrative Law in compliance with this section and the procedures required by Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. This paragraph shall not apply to any decision disapproved by the director under subdivision (c) of Section 109.~~ *effect.*

(f) This section shall not be construed to prohibit the director from affirmatively approving a proposed rule, regulation, or fee change at any time within the 30-day period after it has been submitted to him or her, in which event it shall become effective upon compliance with this section and the procedures required by Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

~~SEC. 6.~~

SEC. 7. Section 2708 of the Business and Professions Code is amended to read:

2708. (a) The board shall appoint an executive officer who shall perform the duties delegated by the board and who shall be responsible to it for the accomplishment of those duties.

(b) The executive officer shall not be a licensee under this chapter and shall possess other qualifications as determined by the board.

(c) The executive officer shall not be a member of the board.

(d) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

~~SEC. 7.~~

SEC. 8. Section 4800 of the Business and Professions Code is amended to read:

4800. (a) There is in the Department of Consumer Affairs a Veterinary Medical Board in which the administration of this chapter is vested. The board consists of the following members:

(1) Four licensed veterinarians.

(2) One registered veterinary technician.

(3) Three public members.

(b) This section shall remain in effect only until January 1, 2021, and as of that date is repealed.

(c) Notwithstanding any other law, the repeal of this section renders the board subject to review by the appropriate policy committees of the Legislature. However, the review of the board shall be limited to those issues identified by the appropriate policy committees of the Legislature and shall not involve the preparation or submission of a sunset review document or evaluative questionnaire.

~~SEC. 8.~~

SEC. 9. Section 4804.5 of the Business and Professions Code is amended to read:

4804.5. (a) The board may appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter.

(b) This section shall remain in effect only until January 1, 2021, and as of that date is repealed.

~~SEC. 9. Section 4825.1 of the Business and Professions Code is amended to read:~~

~~4825.1. These definitions shall govern the construction of this chapter as it applies to veterinary medicine.~~

~~(a) "Diagnosis" means the act or process of identifying or determining the health status of an animal through examination and the opinion derived from that examination.~~

~~(b) "Animal" means any member of the animal kingdom other than humans, and includes fowl, fish, and reptiles, wild or domestic, whether living or dead.~~

~~(c) "Food animal" means any animal that is raised for the production of an edible product intended for consumption by humans. The edible product includes, but is not limited to, milk, meat, and eggs. Food animal includes, but is not limited to, cattle (beef or dairy), swine, sheep, poultry, fish, and amphibian species.~~

~~(d) "Livestock" includes all animals, poultry, aquatic and amphibian species that are raised, kept, or used for profit. It does not include those species that are usually kept as pets such as dogs, cats, and pet birds, or companion animals, including equines.~~

~~(e) "Compounding," for the purposes of veterinary medicine, shall have the same meaning given in Section 1735 of Title 16 of the California Code of Regulations, except that every reference therein to "pharmacy" and "pharmacist" shall be replaced with "veterinary premises" and "veterinarian," and except that only a licensed veterinarian or a licensed registered veterinarian technician under direct supervision of a veterinarian may perform compounding and shall not delegate to or supervise any part of the performance of compounding by any other person.~~

~~SEC. 10. Section 4826.3 is added to the Business and Professions Code, to read:~~

~~4826.3. (a) Notwithstanding Section 4051, a veterinarian or registered veterinarian technician under the direct supervision of a veterinarian with a current and active license may compound a drug for anesthesia, the prevention, cure, or relief of a wound, fracture, bodily injury, or disease of an animal in a premises currently and actively registered with the board and only under the following conditions:~~

~~(1) Where there is no FDA-approved animal or human drug that can be used as labeled or in an appropriate extralabel manner to properly treat the disease, symptom, or condition for which the drug is being prescribed.~~

~~(2) Where the compounded drug is not available from a compounding pharmacy, outsourcing facility, or other compounding supplier in a dosage form and concentration to~~

~~appropriately treat the disease, symptom, or condition for which the drug is being prescribed.~~

~~(3) Where the need and prescription for the compounded medication has arisen within an established veterinarian-client-patient relationship as a means to treat a specific occurrence of a disease, symptom, or condition observed and diagnosed by the veterinarian in a specific animal that threatens the health of the animal or will cause suffering or death if left untreated.~~

~~(4) Where the quantity compounded does not exceed a quantity demonstrably needed to treat a patient with which the veterinarian has a current veterinarian-client-patient relationship.~~

~~(5) Except as specified in subdivision (c), where the compound is prepared only with commercially available FDA-approved animal or human drugs as active ingredients.~~

~~(b) A compounded veterinary drug may be prepared from an FDA-approved animal or human drug for extralabel use only when there is no approved animal or human drug that, when used as labeled or in an appropriate extralabel manner will, in the available dosage form and concentration, treat the disease, symptom, or condition. Compounding from an approved human drug for use in food-producing animals is not permitted if an approved animal drug can be used for compounding.~~

~~(c) A compounded veterinary drug may be prepared from bulk drug substances only when:~~

~~(1) The drug is compounded and dispensed by the veterinarian to treat an individually identified animal patient under his or her care.~~

~~(2) The drug is not intended for use in food-producing animals.~~

~~(3) If the drug contains a bulk drug substance that is a component of any marketed FDA-approved animal or human drug, there is a change between the compounded drug and the comparable marketed drug made for an individually identified animal patient that produces a clinical difference for that individually identified animal patient, as determined by the veterinarian prescribing the compounded drug for his or her patient.~~

~~(4) There are no FDA-approved animal or human drugs that can be used as labeled or in an appropriate extralabel manner to properly treat the disease, symptom, or condition for which the drug is being prescribed.~~

~~(5) All bulk drug substances used in compounding are manufactured by an establishment registered under Section 360 of Title 21 of the United States Code and are accompanied by a valid certificate of analysis.~~

~~(6) The drug is not sold or transferred by the veterinarian compounding the drug, except that the veterinarian shall be permitted to administer the drug to a patient under his or her care or dispense it to the owner or caretaker of an animal under his or her care.~~

~~(7) Within 15 days of becoming aware of any product defect or serious adverse event associated with any drug compounded by the veterinarian from bulk drug substances, the veterinarian shall report it to the federal Food and Drug Administration on Form FDA 1932a.~~

~~(8) In addition to any other requirements, the label of any veterinary drug compounded from bulk drug substances shall indicate the species of the intended animal patient, the name of the animal patient, and the name of the owner or caretaker of the patient.~~

~~(d) Each compounded veterinary drug preparation shall meet the labeling requirements of Section 4076 and Sections 1707.5 and 1735.4 of Title 16 of the California Code of Regulations, except that every reference therein to "pharmacy" and "pharmacist" shall be replaced by "veterinary premises" and "veterinarian," and any reference to "patient" shall be understood to refer to the animal patient. In addition, each label on a compounded veterinary drug preparation shall include withdrawal and holding times, if needed, and the disease, symptom, or condition for which the drug is being prescribed. Any compounded veterinary drug preparation that is intended to be sterile, including for injection, administration into the eye, or inhalation, shall in addition meet the labeling requirements of Section 1751.2 of Title 16 of the California Code of Regulations, except that every reference therein to "pharmacy" and "pharmacist" shall be replaced by "veterinary premises" and "veterinarian," and any reference to "patient" shall be understood to refer to the animal patient.~~

~~(e) Any veterinarian, registered veterinarian technician who is under the direct supervision of a veterinarian, and veterinary premises engaged in compounding shall meet the compounding requirements for pharmacies and pharmacists stated by the~~

~~provisions of Article 4.5 (commencing with Section 1735) of Title 16 of the California Code of Regulations, except that every reference therein to "pharmacy" and "pharmacist" shall be replaced by "veterinary premises" and "veterinarian," and any reference to "patient" shall be understood to refer to the animal patient:~~

~~(1) Section 1735.1 of Title 16 of the California Code of Regulations.~~

~~(2) Subdivisions (d),(e), (f), (g), (h), (i), (j), (k), and (*l*) of Section 1735.2 of Title 16 of the California Code of Regulations.~~

~~(3) Section 1735.3 of Title 16 of the California Code of Regulations, except that only a licensed veterinarian or registered veterinarian technician may perform compounding and shall not delegate to or supervise any part of the performance of compounding by any other person.~~

~~(4) Section 1735.4 of Title 16 of the California Code of Regulations.~~

~~(5) Section 1735.5 of Title 16 of the California Code of Regulations.~~

~~(6) Section 1735.6 of Title 16 of the California Code of Regulations.~~

~~(7) Section 1735.7 of Title 16 of the California Code of Regulations.~~

~~(8) Section 1735.8 of Title 16 of the California Code of Regulations.~~

~~(f) Any veterinarian, registered veterinarian technician under the direct supervision of a veterinarian, and veterinary premises engaged in sterile compounding shall meet the sterile compounding requirements for pharmacies and pharmacists under Article 7 (commencing with Section 1751) of Title 16 of the California Code of Regulations, except that every reference therein to "pharmacy" and "pharmacist" shall be replaced by "veterinary premises" and "veterinarian," and any reference to "patient" shall be understood to refer to the animal patient.~~

~~(g) The California State Board of Pharmacy shall have authority with the board to ensure compliance with this section and shall have the right to inspect any veterinary premises engaged in compounding, along with or separate from the board, to ensure compliance with this section. The board is specifically charged with enforcing this section with regard to its licensees.~~

~~SEC. 11. Section 4826.5 is added to the Business and Professions Code, to read:~~

~~4826.5. Failure by a licensed veterinarian, registered veterinarian technician, or veterinary premises to comply with the provisions of this article shall be deemed unprofessional conduct and constitute grounds for discipline.~~

~~SEC. 12. Section 4826.7 is added to the Business and Professions Code, to read:~~

~~4826.7. The board may adopt regulations to implement the provisions of this article.~~

SEC. 10. Section 4826.5 is added to the Business and Professions Code, to read:

4826.5. Notwithstanding any other law, a licensed veterinarian or a registered veterinary technician under the supervision of a licensed veterinarian may compound drugs for animal use pursuant to Section 530 of Title 21 of the Code of Federal Regulations and in accordance with regulations promulgated by the board. The regulations promulgated by the board shall, at a minimum, address the storage of drugs, the level and type of supervision required for compounding drugs by a registered veterinary technician, and the equipment necessary for the safe compounding of drugs. Any violation of the regulations adopted by the board pursuant to this section shall constitute grounds for an enforcement or disciplinary action.

~~SEC. 13.~~

SEC. 11. Section 4830 of the Business and Professions Code is amended to read:

4830. (a) This chapter does not apply to:

(1) Veterinarians while serving in any armed branch of the military service of the United States or the United States Department of Agriculture while actually engaged and employed in their official capacity.

(2) Regularly licensed veterinarians in actual consultation from other states.

(3) Regularly licensed veterinarians actually called from other states to attend cases in this state, but who do not open an office or appoint a place to do business within this state.

(4) Students in the School of Veterinary Medicine of the University of California or the College of Veterinary Medicine of the Western University of Health Sciences who participate in

diagnosis and treatment as part of their educational experience, including those in off-campus educational programs under the direct supervision of a licensed veterinarian in good standing, as defined in paragraph (1) of subdivision (b) of Section 4848, appointed by the University of California, Davis, or the Western University of Health Sciences.

(5) A veterinarian who is employed by the Meat and Poultry Inspection Branch of the California Department of Food and Agriculture while actually engaged and employed in his or her official capacity. A person exempt under this paragraph shall not otherwise engage in the practice of veterinary medicine unless he or she is issued a license by the board.

(6) Unlicensed personnel employed by the Department of Food and Agriculture or the United States Department of Agriculture when in the course of their duties they are directed by a veterinarian supervisor to conduct an examination, obtain biological specimens, apply biological tests, or administer medications or biological products as part of government disease or condition monitoring, investigation, control, or eradication activities.

(b) (1) For purposes of paragraph (3) of subdivision (a), a regularly licensed veterinarian in good standing who is called from another state by a law enforcement agency or animal control agency, as defined in Section 31606 of the Food and Agricultural Code, to attend to cases that are a part of an investigation of an alleged violation of federal or state animal fighting or animal cruelty laws within a single geographic location shall be exempt from the licensing requirements of this chapter if the law enforcement agency or animal control agency determines that it is necessary to call the veterinarian in order for the agency or officer to conduct the investigation in a timely, efficient, and effective manner. In determining whether it is necessary to call a veterinarian from another state, consideration shall be given to the availability of veterinarians in this state to attend to these cases. An agency, department, or officer that calls a veterinarian pursuant to this subdivision shall notify the board of the investigation.

(2) Notwithstanding any other provision of this chapter, a regularly licensed veterinarian in good standing who is called from another state to attend to cases that are a part of an investigation described in paragraph (1) may provide veterinary medical care for animals that are affected by the investigation with a temporary

shelter facility, and the temporary shelter facility shall be exempt from the registration requirement of Section 4853 if all of the following conditions are met:

(A) The temporary shelter facility is established only for the purpose of the investigation.

(B) The temporary shelter facility provides veterinary medical care, shelter, food, and water only to animals that are affected by the investigation.

(C) The temporary shelter facility complies with Section 4854.

(D) The temporary shelter facility exists for not more than 60 days, unless the law enforcement agency or animal control agency determines that a longer period of time is necessary to complete the investigation.

(E) Within 30 calendar days upon completion of the provision of veterinary health care services at a temporary shelter facility established pursuant to this section, the veterinarian called from another state by a law enforcement agency or animal control agency to attend to a case shall file a report with the board. The report shall contain the date, place, type, and general description of the care provided, along with a listing of the veterinary health care practitioners who participated in providing that care.

(c) For purposes of paragraph (3) of subdivision (a), the board may inspect temporary facilities established pursuant to this section.

~~SEC. 14.~~

SEC. 12. Section 4846.5 of the Business and Professions Code is amended to read:

4846.5. (a) Except as provided in this section, the board shall issue renewal licenses only to those applicants that have completed a minimum of 36 hours of continuing education in the preceding two years.

(b) (1) Notwithstanding any other law, continuing education hours shall be earned by attending courses relevant to veterinary medicine and sponsored or cosponsored by any of the following:

(A) American Veterinary Medical Association (AVMA) accredited veterinary medical colleges.

(B) Accredited colleges or universities offering programs relevant to veterinary medicine.

(C) The American Veterinary Medical Association.

(D) American Veterinary Medical Association recognized specialty or affiliated allied groups.

(E) American Veterinary Medical Association's affiliated state veterinary medical associations.

(F) Nonprofit annual conferences established in conjunction with state veterinary medical associations.

(G) Educational organizations affiliated with the American Veterinary Medical Association or its state affiliated veterinary medical associations.

(H) Local veterinary medical associations affiliated with the California Veterinary Medical Association.

(I) Federal, state, or local government agencies.

(J) Providers accredited by the Accreditation Council for Continuing Medical Education (ACCME) or approved by the American Medical Association (AMA), providers recognized by the American Dental Association Continuing Education Recognition Program (ADA CERP), and AMA or ADA affiliated state, local, and specialty organizations.

(2) Continuing education credits shall be granted to those veterinarians taking self-study courses, which may include, but are not limited to, reading journals, viewing video recordings, or listening to audio recordings. The taking of these courses shall be limited to no more than six hours biennially.

(3) The board may approve other continuing veterinary medical education providers not specified in paragraph (1).

(A) The board has the authority to recognize national continuing education approval bodies for the purpose of approving continuing education providers not specified in paragraph (1).

(B) Applicants seeking continuing education provider approval shall have the option of applying to the board or to a board-recognized national approval body.

(4) For good cause, the board may adopt an order specifying, on a prospective basis, that a provider of continuing veterinary medical education authorized pursuant to paragraph (1) or (3) is no longer an acceptable provider.

(5) Continuing education hours earned by attending courses sponsored or cosponsored by those entities listed in paragraph (1) between January 1, 2000, and January 1, 2001, shall be credited toward a veterinarian's continuing education requirement under this section.

(c) Every person renewing his or her license issued pursuant to Section 4846.4, or any person applying for relicensure or for reinstatement of his or her license to active status, shall submit proof of compliance with this section to the board certifying that he or she is in compliance with this section. Any false statement submitted pursuant to this section shall be a violation subject to Section 4831.

(d) This section shall not apply to a veterinarian's first license renewal. This section shall apply only to second and subsequent license renewals granted on or after January 1, 2002.

(e) The board shall have the right to audit the records of all applicants to verify the completion of the continuing education requirement. Applicants shall maintain records of completion of required continuing education coursework for a period of four years and shall make these records available to the board for auditing purposes upon request. If the board, during this audit, questions whether any course reported by the veterinarian satisfies the continuing education requirement, the veterinarian shall provide information to the board concerning the content of the course; the name of its sponsor and cosponsor, if any; and specify the specific curricula that was of benefit to the veterinarian.

(f) A veterinarian desiring an inactive license or to restore an inactive license under Section 701 shall submit an application on a form provided by the board. In order to restore an inactive license to active status, the veterinarian shall have completed a minimum of 36 hours of continuing education within the last two years preceding application. The inactive license status of a veterinarian shall not deprive the board of its authority to institute or continue a disciplinary action against a licensee.

(g) Knowing misrepresentation of compliance with this article by a veterinarian constitutes unprofessional conduct and grounds for disciplinary action or for the issuance of a citation and the imposition of a civil penalty pursuant to Section 4883.

(h) The board, in its discretion, may exempt from the continuing education requirement any veterinarian who for reasons of health, military service, or undue hardship cannot meet those requirements. Applications for waivers shall be submitted on a form provided by the board.

(i) The administration of this section may be funded through professional license and continuing education provider fees. The

fees related to the administration of this section shall not exceed the costs of administering the corresponding provisions of this section.

(j) For those continuing education providers not listed in paragraph (1) of subdivision (b), the board or its recognized national approval agent shall establish criteria by which a provider of continuing education shall be approved. The board shall initially review and approve these criteria and may review the criteria as needed. The board or its recognized agent shall monitor, maintain, and manage related records and data. The board may impose an application fee, not to exceed two hundred dollars ($200) biennially, for continuing education providers not listed in paragraph (1) of subdivision (b).

(k) (1) Beginning January 1, 2018, a licensed veterinarian who renews his or her license shall complete a minimum of one credit hour of continuing education on the judicious use of medically important antimicrobial drugs every four years as part of his or her continuing education requirements.

(2) For purposes of this subdivision, "medically important antimicrobial drug" means an antimicrobial drug listed in Appendix A of the federal Food and Drug Administration's Guidance for Industry #152, including critically important, highly important, and important antimicrobial drugs, as that appendix may be amended.

~~SEC. 15.~~

SEC. 13. Section 4848.1 is added to the Business and Professions Code, to read:

4848.1. (a) A veterinarian engaged in the practice of veterinary medicine, as defined in Section 4826, employed by the University of California ~~while~~ *and* engaged in the performance of duties in connection with the School of Veterinary Medicine or employed by the Western University of Health Sciences ~~while~~ *and* engaged in the performance of duties in connection with the College of Veterinary Medicine shall be ~~licensed in California or shall hold~~ *issued* a university license ~~issued by the board.~~ *pursuant to this section or hold a license to practice veterinary medicine in this state.*

(b) An ~~applicant is eligible to hold~~ *individual may apply for and be issued* a university license if all of the following are satisfied:

(1) ~~The applicant~~ *He or she* is currently employed by the University of California or Western University of Health ~~Sciences~~ *Sciences,* as defined in subdivision (a).

(2) ~~Passes~~ *He or she passes* an examination concerning the statutes and regulations of the Veterinary Medicine Practice Act, administered by the board, pursuant to subparagraph (C) of paragraph (2) of subdivision (a) of Section 4848.

(3) ~~Successfully~~ *He or she successfully* completes the approved educational curriculum described in paragraph (5) of subdivision (b) of Section 4848 on regionally specific and important diseases and conditions.

(4) He or she completes and submits the application specified by the board and pays the application fee, pursuant to subdivision (g) of Section 4905, and the initial license fee, pursuant to subdivision (h) of Section 4905.

(c) A university license:

(1) Shall be numbered as described in Section 4847.

(2) Shall *automatically* cease to be valid upon termination *or cessation* of employment by the University of California or by the Western University of Health Sciences.

(3) Shall be subject to the license renewal provisions in Section ~~4846.4.~~ *4846.4 and the payment of the renewal fee pursuant to subdivision (i) of Section 4905.*

(4) Shall be subject to denial, revocation, or suspension pursuant to Sections ~~4875 and 4883.~~ *480, 4875, and 4883.*

(5) Authorizes the holder to practice veterinary medicine only at the educational institution described in subdivision (a) and any locations formally affiliated with those institutions.

(d) An individual who holds a university license is exempt from satisfying the license renewal requirements of Section 4846.5.

~~SEC. 16.~~

SEC. 14. Section 4853.7 is added to the Business and Professions Code, to read:

4853.7. A premise registration that is not renewed within five years after its expiration may not be renewed and shall not be restored, reissued, or reinstated thereafter. However, an application for a new premise registration may be submitted and obtained if both of the following conditions are met:

(a) No fact, circumstance, or condition exists that, if the premise registration was issued, would justify its revocation or suspension.

(b) All of the fees that would be required for the initial premise registration are paid at the time of application.

SEC. 15. Section 4904 of the Business and Professions Code is amended to read:

4904. All fees collected on behalf of the board and all receipts of every kind and nature shall be reported each month for the month preceding to the State Controller and at the same time the entire amount shall be paid into the State Treasury and shall be credited to the Veterinary Medical Board Contingent Fund. This contingent fund shall be *available, upon appropriation by the Legislature,* for the use of the Veterinary Medical ~~Board and out of it and not otherwise shall be paid all expenses of the board.~~ *Board.*

SEC. 16. Section 4905 of the Business and Professions Code is amended to read:

4905. The following fees shall be collected by the board and shall be credited to the Veterinary Medical Board Contingent Fund:

(a) The fee for filing an application for examination shall be set by the board in an amount it determines is reasonably necessary to provide sufficient funds to carry out the purpose of this chapter, not to exceed three hundred fifty dollars ($350).

(b) The fee for the California state board examination shall be set by the board in an amount it determines is reasonably necessary to provide sufficient funds to carry out the purpose of this chapter, not to exceed three hundred fifty dollars ($350).

(c) The fee for the Veterinary Medicine Practice Act examination shall be set by the board in an amount it determines reasonably necessary to provide sufficient funds to carry out the purpose of this chapter, not to exceed one hundred dollars ($100).

(d) The initial license fee shall be set by the board not to exceed five hundred dollars ($500) except that, if the license is issued less than one year before the date on which it will expire, then the fee shall be set by the board at not to exceed two hundred fifty dollars ($250). The board may, by appropriate regulation, provide for the waiver or refund of the initial license fee where the license is issued less than 45 days before the date on which it will expire.

(e) The renewal fee shall be set by the board for each biennial renewal period in an amount it determines is reasonably necessary to provide sufficient funds to carry out the purpose of this chapter, not to exceed five hundred dollars ($500).

(f) The temporary license fee shall be set by the board in an amount it determines is reasonably necessary to provide sufficient funds to carry out the purpose of this chapter, not to exceed two hundred fifty dollars ($250).

(g) The fee for filing an application for a university license shall be one hundred twenty-five dollars ($125), which may be revised by the board in regulation but shall not exceed three hundred fifty dollars ($350).

(h) The initial license fee for a university license shall be two hundred ninety dollars ($290), which may be revised by the board in regulation but shall not exceed five hundred dollars ($500).

(i) The biennial renewal fee for a university license shall be two hundred ninety dollars ($290), which may be revised by the board in regulation but shall not exceed five hundred dollars ($500).

~~(g)~~

(j) The delinquency fee shall be set by the board, not to exceed fifty dollars ($50).

~~(h)~~

(k) The fee for issuance of a duplicate license is twenty-five dollars ($25).

~~(i)~~

(l) Any charge made for duplication or other services shall be set at the cost of rendering the service, except as specified in subdivision ~~(h).~~ *(k).*

~~(j)~~

(m) The fee for failure to report a change in the mailing address is twenty-five dollars ($25).

~~(k)~~

(n) The initial and annual renewal fees for registration of veterinary premises shall be set by the board in an amount not to exceed four hundred dollars ($400) annually.

~~(l)~~

(o) If the money transferred from the Veterinary Medical Board Contingent Fund to the General Fund pursuant to the Budget Act of 1991 is redeposited into the Veterinary Medical Board Contingent Fund, the fees assessed by the board shall be reduced correspondingly. However, the reduction shall not be so great as to cause the Veterinary Medical Board Contingent Fund to have a reserve of less than three months of annual authorized board expenditures. The fees set by the board shall not result in a

Veterinary Medical Board Contingent Fund reserve of more than 10 months of annual authorized board expenditures.

SEC. 17. Section 825 of the Government Code is amended to read:

825. (a) Except as otherwise provided in this section, if an employee or former employee of a public entity requests the public entity to defend him or her against any claim or action against him or her for an injury arising out of an act or omission occurring within the scope of his or her employment as an employee of the public entity and the request is made in writing not less than 10 days before the day of trial, and the employee or former employee reasonably cooperates in good faith in the defense of the claim or action, the public entity shall pay any judgment based thereon or any compromise or settlement of the claim or action to which the public entity has agreed.

If the public entity conducts the defense of an employee or former employee against any claim or action with his or her reasonable good-faith cooperation, the public entity shall pay any judgment based thereon or any compromise or settlement of the claim or action to which the public entity has agreed. However, where the public entity conducted the defense pursuant to an agreement with the employee or former employee reserving the rights of the public entity not to pay the judgment, compromise, or settlement until it is established that the injury arose out of an act or omission occurring within the scope of his or her employment as an employee of the public entity, the public entity is required to pay the judgment, compromise, or settlement only if it is established that the injury arose out of an act or omission occurring in the scope of his or her employment as an employee of the public entity.

Nothing in this section authorizes a public entity to pay that part of a claim or judgment that is for punitive or exemplary damages.

(b) Notwithstanding subdivision (a) or any other provision of law, a public entity is authorized to pay that part of a judgment that is for punitive or exemplary damages if the governing body of that public entity, acting in its sole discretion except in cases involving an entity of the state government, finds all of the following:

(1) The judgment is based on an act or omission of an employee or former employee acting within the course and scope of his or her employment as an employee of the public entity.

(2) At the time of the act giving rise to the liability, the employee or former employee acted, or failed to act, in good faith, without actual malice and in the apparent best interests of the public entity.

(3) Payment of the claim or judgment would be in the best interests of the public entity.

As used in this subdivision with respect to an entity of state government, "a decision of the governing body" means the approval of the Legislature for payment of that part of a judgment that is for punitive damages or exemplary damages, upon recommendation of the appointing power of the employee or former employee, based upon the finding by the Legislature and the appointing authority of the existence of the three conditions for payment of a punitive or exemplary damages claim. The provisions of subdivision (a) of Section 965.6 shall apply to the payment of any claim pursuant to this subdivision.

The discovery of the assets of a public entity and the introduction of evidence of the assets of a public entity shall not be permitted in an action in which it is alleged that a public employee is liable for punitive or exemplary damages.

The possibility that a public entity may pay that part of a judgment that is for punitive damages shall not be disclosed in any trial in which it is alleged that a public employee is liable for punitive or exemplary damages, and that disclosure shall be grounds for a mistrial.

(c) Except as provided in subdivision (d), if the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 10 (commencing with Section 3500) of Division 4 of Title 1, the memorandum of understanding shall be controlling without further legislative action, except that if those provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

(d) The subject of payment of punitive damages pursuant to this section or any other provision of law shall not be a subject of meet and confer under the provisions of Chapter 10 (commencing with

Section 3500) of Division 4 of Title 1, or pursuant to any other law or authority.

(e) Nothing in this section shall affect the provisions of Section 818 prohibiting the award of punitive damages against a public entity. This section shall not be construed as a waiver of a public entity's immunity from liability for punitive damages under Section 1981, 1983, or 1985 of Title 42 of the United States Code.

(f) (1) Except as provided in paragraph (2), a public entity shall not pay a judgment, compromise, or settlement arising from a claim or action against an elected official, if the claim or action is based on conduct by the elected official by way of tortiously intervening or attempting to intervene in, or by way of tortiously influencing or attempting to influence the outcome of, any judicial action or proceeding for the benefit of a particular party by contacting the trial judge or any commissioner, court-appointed arbitrator, court-appointed mediator, or court-appointed special referee assigned to the matter, or the court clerk, bailiff, or marshal after an action has been filed, unless he or she was counsel of record acting lawfully within the scope of his or her employment on behalf of that party. Notwithstanding Section 825.6, if a public entity conducted the defense of an elected official against such a claim or action and the elected official is found liable by the trier of fact, the court shall order the elected official to pay to the public entity the cost of that defense.

(2) If an elected official is held liable for monetary damages in the action, the plaintiff shall first seek recovery of the judgment against the assets of the elected official. If the elected official's assets are insufficient to satisfy the total judgment, as determined by the court, the public entity may pay the deficiency if the public entity is authorized by law to pay that judgment.

(3) To the extent the public entity pays any portion of the judgment or is entitled to reimbursement of defense costs pursuant to paragraph (1), the public entity shall pursue all available creditor's remedies against the elected official, including garnishment, until that party has fully reimbursed the public entity.

(4) This subdivision shall not apply to any criminal or civil enforcement action brought in the name of the people of the State of California by an elected district attorney, city attorney, or attorney general.

(g) Notwithstanding subdivision (a), a public entity shall pay for a judgment or settlement for treble damage antitrust awards against a member of a regulatory board for an act or omission occurring within the scope of his or her employment as a member of a regulatory board.

(h) Treble damages awarded pursuant to the federal Clayton Act (Sections 12 to 27 of Title 15 of, and Sections 52 to 53 of Title 29 of, the United States Code) for a violation of the federal Sherman Act (Sections 1 to 6, 6a, and 7 of Title 15 of the United States Code) are not punitive or exemplary damages under the Government Claims Act (Division 3.6 (commencing with Section 810) of Title 1 of the Government Code) for purposes of this section.

SEC. 18. Section 11346.5 of the Government Code is amended to read:

11346.5. (a) The notice of proposed adoption, amendment, or repeal of a regulation shall include the following:

(1) A statement of the time, place, and nature of proceedings for adoption, amendment, or repeal of the regulation.

(2) Reference to the authority under which the regulation is proposed and a reference to the particular code sections or other provisions of law that are being implemented, interpreted, or made specific.

(3) An informative digest drafted in plain English in a format similar to the Legislative Counsel's digest on legislative bills. The informative digest shall include the following:

(A) A concise and clear summary of existing laws and regulations, if any, related directly to the proposed action and of the effect of the proposed action.

(B) If the proposed action differs substantially from an existing comparable federal regulation or statute, a brief description of the significant differences and the full citation of the federal regulations or statutes.

(C) A policy statement overview explaining the broad objectives of the regulation and the specific benefits anticipated by the proposed adoption, amendment, or repeal of a regulation, including, to the extent applicable, nonmonetary benefits such as the protection of public health and safety, worker safety, or the environment, the prevention of discrimination, the promotion of

fairness or social equity, and the increase in openness and transparency in business and government, among other things.

(D) An evaluation of whether the proposed regulation is inconsistent or incompatible with existing state regulations.

(4) Any other matters as are prescribed by statute applicable to the specific state agency or to any specific regulation or class of regulations.

(5) A determination as to whether the regulation imposes a mandate on local agencies or school districts and, if so, whether the mandate requires state reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4.

(6) An estimate, prepared in accordance with instructions adopted by the Department of Finance, of the cost or savings to any state agency, the cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4, other nondiscretionary cost or savings imposed on local agencies, and the cost or savings in federal funding to the state.

For purposes of this paragraph, "cost or savings" means additional costs or savings, both direct and indirect, that a public agency necessarily incurs in reasonable compliance with regulations.

(7) If a state agency, in proposing to adopt, amend, or repeal any administrative regulation, makes an initial determination that the action may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, it shall include the following information in the notice of proposed action:

(A) Identification of the types of businesses that would be affected.

(B) A description of the projected reporting, recordkeeping, and other compliance requirements that would result from the proposed action.

(C) The following statement: "The (name of agency) has made an initial determination that the (adoption/amendment/repeal) of this regulation may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The (name of agency) (has/has not) considered proposed

alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submissions may include the following considerations:

(i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.

(ii) Consolidation or simplification of compliance and reporting requirements for businesses.

(iii) The use of performance standards rather than prescriptive standards.

(iv) Exemption or partial exemption from the regulatory requirements for businesses."

(8) If a state agency, in adopting, amending, or repealing any administrative regulation, makes an initial determination that the action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, it shall make a declaration to that effect in the notice of proposed action. In making this declaration, the agency shall provide in the record facts, evidence, documents, testimony, or other evidence upon which the agency relies to support its initial determination.

An agency's initial determination and declaration that a proposed adoption, amendment, or repeal of a regulation may have or will not have a significant, adverse impact on businesses, including the ability of California businesses to compete with businesses in other states, shall not be grounds for the office to refuse to publish the notice of proposed action.

(9) A description of all cost impacts, known to the agency at the time the notice of proposed action is submitted to the office, that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

If no cost impacts are known to the agency, it shall state the following:

"The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action."

(10) A statement of the results of the economic impact assessment required by subdivision (b) of Section 11346.3 or the standardized regulatory impact analysis if required by subdivision (c) of Section 11346.3, a summary of any comments submitted to

the agency pursuant to subdivision (f) of Section 11346.3 and the agency's response to those comments.

(11) The finding prescribed by subdivision (d) of Section 11346.3, if required.

(12) (A) A statement that the action would have a significant effect on housing costs, if a state agency, in adopting, amending, or repealing any administrative regulation, makes an initial determination that the action would have that effect.

(B) The agency officer designated in paragraph (15) shall make available to the public, upon request, the agency's evaluation, if any, of the effect of the proposed regulatory action on housing costs.

(C) The statement described in subparagraph (A) shall also include the estimated costs of compliance and potential benefits of a building standard, if any, that were included in the initial statement of reasons.

(D) For purposes of model codes adopted pursuant to Section 18928 of the Health and Safety Code, the agency shall comply with the requirements of this paragraph only if an interested party has made a request to the agency to examine a specific section for purposes of estimating the costs of compliance and potential benefits for that section, as described in Section 11346.2.

(13) If the regulatory action is submitted by a ~~state board on which a controlling number of decisionmakers are active market participants in the market the board regulates, a statement that the adopting agency has evaluated the impact of the proposed regulation on competition, and that the proposed regulation furthers a clearly articulated and affirmatively expressed state law to restrain competition.~~ *board within the Department of Consumer Affairs, a statement that the Director of Consumer Affairs has reviewed the proposed regulation and determined that the proposed regulation furthers state law.*

(14) A statement that the adopting agency must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. For

a major regulation, as defined by Section 11342.548, proposed on or after November 1, 2013, the statement shall be based, in part, upon the standardized regulatory impact analysis of the proposed regulation, as required by Section 11346.3, as well as upon the benefits of the proposed regulation identified pursuant to subparagraph (C) of paragraph (3).

(15) The name and telephone number of the agency representative and designated backup contact person to whom inquiries concerning the proposed administrative action may be directed.

(16) The date by which comments submitted in writing must be received to present statements, arguments, or contentions in writing relating to the proposed action in order for them to be considered by the state agency before it adopts, amends, or repeals a regulation.

(17) Reference to the fact that the agency proposing the action has prepared a statement of the reasons for the proposed action, has available all the information upon which its proposal is based, and has available the express terms of the proposed action, pursuant to subdivision (b).

(18) A statement that if a public hearing is not scheduled, any interested person or his or her duly authorized representative may request, no later than 15 days prior to the close of the written comment period, a public hearing pursuant to Section 11346.8.

(19) A statement indicating that the full text of a regulation changed pursuant to Section 11346.8 will be available for at least 15 days prior to the date on which the agency adopts, amends, or repeals the resulting regulation.

(20) A statement explaining how to obtain a copy of the final statement of reasons once it has been prepared pursuant to subdivision (a) of Section 11346.9.

(21) If the agency maintains an Internet Web site or other similar forum for the electronic publication or distribution of written material, a statement explaining how materials published or distributed through that forum can be accessed.

(22) If the proposed regulation is subject to Section 11346.6, a statement that the agency shall provide, upon request, a description of the proposed changes included in the proposed action, in the manner provided by Section 11346.6, to accommodate a person with a visual or other disability for which effective communication

is required under state or federal law and that providing the description of proposed changes may require extending the period of public comment for the proposed action.

(b) The agency representative designated in paragraph (15) of subdivision (a) shall make available to the public upon request the express terms of the proposed action. The representative shall also make available to the public upon request the location of public records, including reports, documentation, and other materials, related to the proposed action. If the representative receives an inquiry regarding the proposed action that the representative cannot answer, the representative shall refer the inquiry to another person in the agency for a prompt response.

(c) This section shall not be construed in any manner that results in the invalidation of a regulation because of the alleged inadequacy of the notice content or the summary or cost estimates, or the alleged inadequacy or inaccuracy of the housing cost estimates, if there has been substantial compliance with those requirements.

~~SEC. 19. Section 11349 of the Government Code is amended to read:~~

~~11349. The following definitions govern the interpretation of this chapter:~~

~~(a) "Necessity" means the record of the rulemaking proceeding demonstrates by substantial evidence the need for a regulation to effectuate the purpose of the statute, court decision, or other provision of law that the regulation implements, interprets, or makes specific, taking into account the totality of the record. For purposes of this standard, evidence includes, but is not limited to, facts, studies, and expert opinion.~~

~~(b) "Authority" means the provision of law which permits or obligates the agency to adopt, amend, or repeal a regulation.~~

~~(c) "Clarity" means written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them.~~

~~(d) "Consistency" means being in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law.~~

~~(e) "Reference" means the statute, court decision, or other provision of law which the agency implements, interprets, or makes specific by adopting, amending, or repealing a regulation.~~

~~(f) "Nonduplication" means that a regulation does not serve the same purpose as a state or federal statute or another regulation. This standard requires that an agency proposing to amend or adopt a regulation must identify any state or federal statute or regulation which is overlapped or duplicated by the proposed regulation and justify any overlap or duplication. This standard is not intended to prohibit state agencies from printing relevant portions of enabling legislation in regulations when the duplication is necessary to satisfy the clarity standard in paragraph (3) of subdivision (a) of Section 11349.1. This standard is intended to prevent the indiscriminate incorporation of statutory language in a regulation.~~

~~(g) "Competitive impact" means that the record of the rulemaking proceeding or other documentation demonstrates that the regulation is authorized by a clearly articulated and affirmatively expressed state law, that the regulation furthers the public protection mission of the state agency, and that the impact on competition is justified in light of the applicable regulatory rationale for the regulation.~~

~~SEC. 20. Section 11349.1 of the Government Code is amended to read:~~

~~11349.1. (a) The office shall review all regulations adopted, amended, or repealed pursuant to the procedure specified in Article 5 (commencing with Section 11346) and submitted to it for publication in the California Code of Regulations Supplement and for transmittal to the Secretary of State and make determinations using all of the following standards:~~

~~(1) Necessity.~~

~~(2) Authority.~~

~~(3) Clarity.~~

~~(4) Consistency.~~

~~(5) Reference.~~

~~(6) Nonduplication.~~

~~(7) For those regulations submitted by a state board on which a controlling number of decisionmakers are active market participants in the market the board regulates, the office shall review for competitive impact.~~

~~In reviewing regulations pursuant to this section, the office shall restrict its review to the regulation and the record of the rulemaking except as directed in subdivision (h). The office shall approve the~~

~~regulation or order of repeal if it complies with the standards set forth in this section and with this chapter.~~

~~(b) In reviewing proposed regulations for the criteria in subdivision (a), the office may consider the clarity of the proposed regulation in the context of related regulations already in existence.~~

~~(c) The office shall adopt regulations governing the procedures it uses in reviewing regulations submitted to it. The regulations shall provide for an orderly review and shall specify the methods, standards, presumptions, and principles the office uses, and the limitations it observes, in reviewing regulations to establish compliance with the standards specified in subdivision (a). The regulations adopted by the office shall ensure that it does not substitute its judgment for that of the rulemaking agency as expressed in the substantive content of adopted regulations.~~

~~(d) The office shall return any regulation subject to this chapter to the adopting agency if any of the following occur:~~

~~(1) The adopting agency has not prepared the estimate required by paragraph (6) of subdivision (a) of Section 11346.5 and has not included the data used and calculations made and the summary report of the estimate in the file of the rulemaking.~~

~~(2) The agency has not complied with Section 11346.3. "Noncompliance" means that the agency failed to complete the economic impact assessment or standardized regulatory impact analysis required by Section 11346.3 or failed to include the assessment or analysis in the file of the rulemaking proceeding as required by Section 11347.3.~~

~~(3) The adopting agency has prepared the estimate required by paragraph (6) of subdivision (a) of Section 11346.5, the estimate indicates that the regulation will result in a cost to local agencies or school districts that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4, and the adopting agency fails to do any of the following:~~

~~(A) Cite an item in the Budget Act for the fiscal year in which the regulation will go into effect as the source from which the Controller may pay the claims of local agencies or school districts.~~

~~(B) Cite an accompanying bill appropriating funds as the source from which the Controller may pay the claims of local agencies or school districts.~~

~~(C) Attach a letter or other documentation from the Department of Finance which states that the Department of Finance has~~

~~approved a request by the agency that funds be included in the Budget Bill for the next following fiscal year to reimburse local agencies or school districts for the costs mandated by the regulation.~~

~~(D) Attach a letter or other documentation from the Department of Finance which states that the Department of Finance has authorized the augmentation of the amount available for expenditure under the agency's appropriation in the Budget Act which is for reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 to local agencies or school districts from the unencumbered balances of other appropriations in the Budget Act and that this augmentation is sufficient to reimburse local agencies or school districts for their costs mandated by the regulation.~~

~~(4) The proposed regulation conflicts with an existing state regulation and the agency has not identified the manner in which the conflict may be resolved.~~

~~(5) The agency did not make the alternatives determination as required by paragraph (4) of subdivision (a) of Section 11346.9.~~

~~(6) The office decides that the record of the rulemaking proceeding or other documentation for the proposed regulation does not demonstrate that the regulation is authorized by a clearly articulated and affirmatively expressed state law, that the regulation does not further the public protection mission of the state agency, or that the impact on competition is not justified in light of the applicable regulatory rationale for the regulation.~~

~~(e) The office shall notify the Department of Finance of all regulations returned pursuant to subdivision (d).~~

~~(f) The office shall return a rulemaking file to the submitting agency if the file does not comply with subdivisions (a) and (b) of Section 11347.3. Within three state working days of the receipt of a rulemaking file, the office shall notify the submitting agency of any deficiency identified. If no notice of deficiency is mailed to the adopting agency within that time, a rulemaking file shall be deemed submitted as of the date of its original receipt by the office. A rulemaking file shall not be deemed submitted until each deficiency identified under this subdivision has been corrected.~~

~~(g) Notwithstanding any other law, return of the regulation to the adopting agency by the office pursuant to this section is the exclusive remedy for a failure to comply with subdivision (c) of~~

~~Section 11346.3 or paragraph (10) of subdivision (a) of Section 11346.5.~~

~~(h) The office may designate, employ, or contract for the services of independent antitrust or applicable economic experts when reviewing proposed regulations for competitive impact. When reviewing a regulation for competitive impact, the office shall do all of the following:~~

~~(1) If the Director of Consumer Affairs issued a written decision pursuant to subdivision (c) of Section 109 of the Business and Professions Code, the office shall review and consider the decision and all supporting documentation in the rulemaking file.~~

~~(2) Consider whether the anticompetitive effects of the proposed regulation are clearly outweighed by the public policy merits.~~

~~(3) Provide a written opinion setting forth the office's findings and substantive conclusions under paragraph (2), including, but not limited to, whether rejection or modification of the proposed regulation is necessary to ensure that restraints of trade are related to and advance the public policy underlying the applicable regulatory rationale.~~

~~SEC. 21.~~

SEC. 19. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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Senate Bill No. 1479

Passed the Senate August 29, 2016

_____

Secretary of the Senate

Passed the Assembly August 22, 2016

_____

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day of _____, 2016, at _____ o'clock ___M.

_____

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 5092, 5094.3, 5550.2, 7074, 7159.5, 7612.6, 7844, and 7887 of the Business and Professions Code, and to amend Section 13995.1 of the Government Code, relating to business and professions.

LEGISLATIVE COUNSEL'S DIGEST

SB 1479, Committee on Business, Professions and Economic Development. Business and professions.

(1) Existing law provides for the licensure and regulation of accountants by the California Board of Accountancy, which is within the Department of Consumer Affairs. Existing law requires an applicant for licensure as a certified public accountant to provide documentation to the board of the completion of a certain number of units of ethics study, as specified. Existing law requires a portion of those units to come from courses containing specified terms in the course title, including, but not limited to, corporate governance.

This bill would instead require those units to come from courses in specified subjects relating to ethics.

(2) The Architects Practice Act provides for the licensure and regulation of architects and landscape architects by the California Architects Board, which is within the Department of Consumer Affairs, and requires a person to pass an examination as a condition of licensure as an architect. Existing law authorizes the board to grant eligibility to a candidate to take the licensure examination if he or she is enrolled in an Additional Path to Architecture Licensing program that integrates the experience and examination components offered by a National Architectural Accrediting Board-accredited degree program.

This bill would instead authorize the board to grant eligibility to a candidate to take the licensure examination if he or she is enrolled in a degree program accepted by the National Council of Architectural Registration Boards that integrates the licensure degree experience and examination components required under that act.

(3) The Contractors' State License Law provides for the licensure and regulation of contractors by the Contractors' State

License Board, which is within the Department of Consumer Affairs. That law requires, except as specified, an application for an original license, an additional classification, or for a change of qualifier to become void when certain conditions are met, including if the applicant or examinee for the applicant has failed to appear for the scheduled qualifying examination and fails to request and pay the fee for rescheduling within 90 days of notification of failure to appear or if the applicant or the examinee for the applicant has failed to achieve a passing grade in the scheduled qualifying examination and fails to request and pay the fee for rescheduling within 90 days of notification of failure to pass the examination.

This bill would delete those above-mentioned conditions as reasons for an application for an original license, an additional classification, or for a change of qualifier to become void.

With respect to home improvement contracts between an owner or tenant and a contractor, whether a general contractor or a specialty contractor, that is licensed or subject to be licensed with regard to the transaction, existing statutory law makes the failure to comply with specified provisions governing the furnishing of a performance and payment bond a cause for discipline. Existing regulatory law requires a licensee seeking approval of a blanket bond to meet certain conditions and to submit to the board an Application for Approval of Blanket Performance and Payment Bond. Existing regulatory law requires a licensee to be licensed in this state in an active status for not less than 5 years prior to submitting that application.

This bill would instead require such a licensee to be licensed for not less than 2 years prior to submitting that application.

(4) Existing law, the Cemetery and Funeral Act, requires each cemetery authority to annually file with the Cemetery and Funeral Bureau a specified written report that includes information relating to the general and special endowment care funds. Existing law requires the report to be accompanied by an annual audit report of those funds and specifies the scope of the audit.

This bill would require the audit to be prepared in accordance with generally accepted accounting principles.

(5) The Geologist and Geophysicist Act provides for the registration and regulation of professional geologists and professional geophysicists by the Board for Professional Engineers, Land Surveyors, and Geologists, which is within the Department

of Consumer Affairs. That act requires an applicant for registration to take an examination and requires the examination to be held at the times and places within the state that the board determines.

This bill would authorize the board to make arrangements with a public or private organization to conduct the examination. The bill would authorize the board to contract with such an organization for materials or services related to the examination and would authorize the board to allow an organization specified by the board to receive, directly from applicants, payments of the examination fees charged by that organization for materials and services.

(6) The California Tourism Marketing Act requires the Governor to appoint a Tourism Selection Committee, as specified, and provides that the Director of the Governor's Office of Business and Economic Development has the power to veto actions of the commission. That act states various findings and declarations by the Legislature regarding the tourism industry in California, including that the mechanism created by that act to fund generic promotions be pursuant to the supervision and oversight of the secretary.

This bill would instead find and declare that the mechanism to fund generic promotions be pursuant to the supervision and oversight of the Director of the Governor's Office of Business and Economic Development.

The people of the State of California do enact as follows:

SECTION 1. Section 5092 of the Business and Professions Code is amended to read:

5092. (a) To qualify for the certified public accountant license, an applicant who is applying under this section shall meet the education, examination, and experience requirements specified in subdivisions (b), (c), and (d), or otherwise prescribed pursuant to this article. The board may adopt regulations as necessary to implement this section.

(b) An applicant for the certified public accountant license shall present satisfactory evidence that the applicant has completed a baccalaureate or higher degree conferred by a college or university, meeting, at a minimum, the standards described in Section 5094, the total educational program to include a minimum of 24 semester units in accounting subjects and 24 semester units in business

related subjects. This evidence shall be provided prior to admission to the examination for the certified public accountant license, except that an applicant who applied, qualified, and sat for at least two subjects of the examination for the certified public accountant license before May 15, 2002, may provide this evidence at the time of application for licensure.

(c) An applicant for the certified public accountant license shall pass an examination prescribed by the board pursuant to this article.

(d) The applicant shall show, to the satisfaction of the board, that the applicant has had two years of qualifying experience. This experience may include providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax, or consulting skills. To be qualifying under this section, experience shall have been performed in accordance with applicable professional standards. Experience in public accounting shall be completed under the supervision or in the employ of a person licensed or otherwise having comparable authority under the laws of any state or country to engage in the practice of public accountancy. Experience in private or governmental accounting or auditing shall be completed under the supervision of an individual licensed by a state to engage in the practice of public accountancy.

(e) This section shall become inoperative on January 1, 2014, but shall become or remain operative if the educational requirements in ethics study and accounting study established by subdivision (b) of Section 5093, Section 5094.3, and Section 5094.6 are reduced or eliminated.

(f) The amendment to subdivision (d) of Section 5094.3 made by the measure adding this subdivision shall not be deemed to reduce or eliminate the educational requirements of Section 5094.3 for purposes of subdivision (e) of this section.

SEC. 2. Section 5094.3 of the Business and Professions Code is amended to read:

5094.3. (a) An applicant for licensure as a certified public accountant shall, to the satisfaction of the board, provide documentation of the completion of 10 semester units or 15 quarter units of ethics study, as set forth in paragraph (2) of subdivision (b) of Section 5093, in the manner prescribed in this section.

(b) (1) Between January 1, 2014, and December 31, 2016, inclusive, an applicant shall complete 10 semester units or 15 quarter units in courses described in subdivisions (d), (e), and (f).

(2) Beginning January 1, 2017, an applicant shall complete 10 semester units or 15 quarter units in courses described in subdivisions (c), (d), (e), and (f).

(c) A minimum of three semester units or four quarter units in courses at an upper division level or higher devoted to accounting ethics or accountants' professional responsibilities, unless the course was completed at a community college, in which case it need not be completed at the upper division level or higher.

(d) Between January 1, 2014, and December 31, 2016, inclusive, a maximum of 10 semester units or 15 quarter units, and on and after January 1, 2017, a maximum of 7 semester units or 11 quarter units, in the following subjects relating to ethics:

(1) Business, government, and society.
(2) Business law.
(3) Corporate governance.
(4) Corporate social responsibility.
(5) Ethics.
(6) Fraud.
(7) Human resources management.
(8) Business leadership.
(9) Legal environment of business.
(10) Management of organizations.
(11) Morals.
(12) Organizational behavior.
(13) Professional responsibilities.
(14) Auditing.

(e) (1) A maximum of three semester units or four quarter units in courses taken in the following disciplines:

(A) Philosophy.
(B) Religion.
(C) Theology.

(2) To qualify under this subdivision, the course title shall contain one or more of the terms "introduction," "introductory," "general," "fundamentals of," "principles," "foundation of," or "survey of," or have the name of the discipline as the sole name of the course title.

(f) A maximum of one semester unit of ethics study for completion of a course specific to financial statement audits.

(g) An applicant who has successfully passed the examination requirement specified under Section 5082 on or before December 31, 2013, is exempt from this section unless the applicant fails to obtain the qualifying experience as specified in Section 5092 or 5093 on or before December 31, 2015.

SEC. 3. Section 5550.2 of the Business and Professions Code is amended to read:

5550.2. Notwithstanding subdivision (b) of Section 5552, the board may grant eligibility to take the licensure examination to a candidate enrolled in a degree program accepted by the National Council of Architectural Registration Boards that integrates the licensure degree experience and examination components required under this chapter. The eligibility point shall be determined by that degree program.

SEC. 4. Section 7074 of the Business and Professions Code is amended to read:

7074. (a) Except as otherwise provided by this section, an application for an original license, for an additional classification, or for a change of qualifier shall become void when:

(1) The applicant or the examinee for the applicant has failed to achieve a passing grade in the qualifying examination within 18 months after the application has been deemed acceptable by the board.

(2) The applicant for an original license, after having been notified to do so, fails to pay the initial license fee within 90 days from the date of the notice.

(3) The applicant, after having been notified to do so, fails to file within 90 days from the date of the notice any bond or cash deposit or other documents that may be required for issuance or granting pursuant to this chapter.

(4) After filing, the applicant withdraws the application.

(5) The applicant fails to return the application rejected by the board for insufficiency or incompleteness within 90 days from the date of original notice or rejection.

(6) The application is denied after disciplinary proceedings conducted in accordance with the provisions of this code.

(b) The void date on an application may be extended up to 90 days or one examination may be rescheduled without a fee upon

documented evidence by the applicant that the failure to complete the application process or to appear for an examination was due to a medical emergency or other circumstance beyond the control of the applicant.

(c) An application voided pursuant to this section shall remain in the possession of the registrar for the period as he or she deems necessary and shall not be returned to the applicant. Any reapplication for a license shall be accompanied by the fee fixed by this chapter.

SEC. 5. Section 7159.5 of the Business and Professions Code is amended to read:

7159.5. This section applies to all home improvement contracts, as defined in Section 7151.2, between an owner or tenant and a contractor, whether a general contractor or a specialty contractor, that is licensed or subject to be licensed pursuant to this chapter with regard to the transaction.

(a) Failure by the licensee or a person subject to be licensed under this chapter, or by his or her agent or salesperson, to comply with the following provisions is cause for discipline:

(1) The contract shall be in writing and shall include the agreed contract amount in dollars and cents. The contract amount shall include the entire cost of the contract, including profit, labor, and materials, but excluding finance charges.

(2) If there is a separate finance charge between the contractor and the person contracting for home improvement, the finance charge shall be set out separately from the contract amount.

(3) If a downpayment will be charged, the downpayment may not exceed one thousand dollars ($1,000) or 10 percent of the contract amount, whichever is less.

(4) If, in addition to a downpayment, the contract provides for payments to be made prior to completion of the work, the contract shall include a schedule of payments in dollars and cents specifically referencing the amount of work or services to be performed and any materials and equipment to be supplied.

(5) Except for a downpayment, the contractor may neither request nor accept payment that exceeds the value of the work performed or material delivered.

(6) Upon any payment by the person contracting for home improvement, and prior to any further payment being made, the contractor shall, if requested, obtain and furnish to the person a

full and unconditional release from any potential lien claimant claim or mechanics lien authorized pursuant to Sections 8400 and 8404 of the Civil Code for any portion of the work for which payment has been made. The person contracting for home improvement may withhold all further payments until these releases are furnished.

(7) If the contract provides for a payment of a salesperson's commission out of the contract price, that payment shall be made on a pro rata basis in proportion to the schedule of payments made to the contractor by the disbursing party in accordance with paragraph (4).

(8) A contractor furnishing a performance and payment bond, lien and completion bond, or a bond equivalent or joint control approved by the registrar covering full performance and payment is exempt from paragraphs (3), (4), and (5), and need not include, as part of the contract, the statement regarding the downpayment specified in subparagraph (C) of paragraph (8) of subdivision (d) of Section 7159, the details and statement regarding progress payments specified in paragraph (9) of subdivision (d) of Section 7159, or the Mechanics Lien Warning specified in paragraph (4) of subdivision (e) of Section 7159. A contractor furnishing these bonds, bond equivalents, or a joint control approved by the registrar may accept payment prior to completion. If the contract provides for a contractor to furnish joint control, the contractor shall not have any financial or other interest in the joint control. Notwithstanding any other law, a licensee shall be licensed in this state in an active status for not less than two years prior to submitting an Application for Approval of Blanket Performance and Payment Bond as provided in Section 858.2 of Title 16 of the California Code of Regulations as it read on January 1, 2016.

(b) A violation of paragraph (1), (3), or (5) of subdivision (a) by a licensee or a person subject to be licensed under this chapter, or by his or her agent or salesperson, is a misdemeanor punishable by a fine of not less than one hundred dollars ($100) nor more than five thousand dollars ($5,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

(1) An indictment or information against a person who is not licensed but who is required to be licensed under this chapter shall be brought, or a criminal complaint filed, for a violation of this section, in accordance with paragraph (4) of subdivision (d) of

Section 802 of the Penal Code, within four years from the date of the contract or, if the contract is not reduced to writing, from the date the buyer makes the first payment to the contractor.

(2) An indictment or information against a person who is licensed under this chapter shall be brought, or a criminal complaint filed, for a violation of this section, in accordance with paragraph (2) of subdivision (d) of Section 802 of the Penal Code, within two years from the date of the contract or, if the contract is not reduced to writing, from the date the buyer makes the first payment to the contractor.

(3) The limitations on actions in this subdivision shall not apply to any administrative action filed against a licensed contractor.

(c) Any person who violates this section as part of a plan or scheme to defraud an owner or tenant of a residential or nonresidential structure, including a mobilehome or manufactured home, in connection with the offer or performance of repairs to the structure for damage caused by a natural disaster, shall be ordered by the court to make full restitution to the victim based on the person's ability to pay, as defined in subdivision (e) of Section 1203.1b of the Penal Code. In addition to full restitution, and imprisonment authorized by this section, the court may impose a fine of not less than five hundred dollars ($500) nor more than twenty-five thousand dollars ($25,000), based upon the defendant's ability to pay. This subdivision applies to natural disasters for which a state of emergency is proclaimed by the Governor pursuant to Section 8625 of the Government Code, or for which an emergency or major disaster is declared by the President of the United States.

SEC. 6. Section 7612.6 of the Business and Professions Code is amended to read:

7612.6. (a) Each cemetery authority shall file with the bureau annually, on or before June 1, or within five months after close of their fiscal year provided approval has been granted by the bureau as provided for in Section 7612.7, a written report in a form prescribed by the bureau setting forth the following:

(1) The number of square feet of grave space and the number of crypts and niches sold or disposed of under endowment care by specific periods as set forth in the form prescribed.

(2) The amount collected and deposited in both the general and special endowment care funds segregated as to the amounts for

crypts, niches, and grave space by specific periods as set forth either on the accrual or cash basis at the option of the cemetery authority.

(3) A statement showing separately the total amount of the general and special endowment care funds invested in each of the investments authorized by law and the amount of cash on hand not invested, which statement shall actually show the financial condition of the funds.

(4) A statement showing separately the location, description, and character of the investments in which the special endowment care funds are invested. The statement shall show the valuations of any securities held in the endowment care fund as valued pursuant to Section 7614.7.

(5) A statement showing the transactions entered into between the corporation or any officer, employee, or stockholder thereof and the trustees of the endowment care funds with respect to those endowment care funds. The statement shall show the dates, amounts of the transactions, and shall contain a statement of the reasons for those transactions.

(b) The report shall be verified by the president or vice president and one other officer of the cemetery corporation. The information submitted pursuant to paragraphs (2), (3), (4), and (5) of subdivision (a) shall be accompanied by an annual audit report, prepared in accordance with generally accepted accounting principles, of the endowment care fund and special care fund signed by a certified public accountant or public accountant. The scope of the audit shall include the inspection, review, and audit of the general purpose financial statements of the endowment care fund and special care fund, which shall include the balance sheet, the statement of revenues, expenditures, and changes in fund balance.

(c) If a cemetery authority files a written request prior to the date the report is due, the bureau may, in its discretion, grant an additional 30 days within which to file the report.

SEC. 7. Section 7844 of the Business and Professions Code is amended to read:

7844. (a) Examination for licensure shall be held at the times and places within the state as the board shall determine. The scope of examinations and the methods of procedure may be prescribed by rule of the board.

(b) The board may make arrangements with a public or private organization to conduct the examination. The board may contract with a public or private organization for materials or services related to the examination.

(c) The board may authorize an organization specified by the board to receive directly from applicants payment of the examination fees charged by that organization as payment for examination materials and services.

SEC. 8. Section 7887 of the Business and Professions Code is amended to read:

7887. The amount of the fees prescribed by this chapter shall be fixed by the board in accordance with the following schedule:

(a) The fee for filing each application for licensure as a geologist or a geophysicist or certification as a specialty geologist or a specialty geophysicist and for administration of the examination shall be fixed at not more than two hundred fifty dollars ($250).

(b) The license fee for a geologist or for a geophysicist and the fee for the certification in a specialty shall be fixed at an amount equal to the renewal fee in effect on the last regular renewal date before the date on which the certificate is issued, except that, with respect to certificates that will expire less than one year after issuance, the fee shall be fixed at an amount equal to 50 percent of the renewal fee in effect on the last regular renewal date before the date on which the certificate is issued. The board may, by appropriate regulation, provide for the waiver or refund of the initial certificate fee where the certificate is issued less than 45 days before the date on which it will expire.

(c) The duplicate certificate fee shall be fixed at not more than six dollars ($6).

(d) The renewal fee for a geologist or for a geophysicist shall be fixed at not more than four hundred dollars ($400).

(e) The renewal fee for a specialty geologist or for a specialty geophysicist shall be fixed at not more than one hundred dollars ($100).

(f) Notwithstanding Section 163.5, the delinquency fee for a certificate is an amount equal to 50 percent of the renewal fee in effect on the last regular renewal date.

(g) Each applicant for licensure as a geologist shall pay an examination fee fixed at an amount equal to the actual cost to the board to administer the examination described in subdivision (d)

of Section 7841, unless an applicant pays the examination fee directly to an organization pursuant to Section 7844.

(h) Each applicant for licensure as a geophysicist or certification as an engineering geologist or certification as a hydrogeologist shall pay an examination fee fixed by the board at an amount equal to the actual cost to the board for the development and maintenance of the written examination, and shall not exceed one hundred dollars ($100).

(i) The fee for a retired license shall be fixed at not more than 50 percent of the fee for filing an application for licensure as a geologist or a geophysicist in effect on the date of application for a retired license.

SEC. 9. Section 13995.1 of the Government Code is amended to read:

13995.1. The Legislature hereby finds and declares all of the following:

(a) Tourism is among California's biggest industries, contributing over fifty-two billion dollars ($52,000,000,000) to the state economy and employing nearly 700,000 Californians in 1995.

(b) In order to retain and expand the tourism industry in California, it is necessary to market travel to and within California.

(c) State funding, while an important component of marketing, has been unable to generate sufficient funds to meet the threshold levels of funding necessary to reverse recent losses of California's tourism market share.

(d) In regard to the need for a cooperative partnership between business and industry:

(1) It is in the state's public interest and vital to the welfare of the state's economy to expand the market for, and develop, California tourism through a cooperative partnership funded in part by the state that will allow generic promotion and communication programs.

(2) The mechanism established by this chapter is intended to play a unique role in advancing the opportunity to expand tourism in California, and it is intended to increase the opportunity for tourism to the benefit of the tourism industry and the consumers of the State of California.

(3) Programs implemented pursuant to this chapter are intended to complement the marketing activities of individual competitors within the tourism industry.

(4) While it is recognized that smaller businesses participating in the tourism market often lack the resources or market power to conduct these activities on their own, the programs are intended to be of benefit to businesses of all sizes.

(5) These programs are not intended to, and they do not, impede the right or ability of individual businesses to conduct activities designed to increase the tourism market generally or their own respective shares of the California tourism market, and nothing in the mechanism established by this chapter shall prevent an individual business or participant in the industry from seeking to expand its market through alternative or complementary means, or both.

(6) (A) An individual business's own advertising initiatives are typically designed to increase its share of the California tourism market rather than to increase or expand the overall size of that market.

(B) In contrast, generic promotion of California as a tourism destination is intended and designed to maintain or increase the overall demand for California tourism and to maintain or increase the size of that market, often by utilizing promotional methods and techniques that individual businesses typically are unable, or have no incentive, to employ.

(7) This chapter creates a mechanism to fund generic promotions that, pursuant to the required supervision and oversight of the director as specified in this chapter, further specific state governmental goals, as established by the Legislature, and result in a promotion program that produces nonideological and commercial communication that bears the characteristics of, and is entitled to all the privileges and protections of, government speech.

(8) The programs implemented pursuant to this chapter shall be carried out in an effective and coordinated manner that is designed to strengthen the tourism industry and the state's economy as a whole.

(9) Independent evaluation of the effectiveness of the programs will assist the Legislature in ensuring that the objectives of the programs as set out in this section are met.

(e) An industry-approved assessment provides a private-sector financing mechanism that, in partnership with state funding, will provide the amount of marketing necessary to increase tourism marketing expenditures by California.

(f) The goal of the assessments is to assess the least amount per business, in the least intrusive manner, spread across the greatest practical number of tourism industry segments.

(g) The California Travel and Tourism Commission shall target an amount determined to be sufficient to market effectively travel and tourism to and within the state.

(h) In the course of developing its written marketing plan pursuant to Section 13995.45, the California Travel and Tourism Commission shall, to the maximum extent feasible, do both of the following:

(1) Seek advice and recommendations from all segments of California's travel and tourism industry and from all geographic regions of the state.

(2) Harmonize, as appropriate, its marketing plan with the travel and tourism marketing activities and objectives of the various industry segments and geographic regions.

(i) The California Travel and Tourism Commission's marketing budget shall be spent principally to bring travelers and tourists into the state. No more than 15 percent of the commission's assessed funds in any year shall be spent to promote travel within California, unless approved by at least two-thirds of the commissioners.

Approved _____, 2016

_____

Governor

NATIONAL COUNCIL OF ARCHITECTURAL REGISTRATION BOARDS (NCARB)

1. Review and Possible Action on NCARB Mutual Recognition Arrangement Between Australia and New Zealand Architectural Licensing Authorities

2. Update and Possible Action on NCARB Integrated Path to Architectural Licensure

REVIEW AND POSSIBLE ACTION ON NCARB MUTUAL RECOGNITION ARRANGEMENT BETWEEN AUSTRALIA AND NEW ZEALAND ARCHITECTURAL LICENSING AUTHORITIES

The ability of a California architect to work abroad is dependent upon being lawfully licensed in the respective foreign jurisdiction. In late 2014, current and former chairs of the National Council of Architectural Registration Boards' (NCARB) Education Committee, Internship Committee, and Examination Committee, along with other subject matter experts reviewed the licensure requirements for Australia and New Zealand. The special review team conducted a substantial comparative analysis and found significant correlation between the expected professional competencies for practice and how they were established and assessed in both countries. Australia and New Zealand were also found to maintain a rigorous and standardized licensure process parallel to that used by NCARB.

On February 10, 2016, a new Mutual Recognition Arrangement (MRA) was signed by NCARB, the Architects Accreditation Council of Australia (AACA), and the New Zealand Registered Architects Board (NZRAB).

This MRA closely follows the lines of the current one with Canada and is strongly founded on accredited education, structured experience, and comprehensive examination, which is typically considered the traditional pathway to licensure. All three countries also have alternate paths to licensure for those without accredited education. The alternatives are appropriately rigorous and include extended periods of experience prior to licensure.

The fundamental principles of recognition under the MRA are:

- Citizenship or lawful permanent residence in the home country;
- Validation of licensure in good standing from the home authority; and
- 6,000 hours (approximately three years) of post-licensure experience in the home country.

For the MRA to be implemented, more than half of all NCARB member boards must become formal signatories to it by December 31, 2016. Similarly, all eight jurisdictions of AACA must become signatories to the MRA by the same date. NZRAB, as the representative of all New Zealand registered architects, has already secured ratification of the MRA. If these conditions are met, the MRA will become operative on January 1, 2017.

The Board is asked to review the MRA and take possible action.

Attachment:
Request for Signatories - Mutual Recognition Arrangement with Australia and New Zealand

NCARB

National Council of Architectural Registration Boards

MEMORANDUM

DATE: 28 June 2016

TO: Member Board Chairs
Member Board Executives

FROM: Kristine A. Harding, NCARB, AIA
President, NCARB

RE: Request for Signatories to the new Mutual Recognition Arrangement with Australia and New Zealand

The ability of an architect licensed in a U.S. jurisdiction to lawfully seek and find work abroad depends on their ability to become licensed in that foreign jurisdiction. In February, 2016 a new Mutual Recognition Arrangement was signed by the leaders of the Council, the Architects Accreditation Council of Australia (AACA), and the New Zealand Registered Architects Board (NZRAB).

In late 2014, current and former chairs of NCARB's Education Committee, Internship Committee, and Examination Committee, along with additional subject-matter experts, were appointed by then-president Dale McKinney, FAIA to review the requirements for licensure in Australia and New Zealand. Through a substantial comparative analysis, this special review team found a significant correlation between the expected professional competencies for practice and the way they were established and assessed in both countries. Furthermore, the detailed comparative analysis revealed that both countries maintain a rigorous and standardized licensure process that parallels NCARB's.

The terms of this Arrangement follow the lines of our current arrangement with Canada and are strongly founded on accredited education, structured experience, and comprehensive examination; the mainstays of licensure in our U.S. jurisdictions. All three countries also provide for alternative paths to licensure for those without accredited education. Those alternatives, like ours, are appropriately rigorous and include extended periods of experience prior to initial licensure. While this arrangement includes those applicants, the focus of the Arrangement is based on the primary and most often utilized pathway.

1801 K Street NW, Suite 700K
Washington, DC 20006
202/783-6500
FAX 202/783-0290
www.ncarb.org

The fundamental principles of recognition under this Arrangement are:

- Citizenship or lawful permanent residence in the home country,
- Validation of licensure in good standing from the home authority, and
- 6,000 hours (approximately three years) of post-licensure experience in the home country.

An architect who obtained their license through other foreign reciprocal registration procedures would not qualify for reciprocal registration under this Arrangement.

Implementation of the Arrangement is contingent on more than half of all NCARB Member Boards becoming formal signatories to the Arrangement by December 31, 2016. Likewise, AACA has the same timeframe to collect signed Letters from all eight of their member jurisdictions. NZRAB represents all registered architects in New Zealand and has secured ratification of the Arrangement. Once we have collected the required number of signatories, the new arrangement will become effective **January 1, 2017**.

Attached to this letter is the MRA and a Letter of Undertaking that we are respectfully asking you to sign on behalf of your Board. Please review this Letter of Undertaking with your fellow Board members and return an executed copy to Maurice Brown (mbrown@ncarb.org) by **December 31, 2016**. We will keep you informed as to the progress of Member Boards who are signing on to the Arrangement. Should you have any questions regarding the Arrangement or its impact, feel free to contact either Kathy Hillegas (khillegas@ncarb.org) or Stephen Nutt (snutt@ncarb.org).

Attachments:

- Letter of Undertaking
- MRA between NCARB and AACA and NZRAB
- Letter of Good Standing (template)
- Declaration of Professional Experience (template)
- AACA/NZARB/NCARB Statement of Credentials (template)
- Confirmation of Council Certification

Letter of Undertaking

with respect to the

MUTUAL RECOGNITION ARRANGEMENT
between the
NATIONAL COUNCIL OF ARCHITECTURAL REGISTRATION BOARDS
and the
ARCHITECTS ACCREDITATION COUNCIL OF AUSTRALIA
and the
NEW ZEALAND REGISTERED ARCHITECTS BOARD

The National Council of Architectural Registration Boards (NCARB)
representing the architectural licensing boards of the 50 United States,
the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands.

AND

The Architects Accreditation Council of Australia (AACA)
representing the architectural licensing boards of the eight states and territories of Australia.

AND

The New Zealand Registered Architects Board (NZRAB)
representing the registered architects of New Zealand.

WHEREAS, NCARB, AACA, and NZRAB have agreed to and signed a Mutual Recognition Arrangement (Arrangement) dated 10 February 2016, ratified by the architectural licensing authorities represented by NCARB, the architectural licensing authorities represented by AACA, and the NZRAB.

NOW THEREFORE, this *Letter of Undertaking* shall be signed, without modification, by each individual licensing/registration authority wishing to participate in the Arrangement.

The undersigned licensing/registration authority, having the authority to register or license persons as Architects within its jurisdiction, wishes to become a signatory to the Arrangement by virtue of this *Letter of Undertaking*. In doing so, the licensing/registration authority agrees to and acknowledges the following:

1. The terms used in this *Letter of Undertaking* shall have the same meaning as defined in the Arrangement between NCARB, AACA, and NZRAB dated 10 February 2016.

2. The undersigned individual has the authority to sign on behalf of the licensing/registration authority.

3. As a signatory to the Arrangement, the undersigned licensing/registration authority will adhere to the fundamental principles of the Arrangement and agrees to accept the *Letter of Good Standing* provided by the home licensing/registration authority and the applicant's personal *Declaration of Professional Experience* as satisfying the eligibility requirements for licensing/registration as set forth in the Arrangement.

4. The undersigned licensing/registration authority will not impose any additional education, experience, or examination requirements, or require the applicant to provide education transcripts, experience verifications, examination scores, or government identification numbers (including, but not limited to, Social Security Numbers or social insurance numbers). However, the host licensing/registration authority may impose familiarity with local laws and other local requirements that also apply to all domestic applicants seeking reciprocal licensure.

5. In keeping with the above, the undersigned licensing/registration authority agrees that it will accept for licensure/registration to practice architecture in its jurisdiction a licensed/registered architect who holds a valid and current NCARB Certificate that has been issued in accordance with the Arrangement and satisfies all conditions outlined within the Arrangement.

IN WITNESS WHEREOF, the licensing/registration authority named below has caused the duly authorized person, on its behalf, to execute and deliver this *Letter of Undertaking*.

Entered into on _____, 201__.

By: _____
Name of Licensing/Registration Authority

_____
Name of duly authorized individual and title

_____
Signature

Copy of Mutual Recognition Arrangement attached

MUTUAL RECOGNITION ARRANGEMENT
between the
NATIONAL COUNCIL OF ARCHITECTURAL REGISTRATION BOARDS
and the
ARCHITECTS ACCREDITATION COUNCIL OF AUSTRALIA
and the
NEW ZEALAND REGISTERED ARCHITECTS BOARD
as executed

10 February 2016

The National Council of Architectural Registration Boards (NCARB)
representing the architectural licensing boards of the 50 United States,
the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands.

AND

The Architects Accreditation Council of Australia (AACA)
representing the architectural licensing boards of the eight states and territories of Australia.

AND

The New Zealand Registered Architects Board (NZRAB)
representing the registered architects of New Zealand.

This **Mutual Recognition Arrangement** *has been designed to recognize the professional credentials of architects licensed/registered in the U.S., Australia, and New Zealand and to support their mobility by creating the opportunity to practice beyond their borders. More specifically, the purpose of this Arrangement is to facilitate the registration of an architect licensed in a participating U.S. jurisdiction as an Australian architect or New Zealand architect; and the licensing of an Australian architect or New Zealand architect as an architect in a U.S. jurisdiction that has agreed to participate in the Arrangement.*

WHEREAS, NCARB establishes model regulations for the profession of architecture and promulgates recommended national standards for education, experience, and examination for initial licensure and continuing education standards for license renewal to the 54 Member Boards; as well as establishing the education, experience, and examination requirements for the *NCARB Certificate* in support of reciprocal licensure within the United States;

WHEREAS, AACA advocates, coordinates, and facilitates the development of national standards of competency for the profession of architecture through education, practical experience, and examination requirements for initial licensure and license renewal for all eight Australian State and Territory Registration Boards;

WHEREAS, NZRAB, as established by an act of the New Zealand Parliament, or its statutory successor, holds the statutory authority to determine the minimum education qualifications, work experience requirements, and assessment procedures for initial registration and license renewal as a registered architect in New Zealand, as well as the responsibility to register, monitor, and discipline all architects registered in New Zealand;

WHEREAS, NCARB and the AACA previously ratified Mutual Recognition Agreements in 1973, 1983, and 2006 that were never fully realized; NCARB, the AACA, and the Architects Education and Registration Board of New Zealand (AERB/NZ) ratified separate Practice in a Host Nation Agreements in 2002 that were never fully implemented; and the AERB/NZ no longer exists and has been statutorily replaced by the NZRAB; and NCARB, AACA, and the NZRAB declare all former Agreements no longer exist or are terminated;

WHEREAS, the NCARB Member Boards, the Australian State and Territory Boards, and the NZRAB are empowered by statutes to regulate the profession of architecture in their respective jurisdictions, including establishing education, experience, and examination/assessment requirements for licensure/registration and license/registration renewal;

WHEREAS, the standards, protocols, and procedures required for entry to the practice of architecture within the United States, Australia, and New Zealand have benefitted from many years of effort by NCARB, AACA, and NZRAB;

WHEREAS, NCARB and the AACA are the lead organizations recognized by their individual state and territory registration authorities and the NZRAB has the necessary statutory authority for the negotiation of mutual recognition arrangements for architects with similar foreign authorities;

WHEREAS, accepting there are differences between the systems in place in United States, Australia, and New Zealand, nonetheless there is significant and substantial equivalence between the regulatory systems for licensure/registration and recognition of the privilege and obligations of architects registered to practice in the United States, Australia, and New Zealand;

WHEREAS, NCARB, AACA, and NZRAB are recognized by the profession as mature and sophisticated facilitators of licensure to which the utmost full faith and credit should be accorded and desire to support reciprocal licensure/registration in the host country of architects who have been licensed/registered in their home country;

WHEREAS, any architect actively engaging or seeking to engage in the practice of architecture in any United States jurisdiction, Australian jurisdiction, or New Zealand must obtain the authorization to practice from the jurisdiction, must comply with all practice requirements of the jurisdiction, and is subject to all governing legislation and regulations of the jurisdiction;

NOW THEREFORE, NCARB, AACA, and NZRAB agree as follows:

1. PARTIES TO THE ARRANGEMENT

Any NCARB Member Board and any Australian State or Territory Board may become a party to the provisions of this Arrangement by submitting a signed *Letter of Undertaking* to the responsible negotiating representative. The *Letter of Undertaking* is incorporated herewith and includes the binding requirements for the implementation of this Arrangement by each individual signatory jurisdiction. The *Letters of Undertaking* shall be distributed, collected, and maintained by NCARB, AACA, and NZRAB respectively. NCARB and AACA each shall promptly notify the others in writing of all individual signatories. Each NCARB Member Board and each Australian State or Territory Board that executes a *Letter of Undertaking*, and which has not withdrawn from this Arrangement, as well as NCARB, AACA, and NZRAB once they sign this Arrangement below, shall be known as a "Party to this Arrangement."

2. ELIGIBILITY REQUIREMENTS

1. Architects who are able to benefit from the provisions of this Arrangement must be citizens respectively of the United States, Australia, or New Zealand or have lawful permanent residency status in that country as their home country in order to seek licensure/registration in one or the other countries serving as the host country under this Arrangement.
2. Architects shall <u>not</u> be required to establish citizenship or permanent residency status in the host country in which they seek licensure/registration under this Arrangement.
3. Architects must be licensed/registered in a jurisdiction of their home country and must have completed at least 6,000 hours of post-licensure/registration experience practicing as a registered architect in their home country as demonstrated through the provision of proof of current and valid licensure in good standing from the jurisdictional licensing authority <u>and</u> a declaration signed by the applicant attesting to the experience.
4. Notwithstanding items 1, 2, and 3 above, Architects who have become licensed/registered in their home country by means of a foreign reciprocal licensing agreement/arrangement are <u>not</u> eligible under this Arrangement.

3. CONDITIONS

A U.S. Architect to AACA Jurisdiction

Upon application, those Australian State and Territory Boards who become a Party to this Arrangement agree to license/register as an architect in their respective jurisdiction any U.S. architect who:

1. meets the eligibility requirements listed in Section 2 of this Arrangement, *and*
2. holds a current *NCARB Certificate*, *and*
3. has been issued an *AACA Statement*, *and*
4. is currently licensed/registered in good standing by one or more NCARB Member Board(s) that is a Party to this Arrangement.

B U.S. Architect to NZRAB

Upon application, the NZRAB agrees to register as an architect in New Zealand any U.S. architect who:

1. meets the eligibility requirements listed in Section 2 of this Arrangement, *and*
2. holds a current *NCARB Certificate*, *and*
3. is currently licensed/registered in good standing by one or more NCARB Member Board(s) that is a Party to this Arrangement.

C Australian Architect to NCARB Jurisdiction

Upon application, NCARB shall issue an *NCARB Certificate* to any Australian Registered Architect licensed/registered in one or more AACA jurisdiction(s) meeting the eligibility requirements listed above.

Upon application, those NCARB Member Boards who become a Party to this Arrangement agree to license/register as an architect in their respective jurisdiction any Australian Registered Architect who:

1. meets the eligibility requirements listed in Section 2 of this Arrangement, *and*
2. holds a current *AACA Statement*, *and*
3. has been issued an *NCARB Certificate*, *and*
4. is currently licensed/registered in good standing by one or more Australian State and Territory Board(s) that is a Party to this Arrangement.

D New Zealand Architect to NCARB Jurisdiction

Upon application, NCARB shall issue an *NCARB Certificate* to any New Zealand Registered Architect licensed/registered by the NZRAB meeting the eligibility requirements listed above.

Upon application, those NCARB Member Boards who become a Party to this Arrangement agree to license/register as an architect in their respective jurisdictions any New Zealand Registered Architect who:

1. meets the eligibility requirements listed in Section 2 of this Arrangement, *and*
2. holds a current *NCARB Certificate*, *and*
3. is currently licensed/registered in good standing by the NZRAB.

4. MONITORING COMMITTEE

A Monitoring Committee is hereby established to monitor the performance of all signatories who have agreed to be bound by the terms and conditions of this Arrangement to assure the effective and efficient implementation of this Arrangement.

The Monitoring Committee shall be comprised of no more than five individuals appointed by NCARB, no more than five individuals appointed by AACA, and no more than five individuals appointed by NZRAB. The Monitoring Committee shall convene at least one meeting (by phone, video conference, or in person) in each calendar year, and more frequently if circumstances so require.

5. LIMITATIONS

Nothing in this Arrangement limits the ability of an NCARB Member Board, Australian State or Territory Board, or the NZRAB to refuse to license/register an architect or impose terms, conditions or restrictions on his/her license/registration as a result of complaints or disciplinary or criminal proceedings relating to the competency, conduct, or character of that architect where such action is considered necessary to protect the public interest.

Nothing in this Arrangement limits the ability of NCARB, AACA, NZRAB or any individual state or territory registration board to seek appropriate verification of any matter pertaining to the foregoing or the eligibility of an applicant under this Arrangement.

6. AMENDMENT

This Arrangement may only be amended with the written consent of NCARB, AACA, and NZRAB. Any such amendment will be submitted to each NCARB jurisdiction and AACA jurisdiction, who may re-affirm their respective assent to this Arrangement as so amended or may withdraw as a Party to this Arrangement.

7. NO ASSIGNMENT

No Party can assign their rights under this Arrangement without the prior written consent of NCARB, AACA, and NZRAB.

The Parties agree that a reference to an individual State or Territory Board includes a reference to any entity, board or regulator that assumes the role and responsibility to regulate an architect registered by that individual State or Territory Board under the relevant legislation, and that a restructure of an individual Board will not be deemed an assignment under this Arrangement.

8. WITHDRAWAL

Any NCARB Member Board, Australian State or Territory Board, or the NZRAB may withdraw from this Arrangement with 90-days written notice given respectively to the responsible negotiating representative. NCARB, AACA, and NZRAB shall each promptly notify the other in writing of all withdrawals.

In the event of withdrawal, all licenses/registrations and any *NCARB Certificate* granted to architects pursuant to this Arrangement shall remain valid as long as all registration and renewal obligations are maintained and all other generally applicable licensure requirements are met or unless registration is revoked for cause.

9. TERMINATION

NCARB, AACA, or NZRAB may invoke termination of this Arrangement with 90-days written notice to the other parties. This Arrangement shall also terminate if more than one-half of the respective NCARB Member Boards or any Australian State and Territory Board or the NZRAB cease to be Parties to this Arrangement.

In the event of termination, all licenses/registrations granted pursuant to this Arrangement prior to the effective termination date shall remain valid as long as all registration and renewal obligations are maintained and all other generally applicable licensure requirements are met or unless registration is revoked for cause.

10. ENTRY INTO FORCE

This Arrangement shall come into force at such time as more than one-half of all NCARB Member Boards and all Australian State and Territory Boards have become Party to this Arrangement and the NZRAB has become party to this Arrangement so long as such condition is met on or before December 31, 2016, or as mutually extended by the NCARB, AACA, or NZRAB Board of Directors.

SIGNATURES

NCARB

President — Dennis Ward

CEO — Mike Armstrong

Witness — Kristine Harding

Witness — Dale McKinney

Witness — Stephen Nutt
30 January 2016

AACA

President — Richard Thorp

CEO — Kate Doyle

Witness — Timothy Horton

Witness — Nadine Roberts

Witness — Mae Cruz
8 February 2016

NZRAB

Chair — Warwick Bell

CEO — Paul Jackman

Witness — Pip Cheshire

Witness — Callum McKenzie

Witness — Christina van Bohemen
10 February 2016

TEMPLATE TO BE COMPLETED BY LICENSING AUTHORITY

Letter of Good Standing

DATE

NAME
ADDRESS
ADDRESS
ADDRESS
ADDRESS

Dear Sir or Madam:

This is to confirm that **[*NAME OF ARCHITECT*]** was licensed/registered on **[*MONTH / DAY / YEAR*]** with the **[*NAME OF LICENSING AUTHORITY*]** and was not licensed by means of a foreign reciprocal licensing agreement or a Broadly Experienced Foreign Architect program.

[*NAME OF ARCHITECT*] is currently a licensee/registrant in good standing with the **[*NAME OF LICENSING AUTHORITY*]** and is not currently the subject of disciplinary action by this licensing authority nor has a record of unresolved disciplinary action on file with this licensing authority.

Sincerely,

NAME
Registrar

TEMPLATE TO BE COMPLETED BY APPLICANT

Declaration of Professional Experience

with respect to the

MUTUAL RECOGNITION ARRANGEMENT
between the
NATIONAL COUNCIL OF ARCHITECTURAL REGISTRATION BOARDS
and the
ARCHITECTS ACCREDITATION COUNCIL OF AUSTRALIA
and the
NEW ZEALAND REGISTERED ARCHITECTS BOARD

I, [***NAME OF ARCHITECT***], declare and affirm that:

I am a citizen or hold permanent residency status in [***UNITED STATES*** **or** ***AUSTRALIA*** **or** ***NEW ZEALAND***];

I am a licensed/registered architect, and currently a licensee/registrant in good standing with the [***NAME OF LICENSING AUTHORITY***];

I was licensed on **[** ***MONTH / DAY / YEAR*** **]** with the [***NAME OF LICENSING AUTHORITY***] who will separately be confirming that I am in good standing with that Authority, and I did not obtain licensure in that jurisdiction by means of a foreign reciprocal licensing agreement/arrangement or a Broadly Experienced Foreign Architect program;

- ☐ I have completed a minimum of 6,000 hours of post-licensure experience as an architect engaged in the lawful practice of architecture in my home country;
- ☐ I meet all of the eligibility requirements of the Mutual Recognition Arrangement for reciprocal licensing between NCARB, AACA, and NZRAB; and
- ☐ I understand that upon licensure/registration, I must comply with all practice requirements of the host jurisdiction and will be subject to all governing legislation and regulations of the host jurisdiction.

NO I have/had a disciplinary action registered against me by a licensing authority (circle one)

YES *If yes, submit the summary findings and official action of the licensing authority, as well as any further explanation necessary with this form.*

The host licensing authority has the right to request further details with respect to all disciplinary actions.

I affirm that the above statements are accurate and true to the best of my knowledge and belief.

_____
Name of Architect (print)

_____ _____
Signature Date

aaca

architects
accreditation
council
of australia

ABN 83 465 163 655
ACN 109 433 114
PO Box 236
Civic Square ACT
Australia 2608
T: 612 6230 0506
F: 612 6230 7879

mail@aaca.org.au

www.aaca.org.au

AACA STATEMENT

Applicant:	XXXX		
Education:	MArch	University of NSW	May 1983
Other:	N/A		
Architectural Practice Examination*:	Passed		October 1990
First Registered:	NSW		December 1990
Currently Registered:	Victoria		

See attached statement of current registration status *(provided by the relevant architect registration board. AACA would seek this from the relevant Board)*

* *The AACA Architectural Practice Examination (APE) is a nationally consistent competency based assessment benchmarked against the National Standard of Competency for Architects. See* http://competencystandardforarchitects.aaca.org.au/matrix/index/print/assessment/4?assessment%5B%5D=4.

The APE comprises three parts - completion of a logbook (3,300 hours) and Statement of Practical Experience, a written paper and an interview with architect practitioners. Candidates who have satisfactorily met the requirements of all three parts of the APE may apply for registration to the Architects Registration Board in any state or territory in Australia. See http://competencystandardforarchitects.aaca.org.au/matrix/index/print/assessment/4?assessment%5B%5D=4

New Zealand Registered Architects Board

NZRAB
PO Box 11106
Manners St
Wellington 6142
New Zealand
Ph. (04) 471 1336
info@nzrab.org.nz
www.nzrab.org.nz

Evaluation of Record

For application for registration/licensure in the United States of America
under the Australia United States New Zealand MRA

Applicant's name:	-
New Zealand registration number:	-
Academic qualification relevant to registration:	-
Qualification provider:	-
Year academic qualification obtained:	-
Current New Zealand registration status:	-
Date first registered:	-

For further information, contact the New Zealand Registered Architects Board at info@nzrab.org.nz or 0064 4 471 1336:

Council Certification

NCARB FILE NO. «NCARB_NO» NCARB CERTIFICATE NO. «NCARB_CERT_NUM»

The National Council of Architectural Registration Boards
Certifies that

«NCARB_NAME_FIRST» «NCARB_NAME_MIDDLE» «NCARB_NAME_LAST»

has met all requirements for Council Certification
and is therefore recommended to all Registration Authorities for
REGISTRATION or LICENSE AS AN ARCHITECT.

Given under our hand and the Seal of the Council
This _____ day of _____ in the year _____.

NATIONAL COUNCIL OF ARCHITECTURAL REGISTRATION BOARDS

Terry Allers, AIA, NCARB
Secretary

Article IX, Section 3 of the Bylaws provides that, "Council Certification shall be in effect for a period of one year. Renewal of the Certification shall be predicated upon the submission of an annual fee and the submission of an annual report containing such information as the Council deems appropriate."

I HEREBY CERTIFY that annual renewal fees and reports having been submitted as required by the Bylaws, the above Certification is in effect on this _____ day of _____ in the year _____.

UPDATE AND POSSIBLE ACTION ON NCARB INTEGRATED PATH TO ARCHITECTURAL LICENSURE

In September 2013, the National Council of Architectural Registration Boards (NCARB) convened its Licensure Task Force to explore potential avenues to licensure by analyzing the essential components (education, experience, and examination) and determining where efficiencies can be realized in order to streamline the process. NCARB formally announced its endorsement for the concept of integrated programs on May 30, 2014.

At the Board's March 12, 2015, meeting, Woodbury University (WU) and NewSchool of Architecture & Design (NSAD) provided the Board with detailed presentations that explained their respective integrated approach. NCARB announced the names of the first 13 National Architectural Accrediting Board (NAAB) accredited programs accepted to participate in the Integrated Path to Architectural Licensure (IPAL) on August 31, 2015. The accepted California programs are: NSAD, University of Southern California, and WU.

NCARB also established a new Integrated Path Evaluation Committee (IPEC) to oversee the ongoing work of this initiative. The IPEC coaches accepted programs, promotes engagement with state boards regarding the necessary statutory or regulatory changes to incorporate integrated path candidates, and oversees the acceptance of future programs. On November 5, 2015, the University of Kansas was added to the list of IPAL accepted schools.

At its December 10, 2015, meeting, the Board was asked by the Association of Collegiate Schools of Architecture, California State Polytechnic University, Pomona, and WU to consider granting early Architect Registration Examination (ARE) eligibility to students enrolled in any NAAB-accredited program. The Board expressed its intent to monitor the performance of IPAL programs prior to making any decision with respect to extending early eligibility to other accredited programs.

The Board secured an amendment to its Sunset Review bill and on January 1, 2016, Business and Professions Code section (BPC) 5550.2 became operative and authorizes the Board to grant candidates enrolled in an IPAL program early eligibility to take the ARE. The Board subsequently sponsored an amendment (contained within Senate Bill [SB] 1479) to clarify the language of BPC 5550.2. SB 1479 is on the Governor's desk for consideration.

During the Board's March 3, 2016, meeting, each of the three California NCARB-accepted schools provided an update on their respective approach to integration. On June 17, 2016, NCARB announced four additional programs that have been accepted to join the original cohort, including a second WU program.

At today's meeting, the Board will receive an update and is asked to take possible action as necessary.

PROFESSIONAL QUALIFICATIONS COMMITTEE (PQC) REPORT

1. Update on July 12, 2016, PQC Meeting

2. Discuss and Possible Action on Recommendation Regarding 2015-16 Strategic Plan Objective to Evaluate the Profession in Order to Identify Entry Barriers for Diverse Groups

Agenda Item H.1

UPDATE ON JULY 12, 2016, PQC MEETING

The PQC met on July 12, 2016, via teleconference. Attached is the Notice of Meeting.

PQC Chair, Tian Feng, will provide the Board with an update on the meeting.

Attachment:
July 12, 2016, Notice of Meeting

Edmund G. Brown Jr.
GOVERNOR

CALIFORNIA ARCHITECTS BOARD

PUBLIC PROTECTION THROUGH EXAMINATION, LICENSURE, AND REGULATION

NOTICE OF MEETING
PROFESSIONAL QUALIFICATIONS COMMITTEE

July 12, 2016
10:00 a.m. to Noon
2420 Del Paso Road, Suite 105
Sacramento, CA 95834

The California Architects Board will hold a Professional Qualifications Committee (PQC) meeting, as noted above and via telephone conference at the following location:

Pasqual V. Gutierrez, Vice-Chair
Ebony Lewis
HMC Architects
633 W. 5th Street, Third Floor
Los Angeles, CA 90071
(213) 542-8300

Raymond Cheng
Cedars Sinai Medical Center
6500 Wilshire Boulevard, Suite 700
Los Angeles, CA 90048
(323) 866-7884

Betsey Olenick Dougherty
Dougherty + Dougherty
3194D Airport Loop
Costa Mesa, CA 92626
(714) 427-0277

Sylvia Kwan
Kwan Henmi Architecture & Planning
456 Montgomery Street, Suite 200
San Francisco, CA 94104
(415) 901-7203

Kirk Miller
3039 49th Avenue, Suite 307
Red Deer, Alberta
Canada T4N 3V8
(403) 986-8600

Paul Neel
2553 Santa Clara Street
San Luis Obispo, CA 93401
(805) 543-5979

Barry L. Williams
Robert E. Kennedy Library
1 Grand Avenue
Conference Room 220A
San Luis Obispo, CA 93407
(805) 459-7353

The notice and agenda for this meeting and other meetings of the Committee can be found on the Board's website: cab.ca.gov. For further information regarding this agenda, please contact Timothy Rodda at (916) 575-7217.

2420 Del Paso Road,
Suite 105
Sacramento,
CA 95834

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

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

(Continued on Reverse)

AGENDA

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

B. Public Comment on Items Not on Agenda

(The Committee may not discuss or take action on any item raised during this public comment section, except to decide whether to refer the item to the Board's next Strategic Planning session and/or place the matter on the agenda of a future meeting [Government Code sections 11125 and 11125.7(a)].)

C. Review and Possible Action on PQC July 14, 2015, Meeting Summary Report

D. Update and Possible Action on 2015–2016 Strategic Plan Objective to Collaborate with California's National Architectural Accrediting Board Accredited Programs at Schools and the National Council of Architectural Registration Boards (NCARB) to Establish and Promote an "Accelerated Path to Architectural Licensure"

E. Update and Possible Action on 2015–2016 Strategic Plan Objective to Conduct Review of Architect Registration Examination Testing Environment in Order to Ensure Security and Efficiency

F. Update on NCARB Resolution 2015-02 Regarding Alternative for Certification of Foreign Architects

G. Discuss and Possible Action on 2015–2016 Strategic Plan Objective to Evaluate the Profession in Order to Identify Entry Barriers for Diverse Groups

Adjournment

Action may be taken on any item on the agenda. The time and order of agenda items are subject to change at the discretion of the Committee Chair and may be taken out of order. The meeting will be adjourned upon completion of the agenda, which may be at a time earlier or later than posted in this notice. In accordance with the Bagley-Keene Open Meeting Act, all meetings of the Committee are open to the public.

Government Code section 11125.7 provides the opportunity for the public to address each agenda item during discussion or consideration by the Committee prior to it taking any action on said item. Members of the public will be provided appropriate opportunities to comment on any issue before the Committee, but the Committee Chair may, at their discretion, apportion available time among those who wish to speak. Individuals may appear before the Committee to discuss items not on the agenda; however, the Committee can neither discuss nor take official action on these items at the time of the same meeting [Government Code sections 11125 and 11125.7(a)].

The meeting is accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Mr. Rodda at (916) 575-7217, emailing timothy.rodda@dca.ca.gov, or sending a written request to the Board. Providing your request at least five business days before the meeting will help to ensure availability of the requested accommodation.

Protection of the public shall be the highest priority for the Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount. (Business and Professions Code section 5510.15)

DISCUSS AND POSSIBLE ACTION ON RECOMMENDATION REGARDING 2015–2016 STRATEGIC PLAN OBJECTIVE TO EVALUATE THE PROFESSION IN ORDER TO IDENTIFY ENTRY BARRIERS FOR DIVERSE GROUPS

The Board's 2015–2016 Strategic Plan contains an objective assigned to the Professional Qualifications Committee (PQC) to evaluate the profession in order to identify entry barriers for diverse groups.

At its July 12, 2016, PQC meeting, Board staff presented the following information for the Committee's consideration related to this objective:

2016 NCARB by the Numbers

The National Council of Architectural Registration Boards (NCARB) published its *2016 NCARB by the Numbers* (currently available as an interactive website). Below are some of the findings:

- Racial and ethnic diversity has doubled since 2007 when it was at 22 percent. Data for 2015 (the most recent available) indicates that diversity has continued to increase and is now at 44 percent.

- Applicants who identified themselves as non-white represented 36 percent of new NCARB Record holders in 2015. This compares to 23 percent of the non-white US population, based upon 2014 US Census Bureau data.

- The percentage of NCARB Record holders who are Hispanic/Latino increased in 2015. When Hispanic/Latino ethnicity is factored in, minorities made up 44 percent of the talent pool in 2015. This compares to 38 percent of racial and ethnic minorities who make up the US population, based upon the 2014 US Census Bureau data.

- NCARB data indicates a greater number of women are earning an initial license, on average, one year sooner than men. Women have consistently completed the licensure process in less time than men. The largest disparity was in 2006, when women earned a license three years sooner than men.

- In 2015, Architectural Experience Program (AXP) completions by women remained steady at 38 percent. In 2000, less than 25 percent of AXP completions were achieved by women. NCARB data suggests the 15-year trend indicates steady, positive growth in the proportion of aspiring women architects.

- Women accounted for 37 percent of Architect Registration Examination (ARE) completions, which is the highest percentage on record. Over the past 10 years, ARE completions by women have increased 11 percentage points, nearly double the rate of change for AXP completions. The percentage of ARE completions by women in 2015 has nearly doubled since 2000.

Diversity in the Profession of Architecture

The American Institute of Architects (AIA), American Institute of Architecture Students, NCARB, National Organization of Minority Architects (NOMA), National Architectural Accrediting Board

(NAAB), Association of Collegiate Schools of Architecture Students (ACSA), and Coalition of Community College Architecture Programs (CCCAP) collaborated on a survey (*Diversity in the Profession of Architecture* [see attachment 1]), which was driven by practitioners and based upon on their perception of racial and gender diversity within the profession.

The survey provides the following key findings:

- **Need for more involvement from practitioners in the community**

  The study suggests increases in community outreach into middle and high schools by university architectural programs may be an effective way of attracting the next generation of architects.

- **Providing greater tools for people of color**

  The study also suggests a lack of role models for people of color and a tendency towards having minimal exposure to architecture as a career option. The study recommended expanded industry support of NOMA.

- **Greater investment from the community to make education affordable and inviting**

  People of color from inner cities, in particular, have difficulty affording architecture school. Offering profession-funded college scholarships may be an effective means to attract and retain individuals in the field. A more diverse faculty is needed at schools that offer accredited architecture programs. The study also recommended the creation of a support system for people of color at architecture schools.

- **Greater investment from firms to promote diversity**

  The study indicates that firms should develop mentorship programs for people of color and provide clear written promotion criteria for employees. Additionally, the study recommends firms provide recognition and praise of employee work product, while also providing a balanced work-life environment.

AIA continues to support diversity through its Gateway Commitment, Diversity Recognition Program, and its three diversity scholarships (Payette Sho-Ping Chin Memorial Academic Scholarship, Diversity Advancement Scholarship, and Jason Pettigrew Scholarship).

Pipeline Into the Profession of Architecture

In a separate data analysis completed by ACSA (see attachment 2), over the last 10 years, the percentage of women interested in earning a degree from a NAAB-accredited program has surpassed 40 percent and continues to gradually rise.

National Center for Education Statistics (NCES) Data on the Ethnicity and Gender of Graduates in Architecture and Related Fields

ACSA also completed an analysis of NCES data (see attachment 3). The findings indicate that California, when compared to the national average, has a greater percentage of Hispanics (17% vs. 12%) and Asians (25% vs. 9%) graduating with a degree in architecture. Nationally, at the baccalaureate through doctoral degree levels of architecture, Hispanics and African Americans are

underrepresented among architecture graduates since they comprise a smaller percent of architecture graduates than the percent in the U.S. population (with the exception of Hispanic men at the baccalaureate level).

Diversity & Multiculturalism in the Architectural Academy: An Assessment of Barriers & Opportunities; Racial and Ethnic Diversity in Architectural Education

An analysis completed by Professor Melinda R. Nettles of the University of Oregon (see attachments 4 and 5), suggests that a higher percentage of students of color are enrolling in architecture school for the first time than degrees awarded and postulates that architecture schools may be a barrier. She also suggests that the curriculum could be modified to recognize the significance that minorities have contributed to society, which might attract a more diverse student body and encourage continued enrollment through graduation. African Americans (42.5%), Asians (63.7%), Hispanics (61.8%), and Native Hawaiian / Pacific Islanders (21.6%) have a lower rate of graduation compared to Caucasians (82%).

California Architects by Sex

- As of July 1, 2016, California's architect population (20,914) consists of 20 percent (4,179) women and 80 percent (16,735) men (see attachment 6). When the licensee population is broken down to licensees with a California address (16,912), the percentage of women increases to 21 percent (3,568) and the percentage of men decreases to 79 percent (13,344).

- Between July 1, 2015 and June 30, 2016, the Board issued 39 percent (258) of its new licenses to women and 61 percent (404) to men. The national average number of women newly licensed in architecture is 34 percent.

The data reviewed indicates that underrepresentation continues to be an issue in the profession, although there are indicators of positive change. Cultural, economic, and social differences may influence the disparities relative to architectural education, academic performance, and career advancement.

Board staff also recommended the following to the PQC for its consideration:

- **Collaborate with NOMA**

  Assign a Board member to serve as liaison with NOMA and invite its representatives to attend Board and committee meetings.

- **Further student access to NAAB-accredited programs**

  Encourage California community colleges with architectural programs to collaborate with NAAB-accredited programs and develop articulation agreements.

- **Inspire student interest in the profession through licensed professionals.**

  California has over 1,800 high schools and 2,600 middle schools. Local architects, through AIA, are best suited to speak with students within their communities regarding the profession. Through a diverse mix of leadership and outreach, individuals may be encouraged to pursue a career in architecture.

PQC discussed the data presented above and was advised by Board staff that demographic information (ethnic or racial) for candidates and licensees is not captured by the Department of Consumer Affairs in its databases. Staff also advised that the Board is not authorized to request such information from candidates and licensees. The PQC was further advised by staff that the Little Hoover Commission, an independent state oversight agency, may provide a recommendation later this year to the Legislature suggesting licensing authorities be required to collect ethnicity and gender information from candidates in order to assess whether some groups are disproportionately experiencing license denials or other difficulties.

PQC members approved a recommendation to the Board that it evaluate staff's recommendations (above) as the foundation to initiate a Strategic Plan objective to encourage and promote California diversity in architecture.

The Board is asked to consider the PQC's recommendation.

Attachments:

1. *Diversity in the Profession of Architecture*
2. Pipeline Into the Profession of Architecture
3. NCES Data on the Ethnicity and Gender of Graduates in Architecture and Related Fields
4. Diversity & Multiculturalism in the Architectural Academy: An Assessment of Barriers & Opportunities
5. Racial and Ethnic Diversity in Architectural Education
6. California Architects by Sex

The American Institute of Architects

Diversity in the Profession of Architecture

Executive Summary 2016

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Coalition of Community College Architecture Programs (CCCAP)
Equity by Design Committee

Views of individual survey participants included in this report
do not necessarily reflect those of the American Institute of Architects.

Foreword

Elizabeth Chu Richter, FAIA
2015 AIA President

Architecture ties our communities and each of us to the other. Architecture touches everything—health, wellness, education, history, culture, and beauty. It reflects who we are. To grow a robust and valued profession prepared to serve the needs of people young and old, rich and poor—all hungry for better communities, better infrastructure, and better lives—our profession requires talents as diverse as life itself.

In a world where technology seems to be the driving force in how we act and react, maintaining the human touch has never been more important. We need architects, creative men and women whose training is complemented by interpersonal skills, emotional intelligence, and judgment—skills only possible when we are in touch, deeply in touch with everyone who is and who should be served by design thinking. To be that kind of profession, we must be a mirror of the rich human tapestry we serve. Empathy and judgment are key.

Where do we stand today? Is our profession as diverse as the many lives we touch? When we gaze in the mirror, what is the reflection that looks back at us?

There is plenty of anecdotal information that suggests there has been progress in building a more diverse and inclusive profession. Yet, the information is just that—anecdotal.

We need data, not anecdotes. We need reliable, quantifiable, and verifiable data. Without it, we cannot gain a credible picture of how far we've come in the past 10 years. Why the past 10 years? Because it was nearly a decade ago that we last conducted a comprehensive survey under the leadership of the AIA's Diversity Committee and Demographic Data Task Force.

A lot has happened since then that demands a clear, unambiguous snapshot of who is entering the profession, who does and does not prosper, and why. In short, as we move forward to develop the programs and actions that have as their goal a more diverse, inclusive profession, we need an updated baseline. Without it, without a clear sense of the direction we must take to move forward, we risk our credibility as a profession relevant to the needs of all people.

Finding a reliable, quantifiable benchmark has to be the work of organizations whose training and reputation have been earned in the highly demanding field of data gathering and analysis. By retaining Shugoll Research, the AIA has partnered in this endeavor with the very best.

If we are successful in applying thoughtfully and with purpose the information surfaced by this study, perhaps a decade from now my successor will be writing a foreword to a glowing report describing a profession that welcomes everyone with the talent and passion to make a positive difference in their communities. We will be better for it, as well as those whose lives are touched by our work—which means everyone.

Elizabeth Chu Richter, FAIA
2015 AIA President

Background and objectives

Introduction
Industry data show that, while improving, women and people of color are underrepresented in the field of architecture. In 2015, industry membership organizations worked together to create a study examining what architects believe is causing this underrepresentation, how significant they feel it is, and offering suggestions of what could be done to address it. The result was the study, Diversity in the Profession of Architecture.

Goals and Objectives
The Diversity in the Profession of Architecture survey examines the impact of basic demographics such as race, ethnicity, and gender on success in the field. The survey focus is to investigate the careers of diverse architects beginning in college, how firm culture affects their career objectives, and what type of practices minority architects are working in.

As suggested in the 2005 AIA Diversity Survey, **the 2015 survey includes collaboration with collateral organizations** to help create a more dynamic picture of both the path and practice of architecture. The main collateral organizations are the **National Council of Architectural Registration Boards, the Association of Collegiate Schools of Architecture, the National Architectural Accrediting Board, the National Organization of Minority Architects, the Coalition of Community College Architecture Programs, and the American Institute of Architecture Students.**

This project contains three separate phases:

Phase I – Assess the quantity and relative value of information and knowledge residing within the AIA and its "collateral organizations," related professional organizations, and other stakeholders that collect data on the profession or have an interest in such information.

Phase II – Collect, synthesize, and analyze the data from the sources identified, and extend the research through targeted data collection methods to: 1) complete the information needs as identified in the Phase 1 gap analysis; and 2) further understand the demographics of the profession.

Phase III – Using the information from Phases I and II, the report will be provided to the Equity in Architecture Commission to develop recommendations for a comprehensive data collection and analysis system to track the diversity of the profession. The recommendations should reflect the resources of the various organizations and should be both as comprehensive and easy to implement as possible.

At the 2015 AIA Convention, the American Institute of Architects created the Equity in Architecture Commission, a blue-ribbon panel of leading architects, educators, and diversity experts to investigate diversity and inclusion in the profession. **A key task of the Equity in Architecture Commission will be to apply the data and findings from the recent 2015 AIA Diversity in the Profession of Architecture survey.**

"Diversity and inclusion is a priority of the AIA. We have made progress but not fast enough. The world around us is changing much faster and we can do better," said 2015 AIA President Elizabeth Chu Richter, FAIA. "We have a great opportunity now to look at how to achieve the equity, diversity, and inclusion in AIA member firms through a creative means and provide a framework for the profession to act faster and better to meet a growing demand for architects."

Background and objectives

Methodology
The 2015 study, Diversity in the Profession of Architecture, was an inclusive effort driven by practitioners.

Members of the aforementioned collateral organizations planned the study, reviewed and edited the survey questionnaire, and provided member contact information to complete the survey.

The 2015 study was conducted online and is a follow-up to a previous study from 2005. To participate, respondents were required to either:

- Have a degree in architecture
- Be pursuing a degree in architecture
- Have started an architectural degree but didn't finish
- Have worked in the field of architecture at some time
- Had planned to pursue a degree in architecture but didn't enter the field

The goal was to include both architects and students as well as those currently in the field and those who had dropped out of the field.

A total of 75,976 email invitations were sent and data were collected from January 5 through January 27, 2015. By the survey cutoff date, 7,522 surveys had been completed. **Women and people of color were oversampled to increase their participation and ensure the survey reflected their views. Therefore, the profile of study participants will not match the profile of the field.**

Participation in the survey by segment (among those who specified a response to gender or race) was as follows:

- Men: 4,223
- Women: 3,117
- Whites: 5,763
- People of color: 1,518

Prior to the 2015 survey, several steps were completed to prepare the final questionnaire:

- Collateral organizations participated in a day-long Diversity Workshop to brainstorm on key topics the survey should include.

- Four two-hour focus groups were conducted with high school seniors and college freshmen and sophomores who are in the early stages of career decision-making, to explore their awareness and perceptions of the profession.

- Twenty-four 30-minute in-depth telephone interviews were conducted with women or people of color who were AIA or collateral organization members. These allowed women and people of color to talk about the issues of underrepresentation by gender and race in the field in an open-ended manner, using their own words. This helped the study team design questions and identify possible solutions to the challenge of gender and racial underrepresentation for testing in the quantitative study.

  Topics covered in the in-depth interviews were:
  - Reasons for entering the field
  - Barriers to diversity in architecture and architecture schools
  - Ways to work together to help diverse populations succeed in architecture as a career

Potential solutions to gender and race underrepresentation tested in the survey were generated by architects themselves during the in-depth interviews with women and people of color.

Representation by gender and race

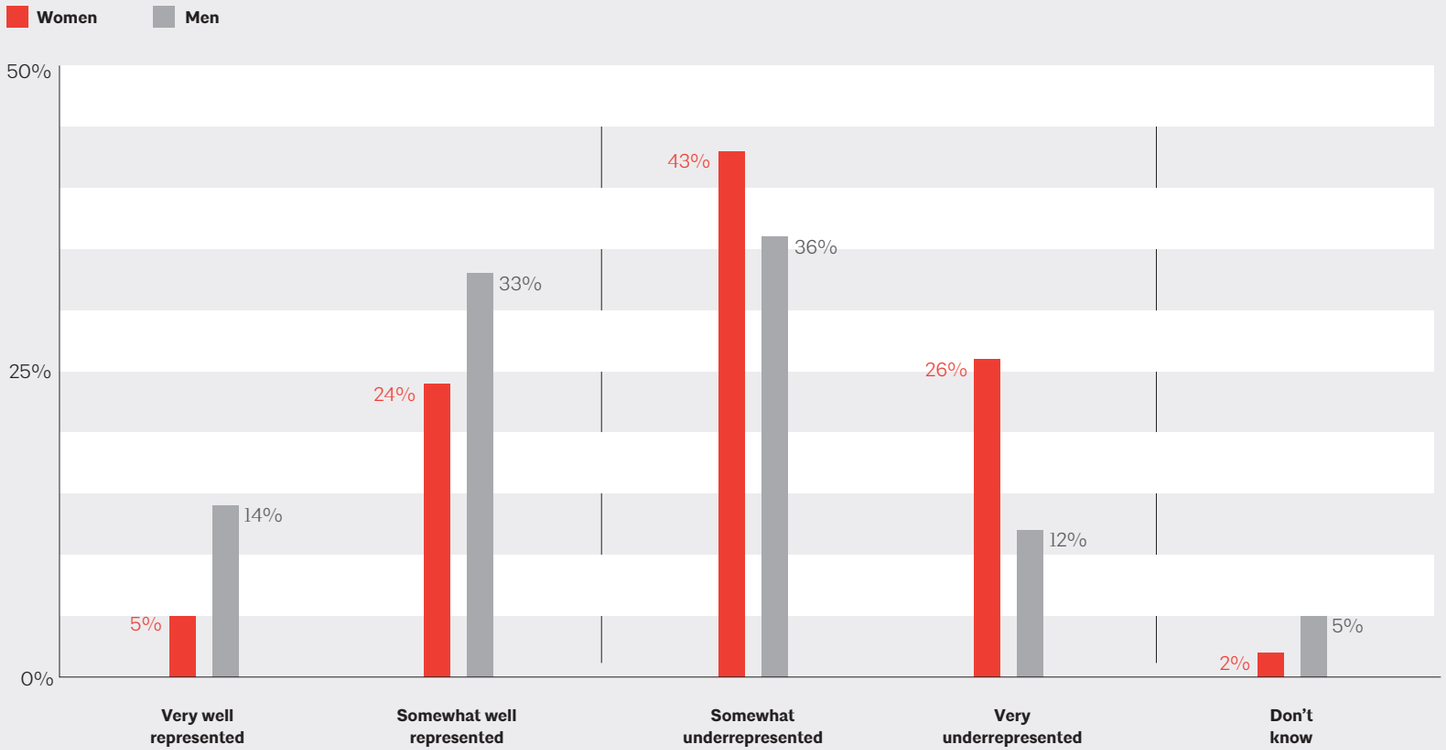
Key findings

While there is agreement on the perceived underrepresentation of people of color in the industry, recognition of the underrepresentation of women is not as definitive.

Representation by gender

Women strongly believe that there is not gender equity in the industry, but men are divided on the issue—half believe women are underrepresented and half perceive them to be well represented.

Figure 1: Perceived representation of women in the field of architecture

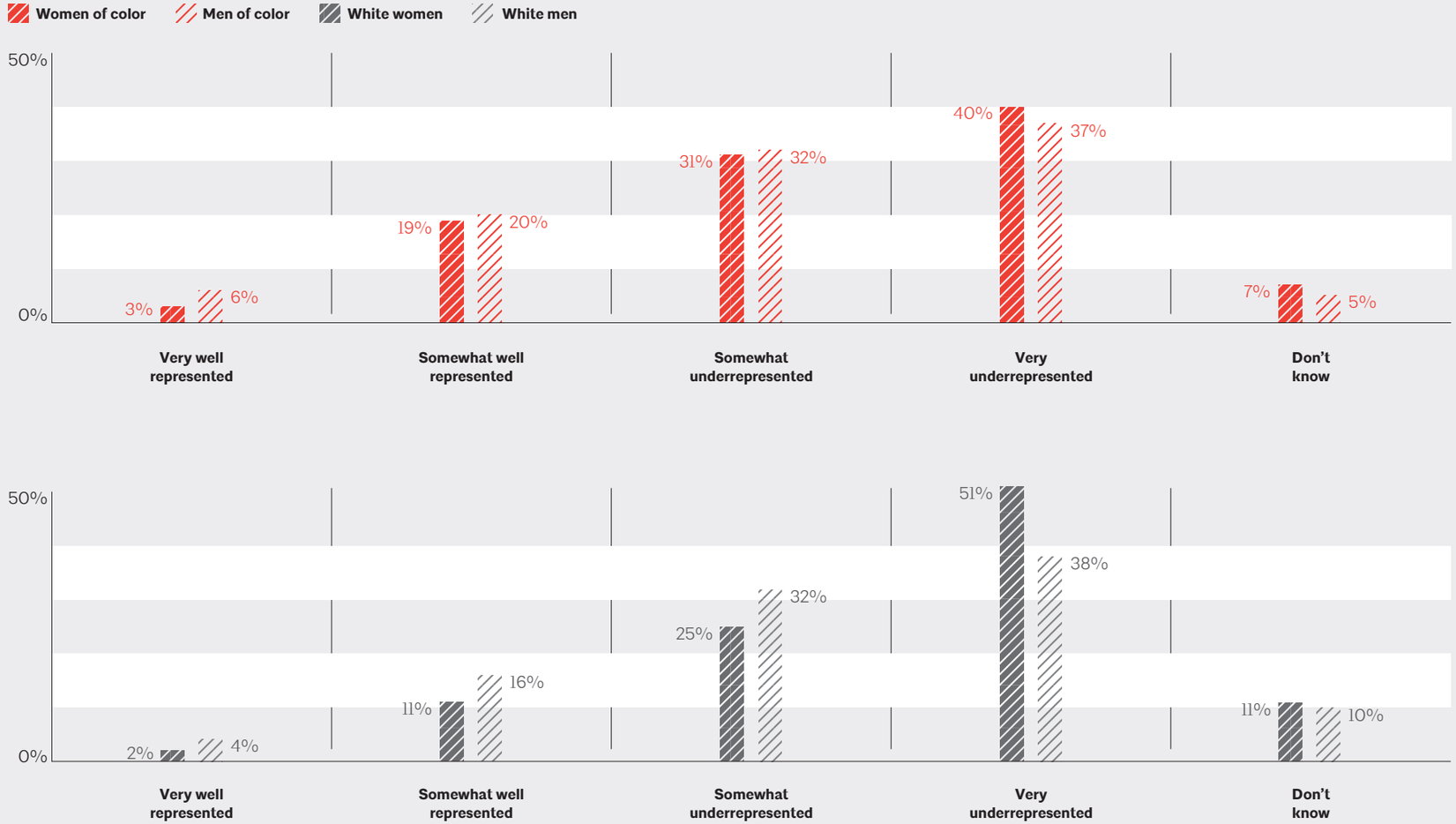


Representation by race

Unlike with gender, both whites and people of color clearly agree that people of color are under-represented in the industry.

Based on these two sets of findings, architects, industry leaders, and member associations could support a strategy for attracting people of color to the profession. As for bolstering representation of women architects in the industry, a strong commitment and strategy will be required to overcome possible resistance from those that don't believe it to be an issue.

Figure 2: Perceived representation of people of color in the field of architecture



Reported challenges to career advancement

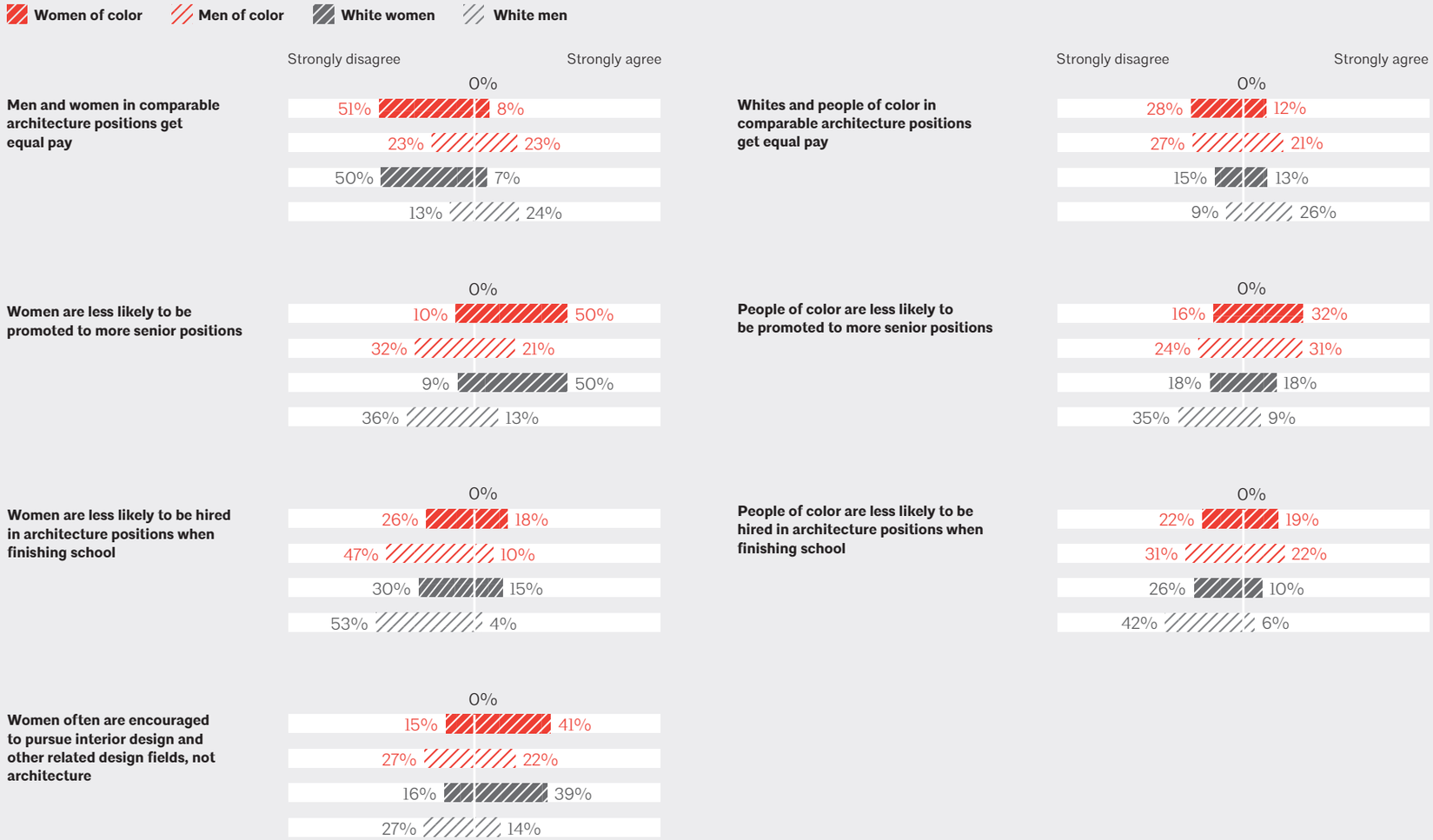
Key findings

There are some attitudinal differences by gender and race on challenges faced by women and people of color in the industry.

Reported challenges to career advancement

Both women and people of color say (much more often than men and whites) that they are less likely to be promoted to more senior positions. Gender and race are also obstacles to equal pay for comparable positions, but this is particularly so for women. Women, more than men, also feel that they are not likely to get equal pay in comparable positions and are often encouraged to pursue interior design and other design fields rather than architecture. These are cultural issues in the field that might be addressed by industry leadership. Women and people of color also somewhat believe that they are less likely to receive job offers when completing school.

Figure 3: Perception of career opportunities in architecture



Percentages represent response of 6 or 7 or 1 or 2 on a 7-point scale where 7 equals “Strongly Agree ” and 1 equals “Strongly Disagree.” Only the scale endpoints, 1 and 7, have a verbal description.

Work-life balance impact on representation of women

Key findings

Work-life balance was identified as a main reason women are underrepresented in the industry. However, changes in this area could benefit the field as a whole.

Work-life balance impact on representation of women

The top three reasons noted for underrepresentation of women in the profession (according to those that reported women were underrepresented) were:

- Concern about work-life balance
- Long work hours that makes starting a family difficult and thereby encourage some women to leave the field.
- Lack of flexibility to work remotely, job share, or work flexible hours

Correspondingly, the leading strategies that both men and women in the in the field believe could attract and retain more women directly address these issues. The most-noted strategies include:

- Promoting a change in office culture that allows better work-life balance
- Increasing job flexibility (including the option to work remotely, job share, or work flexible hours)

It is notable that all architects (regardless of gender or race) consider work-life balance important, and many have low satisfaction with their ability to achieve it. The majority of architects feel that managing work-life balance is more difficult for them compared with other professionals and wish for greater job flexibility in the industry.

This is one of the most important areas where architects, industry leaders, and membership associations could lead an effort to change the professional culture. Not only would it address one of the primary concerns of women in the industry, but also it would benefit the field as a whole.

Figure 4: Perceived factors contributing to an underrepresentation of women in the field of architecture

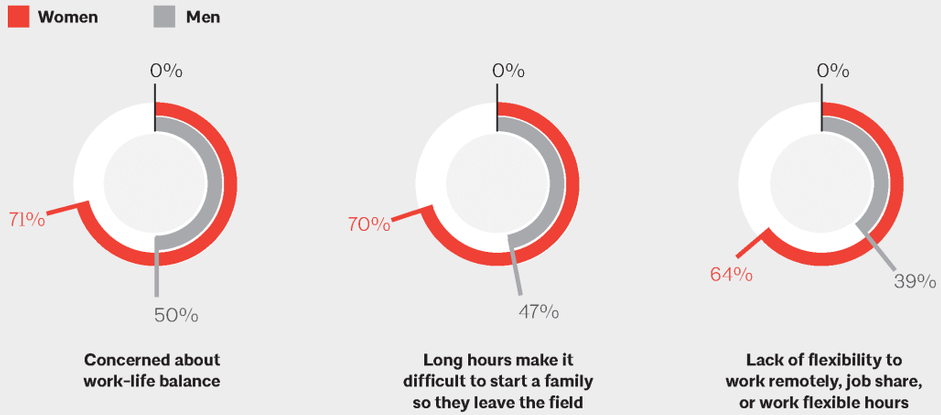
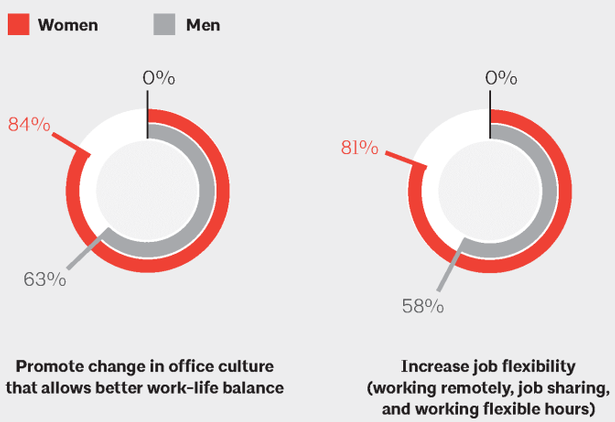


Figure 5: Effective ways of attracting and retaining women in the field



Other impacts on representation of women

Key findings

There are several other often-mentioned hypotheses for underrepresentation of women in architecture as well as strategies to retain and attract them.

Other impacts on representation of women

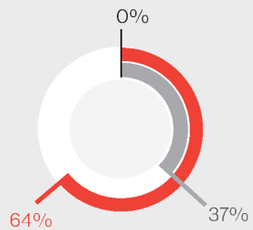
In addition to work-life balance, other often-mentioned hypotheses for underrepresentation of women in architecture include:

- Women not being given significant opportunities upon returning to the industry after having left to start a family
- Lack of women role models
- Lower pay and less likelihood of being promoted than men
- Difficulties catching up with technology changes upon returning to the industry after having left to start a family

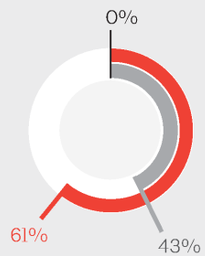
Architects feel they could retain current female architects and attract future ones to the field if firms, industry leaders, membership associations, and schools of architecture would work together to support a variety of other strategies such as:

- Develop a mentorship program for women in firms.
- Offer credentials for architects who wish to return to the profession after taking an extended leave of absence.
- Provide clear written criteria for promotion.
- Offer industry-funded college scholarships for women interested in studying architecture.
- Attract more women professors to teach in accredited architecture programs.

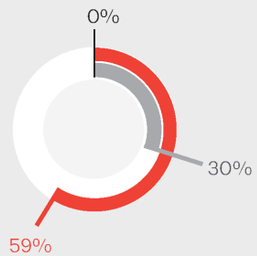
Figure 6: Perceived factors contributing to an underrepresentation of women in the field of architecture



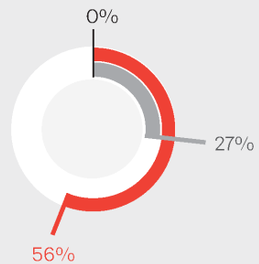
If women take leave to start a family, they are not given significant opportunities when they return



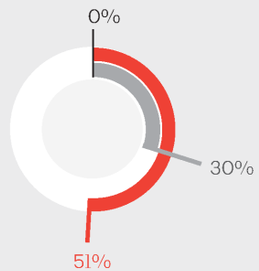
Lack of women role models



Pay is lower for women than men

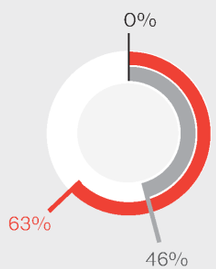


Women less likely to be promoted

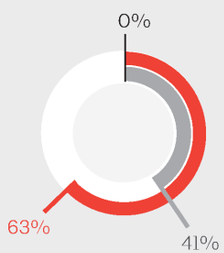


If women take leave to start a family, it is hard to catch up when they return because technology changes quickly

Figure 7: Effective ways of attracting and retaining women in the field

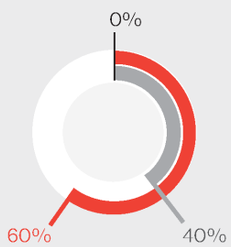


Develop a mentorship program for women in firms

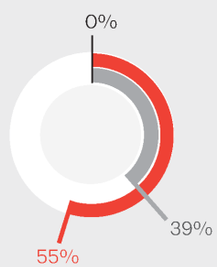


Offer credentials for architects who wish to return to the profession after taking an extended leave of absence so that they are caught up when they return

Provide clear, written criteria for promotion



Offer industry-funded college scholarships for women interested in studying architecture



Attract more women professors to teach in accredited architecture programs

Factors impacting representation of minorities

Key findings

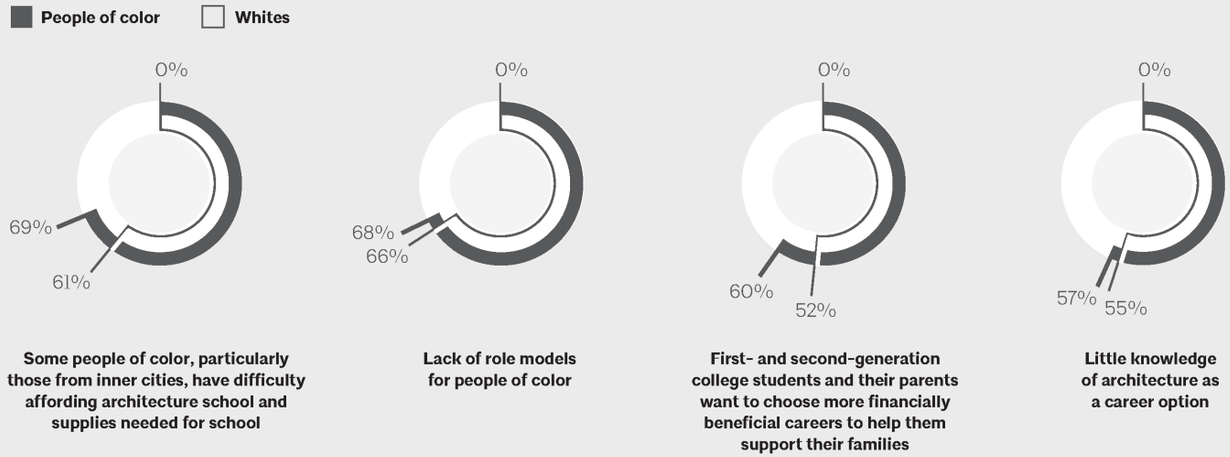
Architects suggest several likely reasons for the lack of minority representation in the field and ways to address them.

Factors impacting representation of minorities

Perceived reasons for the underrepresentation of people of color include:

- People of color, especially those from inner cities, may have difficulty affording the costs associated with a degree in architecture.
- There are few role models for people of color in architecture.
- To help support their families, first- and second-generation college students and their parents may be predisposed towards other careers with greater earning potential.
- Minority students have little knowledge of architecture as a career option.

Figure 8: Perceived factors contributing to an underrepresentation of people of color in the field of architecture

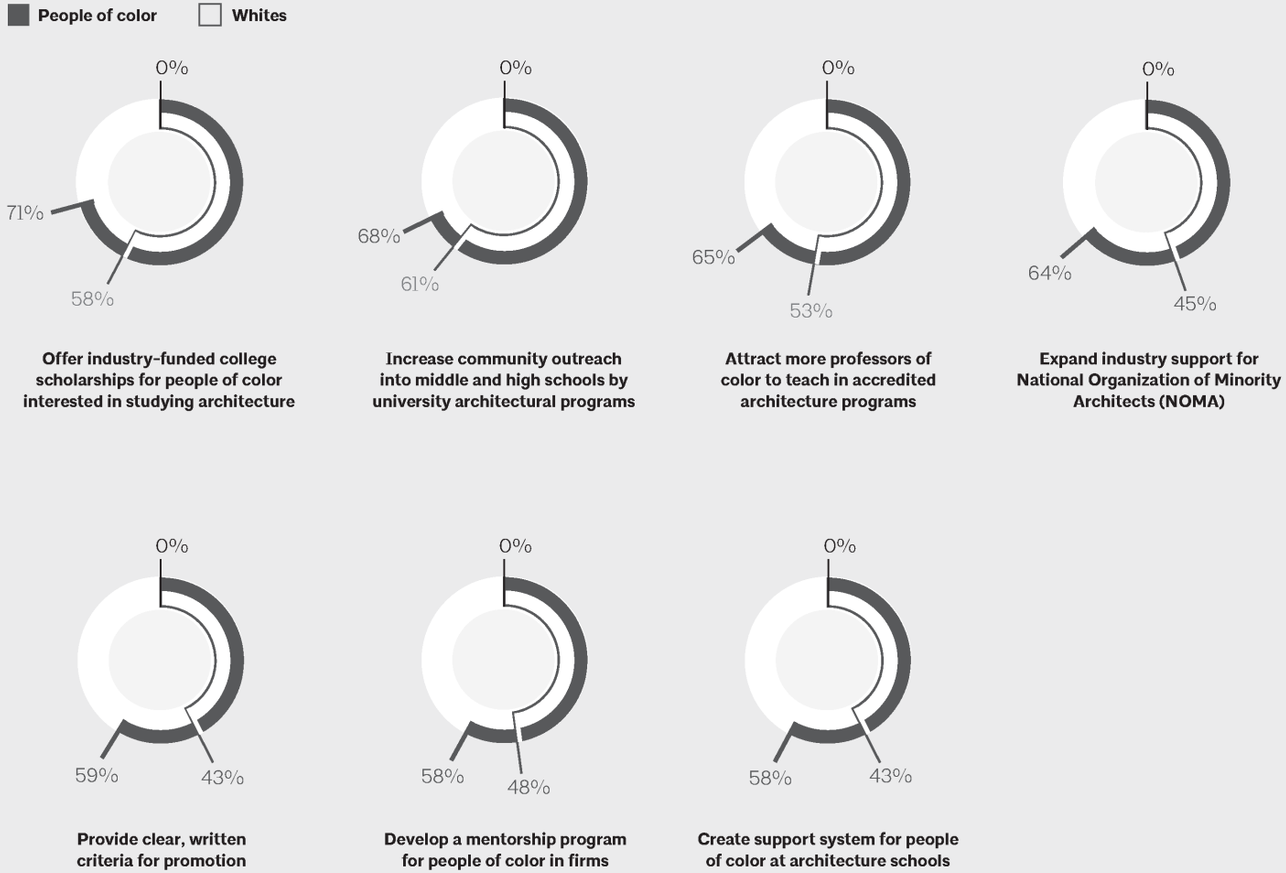


Strategies to address underrepresentation

Architects feel they could retain current people of color in the field and attract new ones if the field adopted the following strategies:

- Offer industry-funded college scholarships for people of color to study architecture.
- Increase community outreach into middle and high schools by university architectural programs.
- Attract more professors of color to teach in accredited architecture programs.
- Expand industry support for the National Organization of Minority Architects (NOMA).
- Provide clear, written criteria for promotion.
- Develop a mentorship program for people of color in firms.
- Create a support system for people of color at architecture schools.

Figure 9: Effective ways of attracting and retaining people of color in the field



Building the pipeline through schools

Key findings

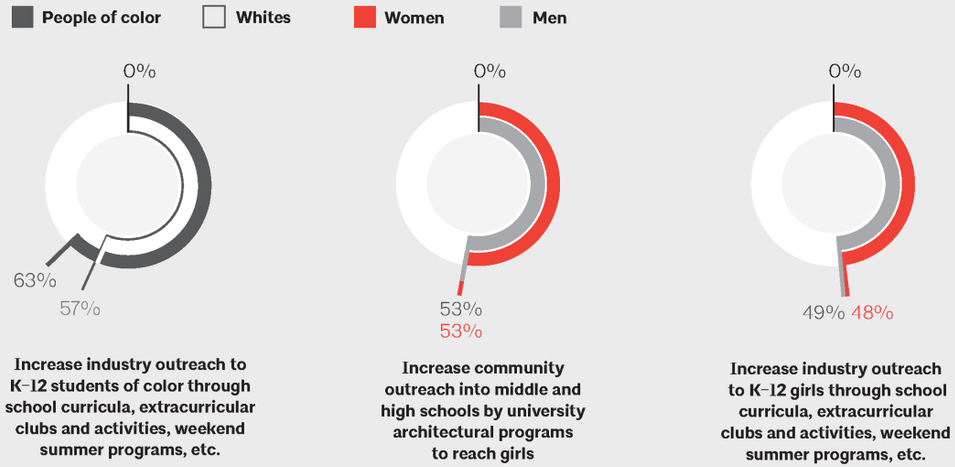
To attract more women and minorities to the field, architects recommend exposing more students in middle and high school to architecture—what it means to be an architect and how to launch a career.

Building the pipeline through schools

The importance of this strategy is supported by findings in the expanded full report. Many current architects grew interested in the profession while in school, recognizing at the time that their skills in math, science, or drawing matched the job requirements well. Others attended a class that sparked an interest in architecture. School interventions are additionally appropriate because architects believe that most middle and high schools students don't know what an architect does, how to become an architect, or the admission requirements to study architecture.

These strategies include industry outreach to K-12 students through curriculum and extracurriculars, and outreach to middle and high schools by university architectural programs.

Figure 10: Effective ways of attracting and retaining women and people of color in the field



Reasons for leaving the field

Key findings

Uninfluenced by gender or race, about one in five architects have left the field at some point. Architects who return after having left the industry face new challenges.

Reasons for leaving the field

Men and women, as well as whites and people of color, share many reasons for leaving the field of architecture. Some lose their jobs due to layoffs or termination, but more often they seek better opportunities elsewhere.

There are some variations along gender lines. One of the most important reasons that women give for leaving the field is dissatisfaction with work-life balance, while men are less likely to say the same. Many more women than men also leave to start a family or leave because they need to care for a child at home. However, these percentages may be impacted by the high percentage of women respondents who are in the younger age demographic when women would be most likely to start a family and/or take on child-rearing responsibilities. Men, on the other hand, are far more likely to leave their jobs in architecture in order to pursue a more lucrative career.

People of color give some reasons more often than whites: They are dissatisfied with their professional growth and they aren't recognized for the work they do. Men of color also leave more than white men because they perceive that their salaries are not commensurate with the workload, their pay is not equal to others in their position, and they are unable to achieve work-life balance.

Figure 11: Reasons for leaving the field of architecture

Percentages represent response of 6 or 7 on a 7-point scale where 7 equals "Extremely Important" and 1 equals "Not at All Important." Only the scale endpoints, 1 and 7, have a verbal description.

Job satisfaction findings

Key findings

Overall, job satisfaction in the industry is, at best, moderate—with lower satisfaction for women and people of color.

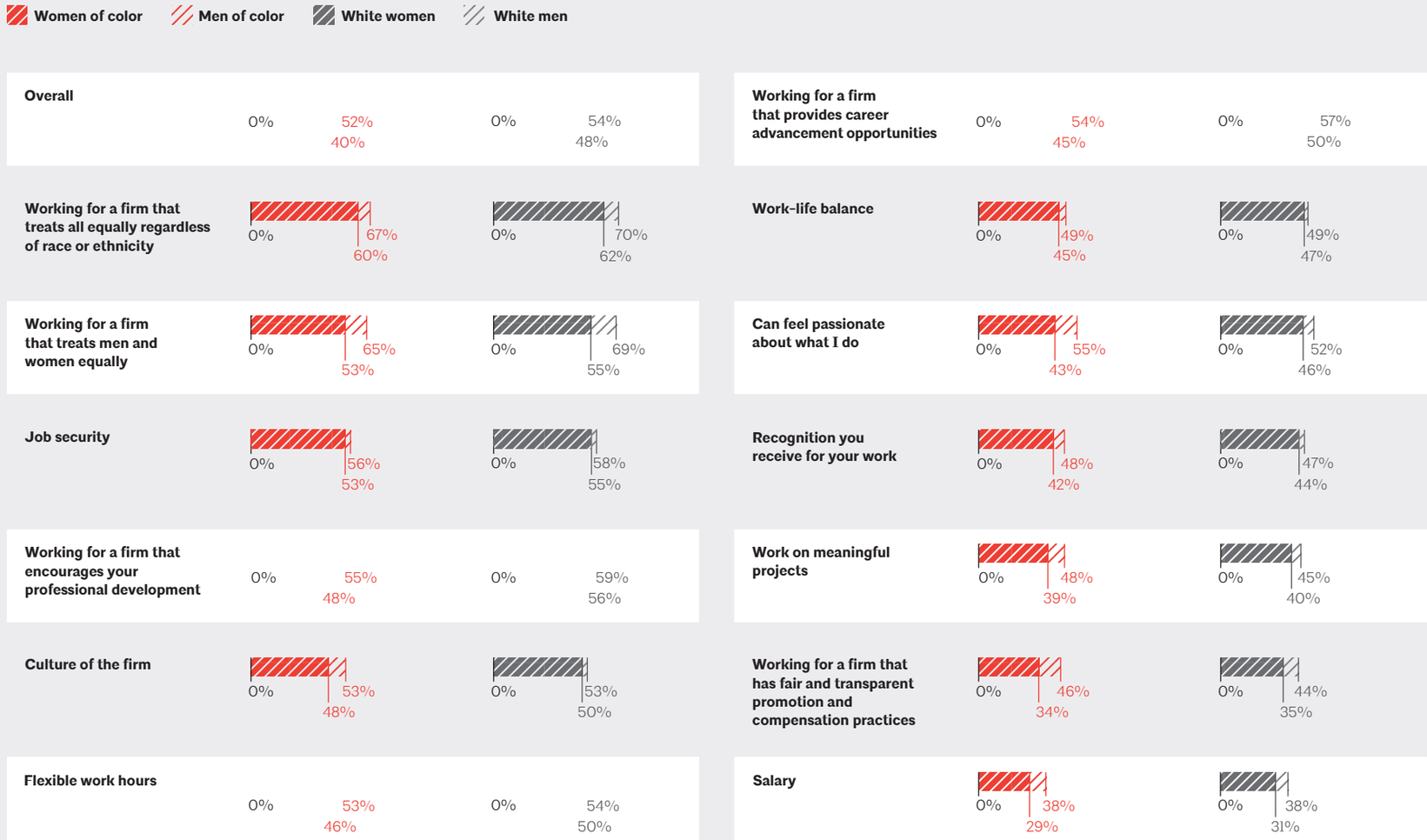
Job satisfaction findings

Job satisfaction in the field is moderate: About half of respondents report high satisfaction with their jobs overall, though few are highly unsatisfied. Less than half of all architects are satisfied with their work-life balance, with the recognition they receive for work accomplished, or with the frequency of working on meaningful projects. Satisfaction is lowest on salary and fairness and transparency of their employers' promotion and compensation practices.

Satisfaction is highest among males, with white men and men of color reporting higher satisfaction compared to white women and women of color. Women (both white and non-white) rate their job satisfaction lower than men in many areas, including salary, career advancement opportunities, and gender equality on the job. Women also are not satisfied that their employers' promotion and compensation practices are fair and transparent.

Women of color and men of color are less satisfied than white women and white men, respectively, with career advancement opportunities and working for a firm that encourages their professional development. The difference in job satisfaction across these areas tends to be smaller between people of color and whites than women and men.

Figure 12: Percentage with high job satisfaction overall and in selected areas



Percentages represent response of 6 or 7 or 1 or 2 on a 7-point scale where 7 equals "Extremely Satisfied" and 1 equals "Not at All Satisfied." Only the scale endpoints, 1 and 7, have a verbal description.

Appendix

Selected respondent demographics

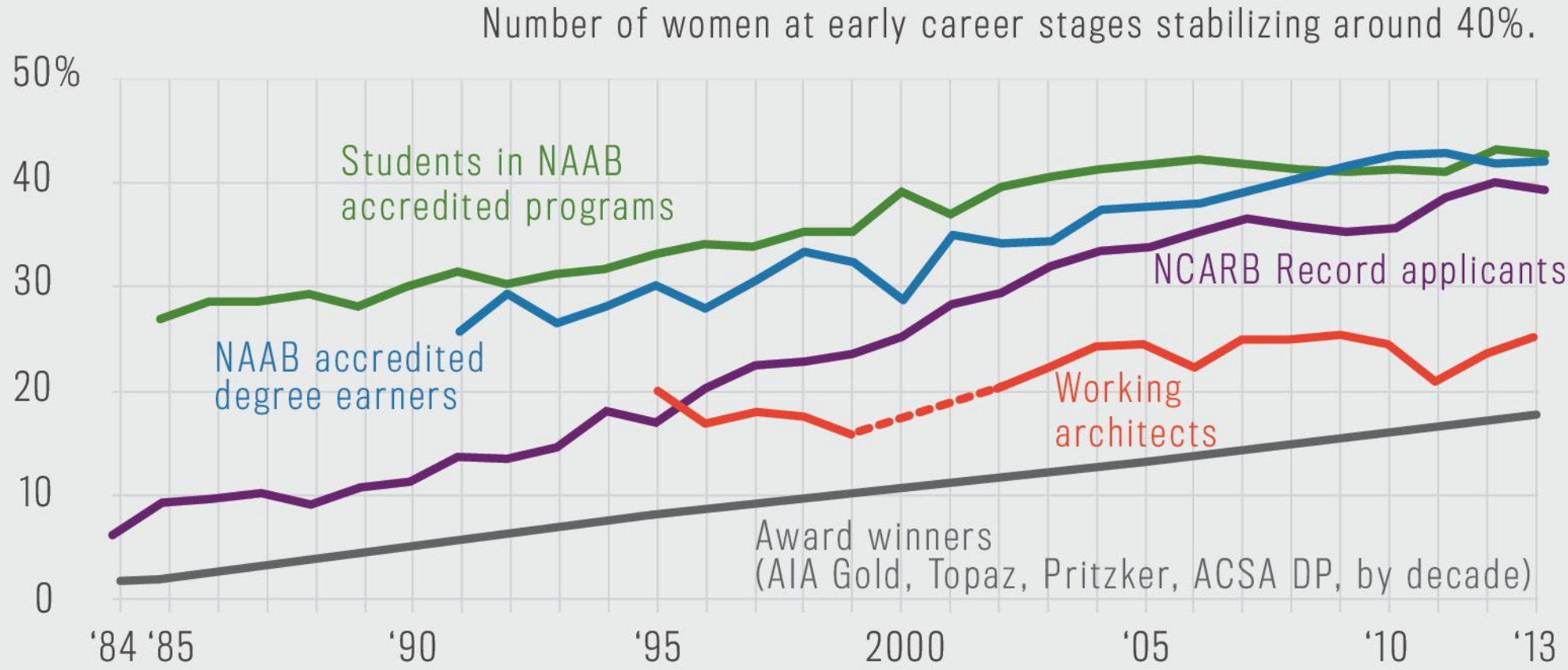
	Total	Women	Men	People of color	White
Working region	**n=7467**	**n=3094**	**n=4203**	**n=1564**	**n=5734**
Northeast	23%	24%	22%	21%	23%
South	30%	29%	29%	33%	29%
Midwest	20%	18%	22%	12%	22%
West	25%	26%	24%	28%	24%
Work outside the U.S.	2%	3%	3%	6%	2%
Firm owner*	**n=5889**	**n=2631**	**n=3387**	**n=1169**	**n=4565**
Woman-owned	16%	24%	10%	14%	16%
Minority-owned	10%	8%	11%	26%	6%
None of these	78%	72%	82%	67%	81%
Age	**n=7452**	**n=3109**	**n=4206**	**n=1574**	**n=5747**
Under 25	12%	15%	9%	14%	11%
25-34	36%	45%	30%	37%	37%
35-44	20%	19%	21%	24%	19%
45-54	13%	11%	14%	12%	13%
55-64	13%	8%	16%	8%	13%
65-74	5%	2%	8%	4%	6%
75 or older	1%	0%	2%	1%	1%
Mean	39.7	35.5	42.8	37.5	40.1

* Percentages may not add up to 100% because multiple answers were accepted.

Note: The number of respondents by gender and race in this table may be lower than the totals reported in the methodology. This is because some respondents did not answer all demographic questions.

Pipeline Into the Profession of Architecture

Female students, graduates, NCARB applicants, and awardees by %



ACSA

SOURCES: ACSA, AIA, NAAB, NCARB, Pritzker, U.S. Bureau of Labor Statistics NOTE: Employment data interpolated for 2000-1. BLS occupational definition changed in 2003.

NCES Data on the Ethnicity and Gender of Graduates in Architecture and Related Fields

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December 2014

Ethnicity and Gender of Graduates

The interactive graphics on this page explore ethnicity and gender information from the National Center for Education Statistics (NCES) on 2012–13 graduates in architecture and related fields.

Visualizing this same dataset, the Graduates and Institutions page looks at overall enrollment and institutional characteristics from this same dataset; and you can also explore a map and list of programs that describe institution-level characteristics of schools offering NAAB-accredited, NAAB-candidate, and non-professional programs in architecture, and in other architecture-related fields.

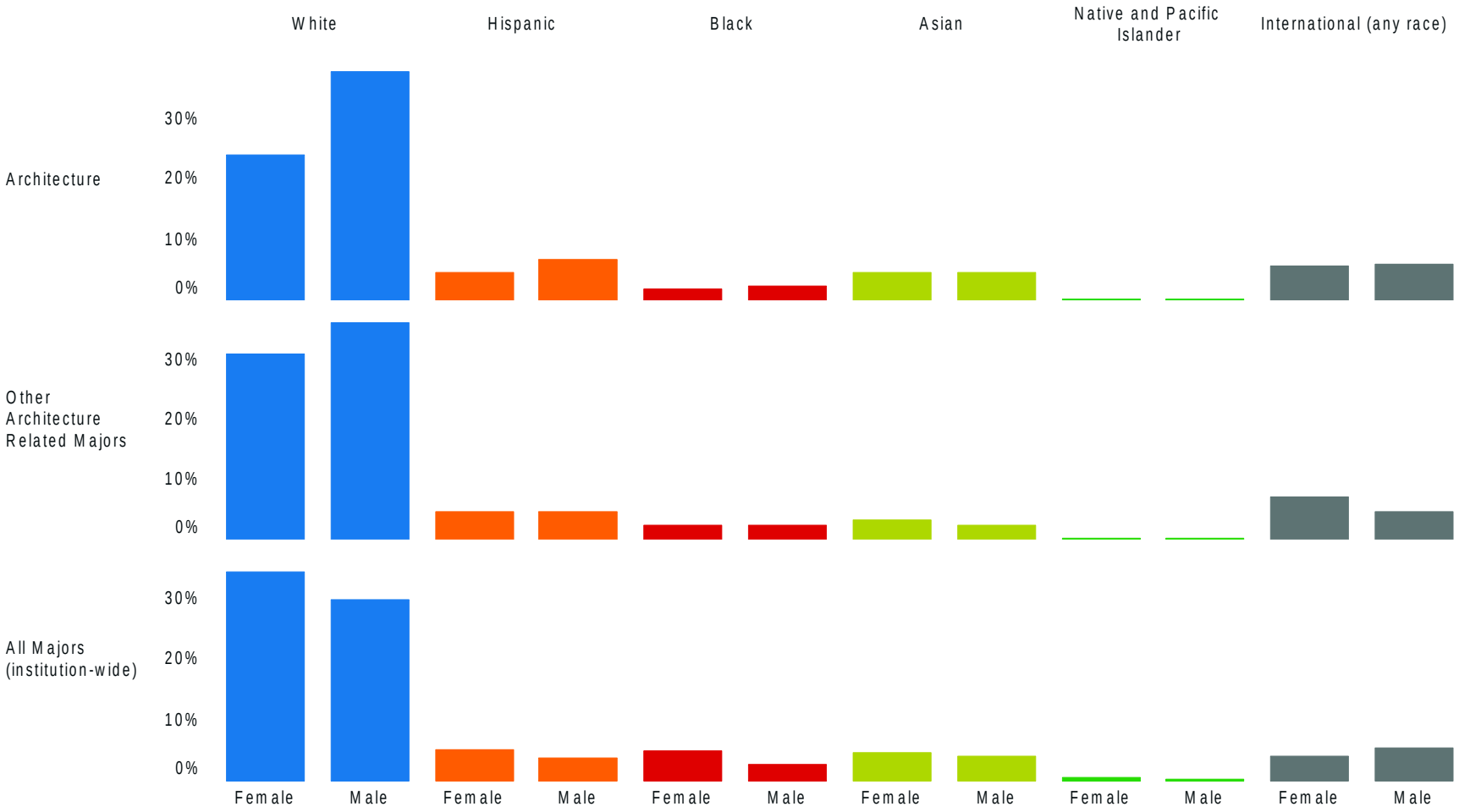
Among Whites, Hispanics, and Blacks, More Men Than Women Earned Architecture Degrees

How do the ethnicity and gender of architecture graduates compare with other graduates at the same institutions? This first chart considers those who graduated in 2012–13 with degrees in architecture, architecture-related majors (combined in this view), and all majors (architecture-related and others).

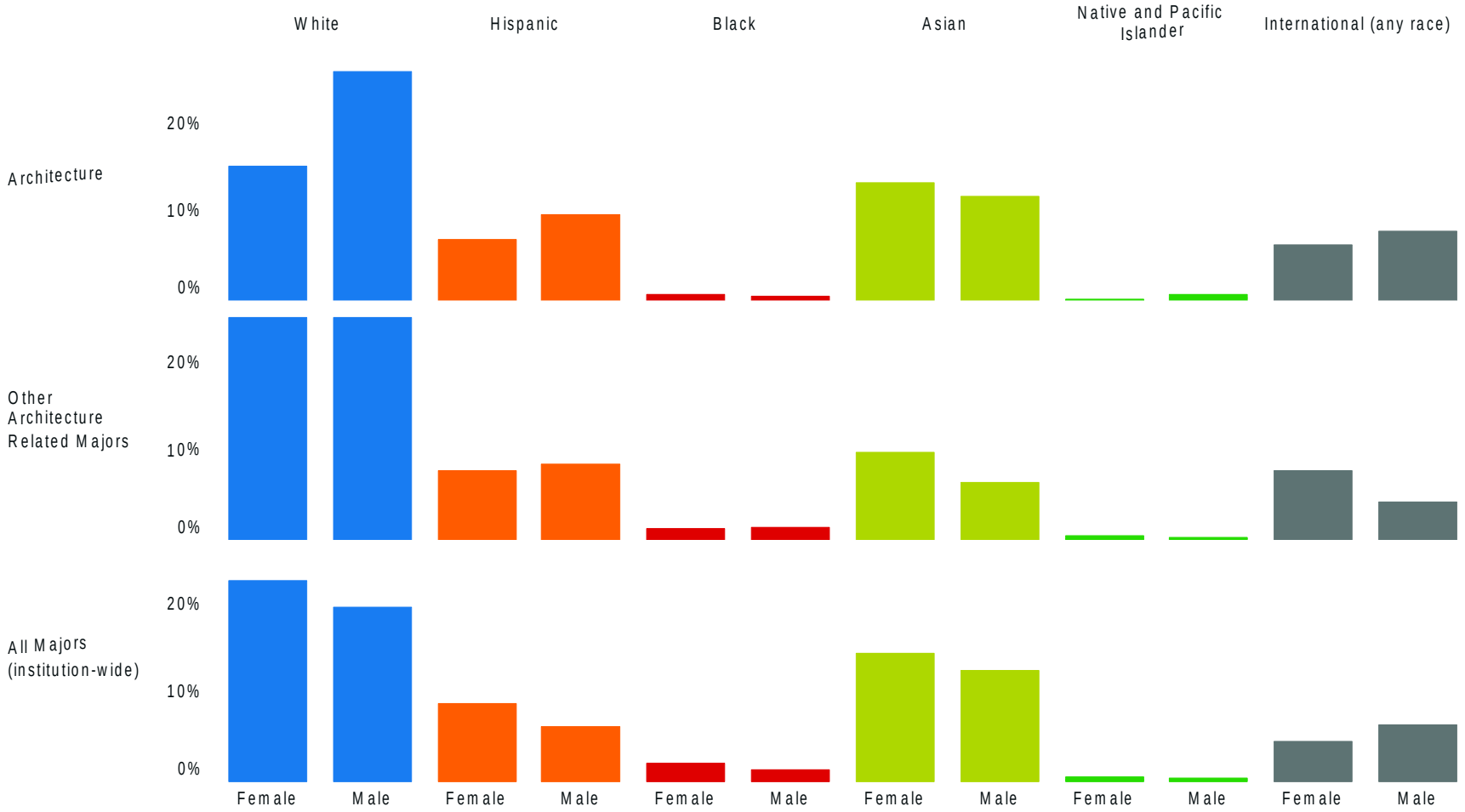
We can see that although more women than men earned degrees across all majors, in all groups except "international" (nonresident aliens) this gender balance often reverses among architecture and architecture-related majors. That is, there were more white men than white women among architecture degree earners. The same holds true for Hispanics, Blacks, and Natives and Pacific Islanders (a group which includes the NCES categories of 'American Indians/Alaska Natives' and 'Native Hawaiian or Other Pacific Islander'). Among Asians, the numbers are closer to equal for both genders in both architecture and other majors. Among international students, the pattern is the opposite: there were more male than female graduates across all majors, while this gender gap is somewhat closed among architecture graduates.

The default view on this chart shows this data for all institutions that had at least one graduate in an architecture or related major in 2012–13, and you can toggle the filters to show just a subset of these schools. You can also select an individual state or institution to see just those graduates. For example, when you toggle between private not-for-profit and public institutions under the 'Funding' filter, you can see that international students are much less common at public institutions.

U.S. Graduates in Architecture, Related Fields, and All Majors by Ethnicity and Gender



California Graduates in Architecture, Related Fields, and All Majors by Ethnicity and Gender



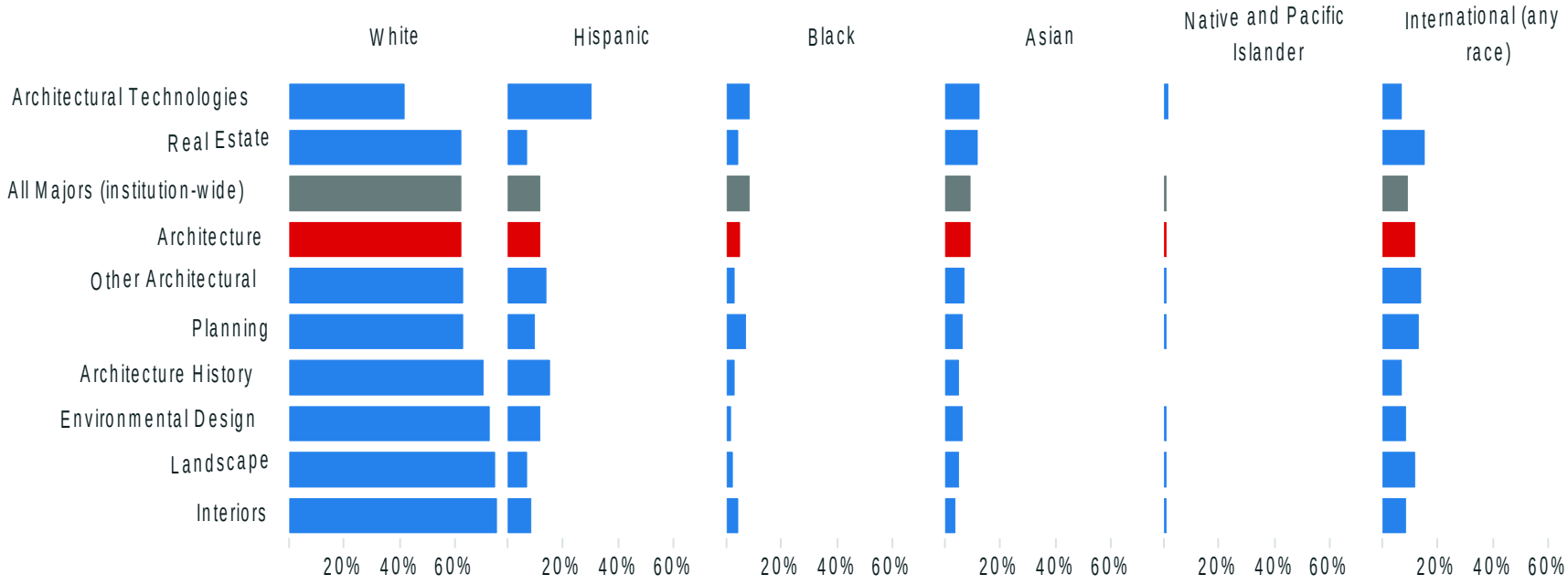
http://www.acsa-arch.org/resources/data-resources/nces-data-on-u-s-programs-in-architecture-and-related-fields/ethnicity-and-gender-of-graduates

Architecture Had More International and Fewer Black Graduates By Percent Than All Majors

Which majors are "most white"? "Most black"? "Most international"? This first chart shows the percent of 2012–13 graduates in each major by ethnicity. For example, you can see that Hispanics were strongly represented among graduates in architectural technologies, and more represented among architecture graduates than in all majors at these institutions. On the other hand, Blacks were less represented in architecture than they were in all majors institution-wide or in several other architecture-related majors.

Hover over each bar for details. You can filter the results by gender and level of graduates, and by institutional funding type and Carnegie Classification. You can also select an individual institution to see the breakdown of graduates by race/ethnicity at that institution.

Percent of Graduates in Architecture and Related Fields by Major and Ethnicity

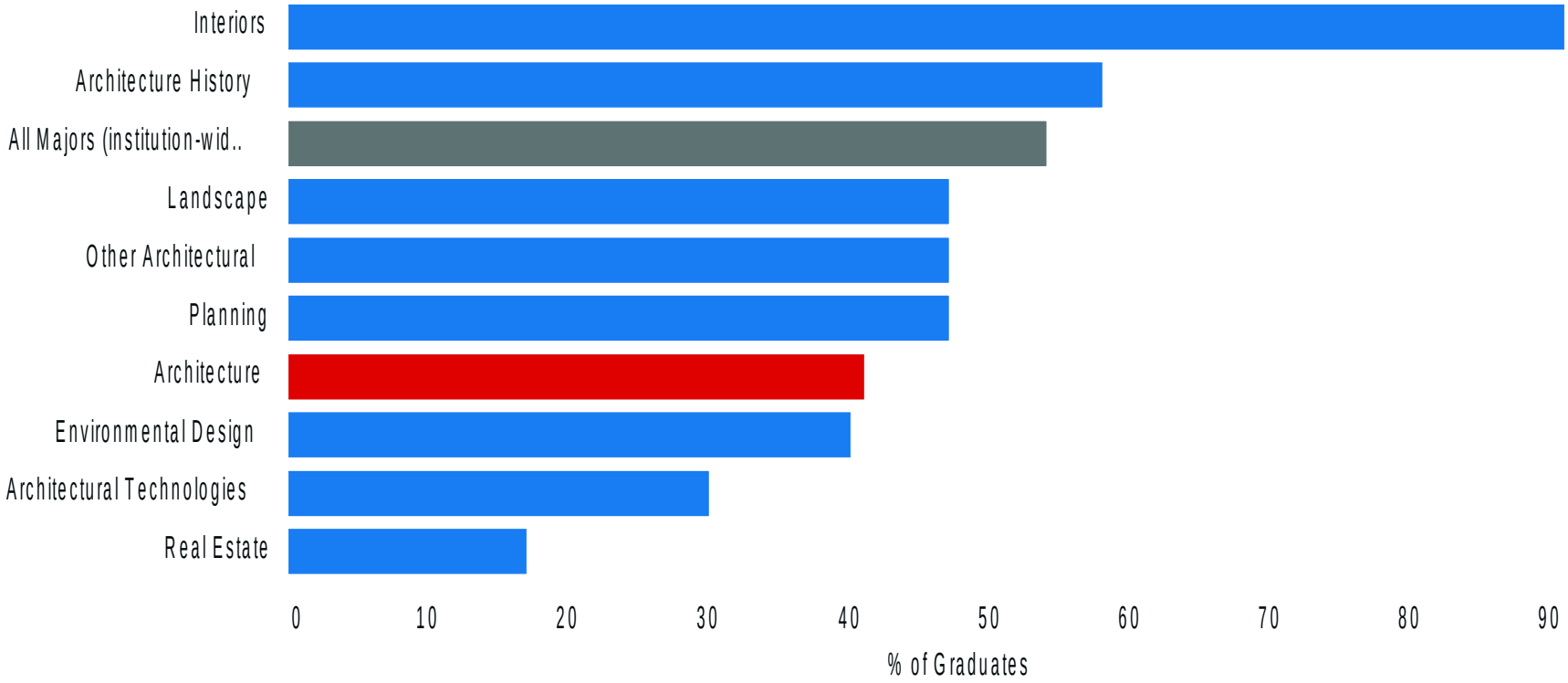


Architecture Had Fewer Female Graduates by Percent Than Most Related Fields or All Majors

The next chart breaks down the majors in a similar way, this time by gender. For example, you can see that in 2012–13 architecture had a lower percentage of women than all majors at these institutions; and if you toggle through the degree levels under 'Filter by Graduates,' you can see that this is true at all levels.

You can also see that 91% of graduates in interior design are female; and by toggling through the various ethnicities under the 'Filter by Graduates' heading, you can see that interior design is predominantly female within each ethnicity.

Graduates in Architecture and Related Fields by Major and Gender



Hispanic and Blacks Are Underrepresented in Architecture at Most Degree Levels

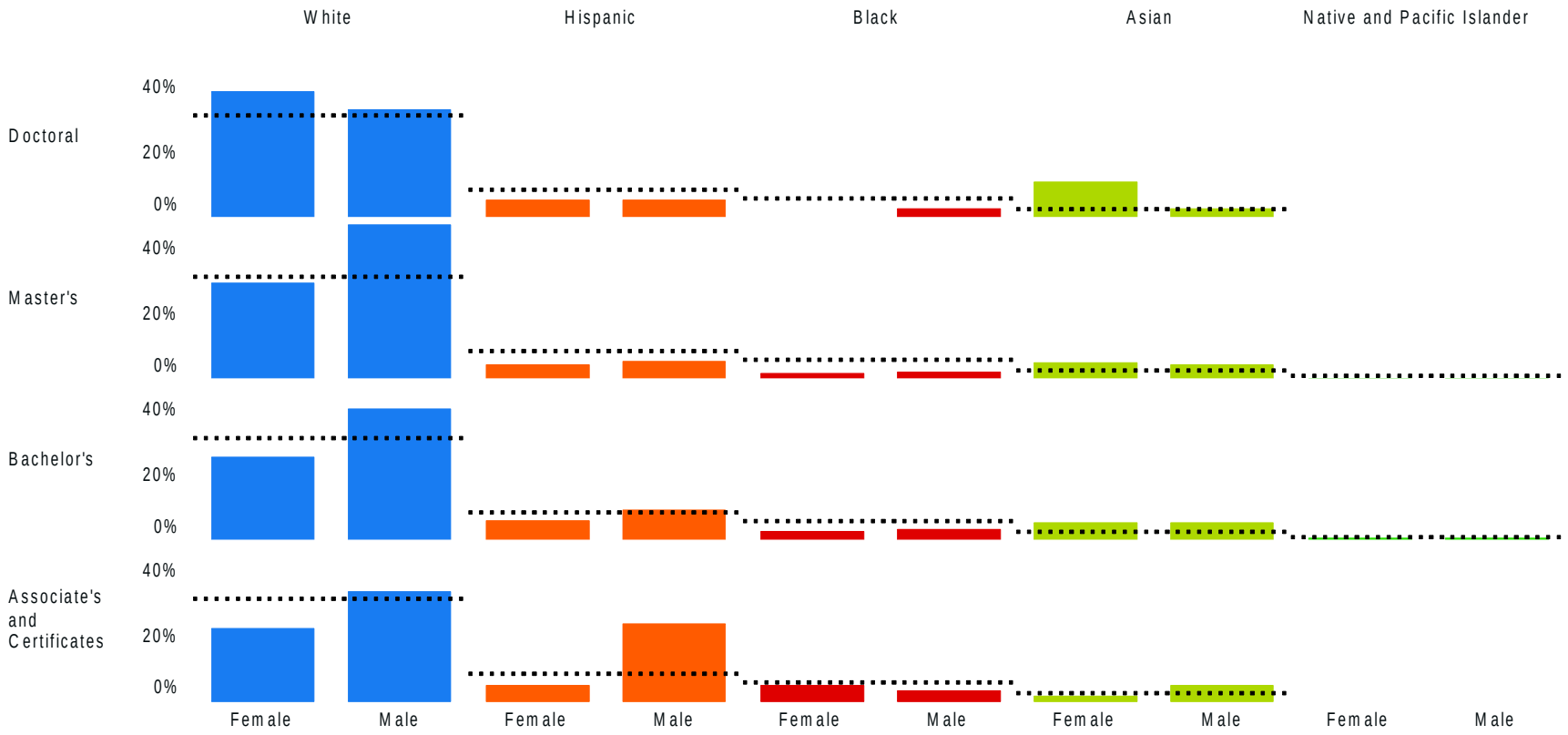
To what extent does this distribution of graduates by ethnicity and gender represent the demographics of the United States as a whole? That is, which demographics are underrepresented among graduates in architecture and related fields? This final chart shows graduates by ethnicity and gender across the various degree levels, with a dotted reference line showing the percent of each ethnic demographic in the U.S. population.

This chart shows that at the bachelor's, master's, and doctoral levels, Hispanic and Black men and women are underrepresented among architecture graduates since they comprise a smaller percent of architecture graduates than their percent in the U.S. population (with the exception of Hispanic men at the bachelor's level). Women are often underrepresented as well, although white women are represented in a greater percentage among architecture doctoral degree earners than in the U.S. population overall; and Asian women are more represented among architecture degree earners at the bachelor's, master's, and doctoral levels.

By toggling through majors under 'Filter by Graduate,' you can see how architecture compares with architecture-related fields and all majors at these institutions. You can also look at graduates from a subset of institutions by exploring the 'Filter by Institution' settings. For example, by selecting 'architecture' as a major and focusing just on private institutions, you can see that there were very few white men completing doctoral degrees in architecture at private institutions in 2012–13, as compared with their numbers in the overall U.S. population.

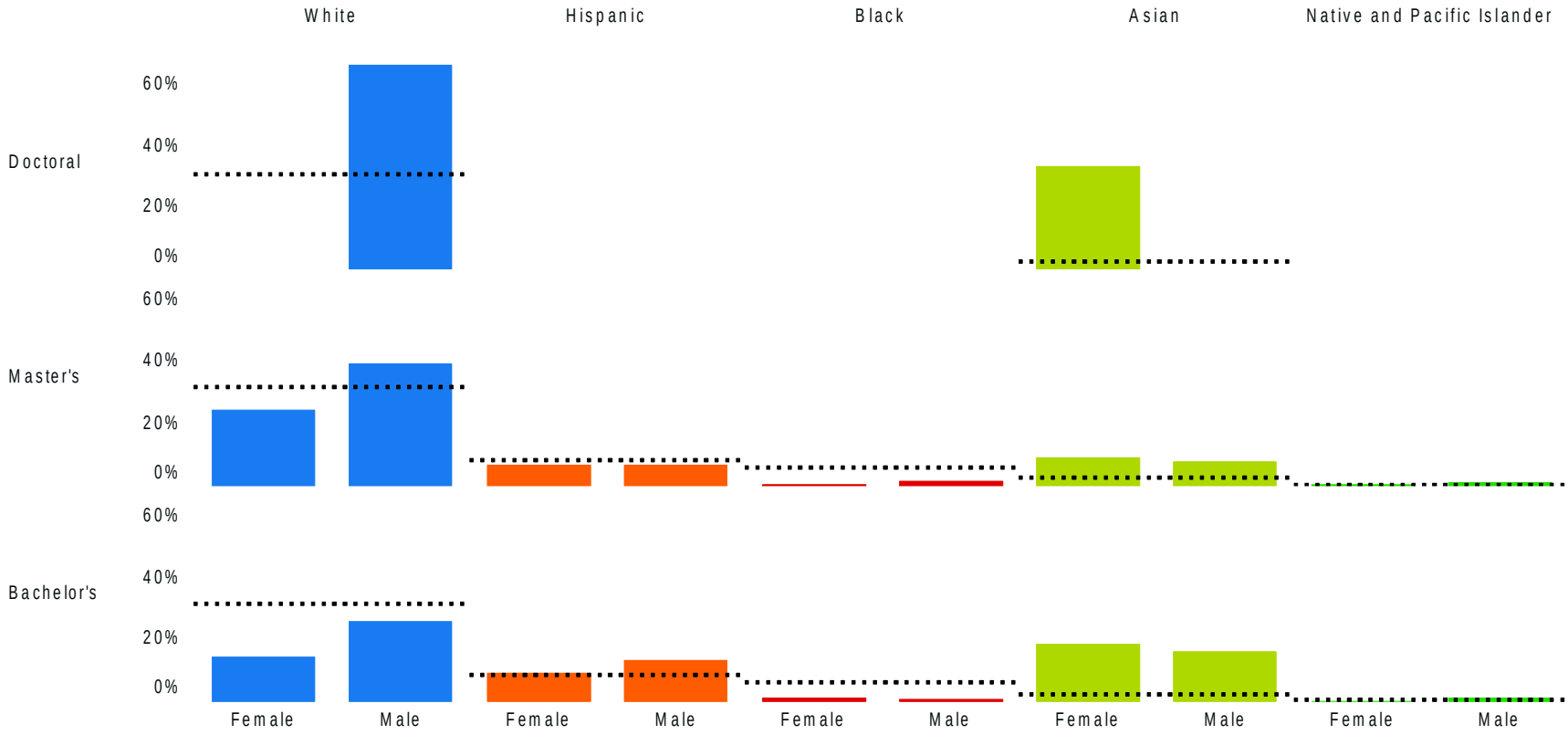
These trends may look different if we include data from multiple years, so in future visualizations, we will expand the data included in order to share a fuller picture.

Ethnicity and Gender Relative to Numbers in Overall U.S. Population



Dotted line shows percentage in overall U.S. population. Bars above the dotted line indicate a demographic represented in greater proportion in a given major and degree level than in the U.S. population overall. Bars below the dotted line indicate an underrepresented demographic group.

Ethnicity and Gender Relative to Numbers in Overall California Population



Dotted line shows percentage in overall U.S. population. Bars above the dotted line indicate a demographic represented in greater proportion in a given major and degree level than in the U.S. population overall. Bars below the dotted line indicate an underrepresented demographic group.

If you're looking for information on overall enrollment and institutional characteristics, please see **Graduates and Institutions**, as well as our Map of Programs and **List of Programs**. To learn more about the underlying dataset or to download this and similar data, please visit the National Center for Education Statistics**.**

To let us know how you are using this data and what you'd like to see in the future, or if you have questions or corrections, please contact **Kendall Nicholson, Director of Research + Information.**

Diversity & Multiculturalism in the Architectural Academy: An Assessment of Barriers & Opportunities

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University of Oregon

INTRODUCTION

While the persistent underrepresentation of students of color in architecture is well documented, little empirical research is available from within the discipline that helps us to understand the problem's causes.[1] However, the body of argumentative literature that does exist calls attention to the political nature of schooling and suggests that architectural theory, curricula, and pedagogy may play a role in deterring the participation of people of color. In doing so, it also raises questions about architecture schools' ability to prepare students to work in a context of increasingly internationalized professional practice and resurgent interest in humanitarian design.

I begin the paper with an overview of data on racial and ethnic representation in architecture and a discussion of its possible implications. I then review the argumentative literature and evaluate it relative to related educational theory. This is followed by a brief evaluation of four design studios I taught between 2007 and 2011 at the University of Oregon. I conclude by suggesting concrete changes that can be made to improve multicultural teaching in the design studio, and by identifying areas in need of future research.

A STATISTICAL OVERVIEW

Questions remain about the reliability of the little available statistical data on race and ethnicity in architecture.[2] It is also difficult to compare data sets to one another due in part to in the way racial and ethnic categories, as well as participation in architecture, are defined. However, the available data (Figure 1) seem to indicate both that there are multiple factors affecting the participation of people of color in architecture and that these groups may face different deterrents.

Pipeline Leakage

The data show a phenomenon often referred to as 'pipeline leakage',[3] or declining participation at multiple 'sites' along the path to professional practice. While significant additional research is needed to confirm these apparent trends and to identify causality, the data thus nevertheless suggest that there are likely multiple factors working to deter participation.

The statistics for people who indentify as African American and Hispanic provide examples of this phenomenon. While African Americans make up 14.6% of the non-Hispanic U.S. population,[4] they represent only 8.4% of first time enrollments and 4.9% of degrees awarded in National Architecture Accrediting Board (NAAB) accredited schools and 2.1% of persons employed as architects. Similarly, while people who identify as Hispanic represent 16.3% of the population, they constitute only 13% of first time enrollments, 11% of degrees awarded, and 7.8% of people employed as architects. [5]

The data also show a higher percentage of students of color enrolling in architecture school for the first time than of degrees awarded, which suggests that architecture schools may be one of the sites at which barriers to the participation arise. Combined NAAB data from 2009 and 2010 (Figure 1)

	Total US Population	Non-Hispanic US Population	Persons Employed as Architects	Demographic Diversity Audit Survey Respondents	AIA Membership		Students at NAAB Accredited Schools			
					Architects	Associates	Total Enrollment	1st Time Enrollment	Degrees Awarded	Degrees Awarded + 1st Time Enrollments
White/Caucasian	72.4%	76.2%		80.0%	72.0%	56.0%	63.0%	64.0%	73.0%	82.0%
Black/African-American	12.6%	14.6%	2.1%	5.0%	1.0%	3.0%	6.3%	8.4%	4.9%	42.5%
Amer. Indian including Alaska Native	0.9%	0.9%		0.5%			0.5%	0.6%	0.5%	66.0%
Asian	4.8%	5.6%	1.9%	5.0%	5.0%	6.0%	12.4%	10.7%	9.5%	63.7%
Native Hawaiian, Other Pacific Islander	0.2%	0.2%					0.3%	0.5%	0.2%	21.6%
Some Other Race	6.2%	0.2%			1.0%	4.0%				
Two or More Races	2.9%	2.3%					1.0%	2.5%	0.6%	16.4%
Hispanic	16.3%		7.8%	5.0%	3.0%	7.0%	16.0%	13.0%	11.0%	61.8%

Figure 1. Comparative Racial & Ethnic Representation in Architecture & U.S. Population[7]

show that graduation rates may in fact be considerably lower for students of color than for white students. They indicate, for example, that while 82% of white students who matriculate are receiving degrees, only 42.5% of non-Hispanic African American students are doing so.[6] However, because the amount of available data is quite limited, it may be misleading and simply reflect annual variability in enrollments and degrees awarded. However, this does suggest the need to monitor relative graduation rates as more data becomes available. It also suggests that tracking specific cohorts through school might be needed in order to understand if and why the trend exists.

Variability Between Groups

The data also show that participation rates vary considerably between racial and ethnic groups, as does that the rate of change at each point along the 'pipeline'. This may indicate that different deterrents exist, or have differential impact, for different groups. For example, in contrast with data described above for people identifying as African American and Hispanic, which indicate that these groups are already underrepresented by the time they enter architecture schools, Asians are overrepresented: 10.7% of students enrolling for the first time are Asian and they are awarded 9.5% of degrees, while they are only 5.6% of the total non-Hispanic population.[8] This seems to indicate that African Americans and Hispanics may face more barriers to participation prior to entering architecture school, while for Asians more deterrents may arise during or after architecture school.

In addition, while all groups are significantly underrepresented among people employed as architects, some are less well represented than others. For example, U.S. Census data for 2010 show that the proportion of Asians and Hispanics employed as architects is a bit less than half their representation in the total population. In contrast, African Americans representation in the total population is about seven times greater than it is among architects. This indicates that there may be more deterrents to African Americans' participation than that of Asians or Hispanics.[9]

This overview therefore suggests the need for a nuanced approach to studying barriers to participation that recognizes the diversity that exists between ethnic groups, as well as the need to take seriously the prospect that aspects of architectural schooling may play an important role in limiting diversity in architecture.[10]

A REVIEW OF ARCHITECTURAL DIVERSITY LITERATURE

Most of the literature regarding diversity in architecture supports the idea that architecture schools contribute to the persistent underrepresentation of people of color in the field. It tends to focus in particular on the role of curricula, pedagogical practices, or both, and to ultimately challenge the stated or unstated foundational assumptions that shape them.

Scope, Diversity, & Emphasis of Curricula

The most straightforward argument made about architecture schools' role is that greater curricular diversity is needed to attract more people of color. Sharon Sutton, Linda Groat, and Sherry Ahrentzen have argued, for example, that women and people of color are more likely than their white counterparts to be interested in careers that have "power," especially the power to affect social change or provide "the opportunity to solve important social problems."[11] They therefore advocate for an expansion of curricula that address architecture's social aspects and those that prepare students not just for traditional design practice but also for a broad range of related careers.[12]

Groat also makes the argument that predominant models of architects' role, which she labels the "architect-as-artist" and the "architect-as-technician," are problematic because they "depend on the patronage of well-to-do and influential clients" and thus have a limited ability to affect social change.[13] She sees the architect-as-artist model, for example, as one that serves to "distanc[e] the artist/architect from the sociocultural context of his or her work" because it is rooted in an ideals of individuality, originality, and the "now commonplace view of the artist as fundamentally separated from society."[14] Groat proposes a new conceptual model, the "architect-as-cultivator," in which the architect's work is understood as a collaborative endeavor that engages practitioners with the social aspects of the built environment, and in which buildings are seen as part of a "collective [cultural] inheritance created by past individuals and continuously reinterpreted and reconstructed by others."[15] This new approach allows the contributions of people of color to be acknowledged and, implicitly, for architecture to begin to serve communities in ways that can reverse the conditions of racial oppression, and to attract students interested in careers that do so.[16]

Groat's argument dovetails with Craig Wilkins's contention that the predominance of the idea that architects' credibility is tied to their artistic genius, and schools corresponding emphasis on the aesthetic, serves to distract attention from architecture's other implications and thus to resist the participation of African Americans.[17] He writes,

> "The genius is required… to create… something that cannot – by definition – be understood by objective means… the function, economics, and politics of the object are all rendered immaterial to the aesthetic product. So why bother to investigate or even teach its economic and political implications?"[18]

Wilkins implies that these curricular omissions play a role in the continued devaluation of African Americans in society because they silence discourse about things like architecture's relationship to power and social inequality.

Both Wilkins and Sutton also contend that one of the consequences of architecture's focus on form and aesthetics is to retard the development of the objective research base they see as necessary to increase the profession's legitimacy, and thus its social power and ability to attract people of color, as well as to allow for the kind of critical self-evaluation needed to understand how architecture may be working to replicate conditions of social inequality, including those that disadvantage people of color.[19]

Pedagogical Practices

Sutton also argues for a revised approach to architectural teaching. She characterizes typical pedagogical models as akin to "a Medieval guild culture where each person learns at the side of another person, thus perpetuating all [their]... intellectual limitations and cultural biases."[20] She argues that instruction grounded in objective research rather than the received wisdom of instructors can help to overcome these biases.[21]

Thomas Dutton likewise sees studios' predominant pedagogical practices as a barrier to diversity, arguing that the dominant hierarchical "master-apprentice" model of studio instruction places undue influence on the knowledge of the instructor and thus his or her "ideologies, values, and assump-

tions about social reality,"[22] thus reproducing the "forms and practices of power in [broader] society," including those that work to oppress people of color.[23]

Curricular Invisibility[24]

Meltem Ö. Gürel, Kathryn Anthony, and Bradford Grant argue that course materials and content also reinforce ideologies that devalue people of color. Gürel and Anthony demonstrate that survey texts commonly used in architectural history courses marginalize women's contributions and almost categorically exclude those of African Americans.[25] They argue that the exclusionary content of these texts is of consequence because they "play a significant role in conveying the culture, norms, and values of the architectural discipline to newcomers."[26] Said differently, inclusion in these texts legitimizes certain works as Architecture and conversely devalues excluded works; moreover, because of these texts importance in defining for students what constitutes Architecture, they also devalue excluded groups within the broader disciplinary culture.[27] This argument implies as well that even apparently objective architectural research, like that represented in history texts, is not neutral.

Bradford Grant is more explicit in arguing that curricular invisibility devalues students of color. He views architectural education's Eurocentrism of as a form of "protectionism" born of "racism and ignorance" that "is powerfully prejudicial, leading to the virtual denial of African Americans', women's, and others' identities in built form."[28] He contends that curricula's "narrow focus" with it's "determined ignorance"[29] of non-European "histories, formal aesthetics, and theories"[30] not only presents a false narrative about the nation's cultural ancestry and built history,[31] but also that doing so strips women and people of color of an "empowering" form of "potent cultural symbolism" that helps to "define and validate …identity."[32] Grant proposes a revised approach to architecture based on the idea of "shared otherness" that allows architecture to fully express the "cultural diversity that actually exists within Western societies."[33]

Grant, Gürel, and Anthony thus call attention to the political nature of architectural schooling by revealing what they see as essentially racist assumptions embedded in its curricula and artifacts. Indeed, the larger body of literature discussed here can be read as an attempt to reveal and to challenge the generally unstated assumptions that guide decisions about architectural schooling, and to suggest that these work together discourage the participation of students of color. In doing so, it frames architectural schooling and its constituent elements as political rather than neutral. Dutton makes this argument explicitly, writing that,

> "there is a rough correspondence between schooling and wider societal practices, whereby the selection and organization of knowledge and the ways in which school and classroom social relations are structured to distribute such knowledge are strongly influenced by forms and practices of power in society. That is, the characteristics of contemporary society …such as class, race and gender discrimination and other asymmetrical relations of power – are too often reproduced in schools and classrooms, including the design studio."[34]

THEORETICAL FOUNDATIONS & FURTHER IMPLICATIONS

This architectural scholarship is grounded in the twin ideas (a) that knowledge is socially constructed and therefore contingent rather than absolute, and (b) that schools play a central role in social and cultural reproduction because they do not simply transfer neutral information to students, but also socialize them in society's norms and values.

This scholarship draws in particular on the work of educational theorists Henry Giroux and Paulo Freire. Freire argued that reformed pedagogy is necessary in order to transform the inequitable, or oppressive, conditions of society. He contended that conventional "banking" methods that treat education as a neutral process of knowledge transfer serve to "reinforce existing modes of social relations and production."[35] This is because the knowledge transferred to students is indeed not neutral but instead reflects particular ideologies, and because it limits discourse and thus any challenges to these ideologies. He argued that a "dialogical and problem-posing education" in which teachers and students "become jointly responsible for a process in which they all grow" was therefore needed.[36] In this approach,

> "the students – no longer docile listeners – are now critical co-investigators with the teacher. The teacher presents the material to students for their consideration, and re-considers her earlier considerations as the students express their own. The role of the problem-posing educator is to create, together with

> the students, the conditions under which knowledge at the level of the *doxa* is superseded by true knowledge, at the level of the *logos*."[37]

Henry Giroux further develops Freire's ideas. He agrees with Freire that schools play a role in reproducing the conditions of broader society, including those of racial oppression, but that "teachers and students …often reject the basic messages and practices of schools," and thus the dominant ideologies[38] they represent.[39] Therefore, while these ideologies become "inscribed in: (1) the form and content of classroom material; (2) the organization of the school; (3) the daily classroom social relationships; (4) the principles that structure the selection and organization of the curriculum; (5) the attitudes of the school staff; and (6) the discourse and practices of even those who appear to have penetrated its logic," their replication is incomplete.[40]

Angela Valenzuela's study of Mexican origin[41] students in a Houston high school provides a useful concrete example of how difficult it can be to identify these 'inscribed ideologies' – especially when they are not evidently racist – and thus to understand how they may be working to devalue or disadvantage students of color. Valenzuela's study found that the mostly white middle-class teachers assumptions about what constituted success – that is, the ideological assumptions about 'what constitutes the good life' that informed the content of their courses and their interactions with students – were at odds with those of their less-affluent Mexican origin students and that this adversely affected both the students' success in school and their willingness to participate in schooling.[42]

The teachers saw success as getting into college and out of the *barrio*. For the students, who valued their home-place and the social an cultural associations it held, this kind of success meant turning their backs on their culture and community.[43] As one student put it, "getting with the program" is undesirable because those who do, "get rich, move out of the *barrio*, and never return to give back to their *gente* [people].[44] Or, as another student commented, "If only us *raza* [Mexican American people] could find a way to have all three, money… clean money, education, and the 'hood."[45]

The students therefore rejected schooling in a variety of ways, including dropping out or skipping classes. Valenzuela contends that in this way and others,

> "[s]chooling is a *subtractive* process" for these students that is "organized formally and informally in ways that fracture students' identities" and "divests [them] …of important social and cultural resources, leaving them progressively prone to academic failure."[46]

Giroux outlines a pedagogical approach based on Freire's idea of "praxis" – a cyclical process of "critical reasoning and critical intervention in the world" – intended to help bring the sorts of hidden ideologies Valenzuela describes to light.[47] This includes four "dialectics": (a) *totality*, which is "based on the insight that for any fact, issue, or phenomena to become meaningful it must ultimately be examined within the context of the social totality that gives it meaning; (b) *mediation,* which suggests that the "true nature" of phenomena are mediated by different layers of meaning shaped by ideology, but that these "legitimated" or "commonsense" meanings can be unmasked; (c) *appropriation*, which frames "critical thought and dialogue" as essential "forms of classroom action" that help us "to focus more critically on questions concerning the nature of the hidden curriculum, the patterns of social control underlying student-teacher relationships, and the focus of ideology embedded in the use of specific types of knowledge and modes of classroom evaluation"; and *transcendence*, or "refusal to accept the world as it is."[48]

Architecture scholars' arguments for a shift in emphasis away from aesthetics and toward other aspects of architecture, as well as those for the development of a broad objective knowledge base for architecture, can be seen as related to Giroux's notion of *totality* in that they endeavor to set formal and aesthetic decisions in their social context. Critiques of hierarchical models of studio instruction can be understood as related to his notions of *mediation*, *appropriation*, and *transcendence* in that that they seek to remove one level of ideological mediation between students and phenomena through more dialogical processes of classroom instruction. Critiques of the invisibility of people of color in texts and curricula can be seen in terms of "appropriation" in the sense that they seek to reveal how these work to frame what is seen to matter as architectural knowledge.

These authors' practical recommendations for reform can thus be seen as efforts to deploy Giroux's dialectics. These include adopting models of design

teaching and evaluation that promote "greater discussion and debate about design," including panel discussions and colloquia, exhibits, debates, workshops and small group discussions, and emphasis on "critical questioning" and team work, as well as offering courses that focus on "broader issues that affect the profession at large," and integrating teaching about the work and issues of people of color throughout the curricula.[49]

LESSONS FROM MULTICULTURAL DESIGN TEACHING

Between 2007 and 2011, I taught four design studios at the University of Oregon intended to raise cultural issues in design and also to test assumptions about some of the 'received wisdom' common in architectural discourse. While there is not room here to provide a thorough evaluation of these studios, I would like to highlight aspects of my experience that are not evident in the literature discussed above.

In the first studio, I asked students to evaluate the appropriateness of common green building strategies in housing for migrant farmworkers in Washington state. In the second, students designed housing for the primarily Latino/a and Mexican immigrant residents of a very low income *colonia* in New Mexico. Two other studios asked students to consider what constituted contextually appropriate architecture in central Saigon (Ho Chi Minh City), Vietnam, which is being transformed by rapid urbanization, increased political openness, and an influx of global capital.

Not wanting to engage in 'parachute projects' that would benefit myself and the students but do little for the communities in question, and not having the social networks in place that would have helped me to identify real clients, the studios' were based on real issues and places but hypothetical projects. We therefore worked largely from readings, internet-based research, image collection and analysis, and other similar sources rather than directly with the 'client' groups in question.

A challenge associated with this approach was to find ways to humanize the projects' 'client' groups for us all in order to try to avoid a stereotyped view of these groups. In part for this reason, I began to front-load my studios with in-depth research into historical, social, environmental, economic, formal, aesthetic, technical, and other aspects of the design project. These assignments helped to provide us with broad background in the issues and possibilities and to reveal the diversity within groups labeled as 'Vietnamese' or 'Latino/a'. In the case of the Saigon studios, where two participants were natives of the city, the challenge was to avoid the expectation that these students be seen to speak for all Vietnamese, and thus once again an to avoid an essentialized view of all Vietnamese.

The research assignments also resulted from my evolving pedagogical approach; I began with a sense of obligation to have knowledge and transfer it to the students, and ended seeing it as my role instead to raise relevant questions and learn along with my students – an approach perhaps in line with what Paulo Freire argued was necessary for 'true' or 'liberative' education.[50] I've found that these assignments worked well to ground students' designs in meaningful rather than arbitrary decisions, be they technical, aesthetic, or otherwise.

Perhaps the most challenging aspect of my experience has been to try to unearth my own biases. For instance, I realized at a certain point that I'd entered the farmworker housing studio with a sort of paternalistic mentality that failed to see the workers' agency, social organization, and personhood. I suspect this attitude of being tied up in part in the internalized stereotypes of Mexicans that affect, to use Giroux's words, "even those who appear to have penetrated [their] logic."[51] As William Anthony Nericcio deftly demonstrates in his cuttingly insightful book *Tex[t]-Mex: Seductive Hallucinations of the "Mexican" in America*, the "Mexican" is commonly "seen" in the United States in terms of simultaneous, contradictory, and largely negative stereotypes that affect even Mexican Americans themselves, not to mention people who see themselves as positive promoters of things Mexican.[52] I do not intend this as a *mea culpa*, but rather as an observation that even inclusive curricula and discursive pedagogy cannot avoid being affected by the complex dynamics of race and ethnicity in broader society.

Despite these challenges, it is absolutely clear to me that my experience teaching these studios has broadened my cultural understanding and sensitivity to issues of race and ethnicity. While I do not have empirical evidence of what these studios meant for students of color, my experience tells me that

multicultural teaching and design studios are quite compatible, even complimentary. Thus, it is my view that multicultural teaching can be effectively integrated into architectural curricula even without dethroning the primacy of the design studio or eroding studios' ability to help students develop the skills necessary for traditional professional practice.

SOME CONCLUSIONS

While the theoretical research to date and my own experience suggest that schools play a role in the persistent underrepresentation of people of color, it remains unclear how these students experience architectural education, why or why not they choose to pursue architecture as a career, and how big a role schools play. In addition, seen in a global context, this literature raises troubling questions about the ideologies and values architecture schools transmit to students about people of non-Western origins, and thus about their ability to graduate culturally fluent students capable of engaging in international and humanitarian work in ways that do not devalue those they are intended to serve. Thus, while the literature to date provides a useful revised theoretical foundation for multicultural architectural education, it leaves many of questions unresolved, including those identified in the data section above and those I will finish with here:

- What impact does curricular exclusion of the "histories, formal aesthetics, and theories"[53] of people of color have on students of color?
- To what extent does the absence or tenuousness of social ties between mostly white faculty and communities of color work to perpetuate the underrepresentation of people of color in architecture?
- How do barriers to participation vary between and within different racial and ethnic groups, and to what extent do architecture schools play a role?
- Are students of color in fact more likely to favor careers with a social mission?

ENDNOTES

1 While there are several empirical studies of diversity in architecture, most have either extended conclusions about gender to include people of color, or have had insufficient data about people of color to draw firm conclusions. See, for example, Kathryn Anthony, *Design Juries on Trial: The Renaissance of the Design Studio* (New York: Van Nostrand Reinhold, 1991), 35 Fig 3-6, 158-161, 163-168, 236; See also Linda N. Groat and Sherry Ahrentzen, "Reconceptualizing Architectural Education for a More Diverse Future: Perceptions and Visions of Architecture Students, *Journal of Architectural Education* 49, no. 3 (February 1996):168; Paul Mark Frederickson's "Gender and Racial Bias in Design Juries," *Journal of Architectural Education* 47, no. 1 (September 1993) provides empirical evidence of racial discrimination in architecture school settings. However, even this data emerged from a study that focused primarily on gender. Given evidence from other fields that the dynamics of gender and race operate in overlapping but differential ways, it seems clear that more research is needed that focuses specifically on students of color. The most concrete evidence regarding race and ethnicity in architectural education to date may be the 2005 study commissioned by the AIA (see following footnote).

2 For a discussion of available sources, see Holland & Knight LLP, Corporate Diversity Counseling Group, for the American Institute of Architects, *Demographic Diversity Audit Final Report* (October 18, 2005): 8-19.

3 This term comes from literature on the so-called STEM fields – science, technology, engineering, and mathematics – where the same phenomenon has been observed. See for example Catherine Hill, Christianne Corbett, & Andresse St. Rose, "Why So Few: Women in Science, Technology, Engineering, and Mathematics," Washington, D.C.: American Association of University Women (2010).

4 The 2010 U.S. Census treats race and Hispanic origin as "two separate and distinct concepts." "Hispanic origin" which like the term Latino refers to "a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race," "can be viewed as the heritage, nationality group, lineage, or country of birth of the person or person's parents or ancestors before their arrival in the United States," and is distinct from racial self-identification. One can thus identify as, for example, both white and Hispanic. (See U.S. Department of Commerce, Economics, and Statistics Administration, U.S. Census Department, *Overview of Race and Hispanic Origin: 2010.* U.S. Census Briefs, March 2011, p. 2). NAAB data does not make this distinction and treats Hispanic as a racial category. For the purposes of this study, I have therefore divided the raw numbers of students from the NAAB data into Hispanic and Non-Hispanic categories, eliminated non-resident aliens and persons of unknown race/ethnicity, and recalculated the percentages in order to attempt to achieve a more accurate comparison of the NAAB data to U.S. Census data for the total Hispanic and Non-Hispanic population. I also aggregated the NAAB data for 2009 and 2010 in an attempt to achieve a broader data set. (National Architecture Accrediting Board, Inc., *2009 Report on Accreditation in Architecture Education* (February 2010), 12-13, 15; National Architecture Accrediting Board, Inc., *2010 Report on Accreditation in Architecture Education* (March 2011), 14,19, 22-23.)

5 U.S. Department of Commerce, Economics, and Statistics Administration, U.S. Census Department, *Overview of Race and Hispanic Origin: 2010.* U.S. Census Briefs (March 2011): Tables 1 & 2, p. 4, 6; NAAB, *2009 Report on Accreditation* (February 2010), 12-13, 15; NAAB, *2010 Report on Accreditation* (March 2011), 14,19, 22-23; U.S. Department of Labor, Bureau of Labor Statistics, *Labor Force Characteristics by Race and Ethnicity 2010*, Report 1032 (August 2011): p. 17, Table 6: Employed people by detailed occupation, race, and Hispanic or Latino ethnicity, 2010 annual averages; See also note 3 above regarding NAAB data.

6 Aggregated data from NAAB, *2009 Report on Accreditation*, (February 2010): 13,15; and NAAB, *2010 Report on Accreditation,* (March 2011): 19, 22. See also note 3 above regarding NAAB data.

7 Total U.S. Population and Non-Hispanic Population: U.S. Census Department, *Overview of Race and Hispanic Origin: 2010 (*March 2011), Tables 1 & 2, p. 4, 6; Persons Employed As Architects: Bureau of Labor Statistics, *Labor Force Characteristics* (August 2011): p. 17, Table 6; Demographic Diversity Audit: Holland & Knight LLP, *Demographic Diversity Audit Final Report* (October 18, 2005): 18; AIA Membership: American Institute of Architects, AIA Diversity and Inclusion Web Page, "Snapshot of AIA Members (as of November 1, 2010)," http://www.aia.org/about/initiatives/AIAS076703 (Accessed 11 June 2011); NAAB School Data: Aggregated data from NAAB, *2009 Report on Accreditation*, 13,15; and NAAB, *2010 Report on Accreditation,* 19, 22. See also note 3 above regarding NAAB data.

8 Aggregated data from NAAB, *2009 Report on Accreditation*, 13,15; and NAAB, *2010 Report on Accreditation,* 19, 22. See also note 3 above regarding NAAB data.; U.S. Census Department, *Overview of Race and Hispanic Origin*, March 2011, Table 2, p. 6.

9 U.S. Census Department, *Overview of Race and Hispanic Origin*, March 2011, Table 2, p. 6; Bureau of Labor Statistics, *Labor Force Characteristics,* August 2011: p. 17, Table 6.

10 As indicated by the U.S. Census definition of the term Hispanic, these data tend to obscure the diversity within broader racial and ethnic categories, thus potentially masking the existence of different barriers facing different groups within them. The 'Hispanic' umbrella term, for example, includes everyone from English-language dominant Hispanos whose ancestors settled in the Southwest before it was part of the United States ("we didn't cross the border, the border crossed us") to first generation Latin American immigrants of indigenous ancestry and primary language. Because each of these groups has distinct histories and sets of language, economic, and other resources, it seems likely that they are affected by different deterrents to participation in architecture. For a good overview of diversity among Hispanics, see Juan Gonzales, *Harvest of Empire: A History of Latinos in America* (New York: Penguin Press, 2000). For a brief and useful discussion of the terms Hispanic and Latino, see Earl Shorris, *Latinos: A Biography of the People* (New York: Avon Press, 1992), xv-xvii.

11 Linda N. Groat and Sherry Ahrentzen, "Reconceptualizing Architectural Education for a More Diverse Future: Perceptions and Visions of Architecture Students, *Journal of Architectural Education* 49, no. 3 (February 1996): 176-177.

12 Groat & Ahrentzen, 1996: 176-177; Sharon E. Sutton, "Practice, Architects, and Power, *Progressive Architecture* 73, no. 5 (May 1992): 67-68.

13 Linda Groat, "Architecture's Resistance to Diversity: A Matter of Theory as Much as Practice," *Journal of Architectural Education* 47, no. 1 (September 1993): 5.

14 Groat, 1993: 4, 6.

15 Groat, 1993: p. 7, citing Lawrence Cahoone.

16 Groat, 1993: 7.

17 Craig L. Wilkins, *The Aesthetics of Equity,* Minneapolis, University of Minnesota Press, 2006: 42.

18 Wilkins, 2006: 42.

19 Wilkins, 2006: 39; Sutton, "Practice, Architects, and Power", 1992: 65-67.

20 Sutton, 1992: 67.

21 Sutton, 1992: 67.

22 Thomas Dutton, "Design and Studio Pedagogy," *Journal of Architectural Education* 41, no. 1 (Autumn 1987): 17, citing Lindsay Fitzclarence and Henry Giroux.

23 Dutton, 1987: 16-19.

24 There is some empirical evidence that students of color are frustrated by the lack of diversity in architectural teaching. In Holland & Knight's 2005 study for the AIA, "Some minority focus group and interview participants complained of discriminatory experiences in architecture school, but more often minorities complained that the architecture curriculum lacks adequate diversity. Minorities pointed to the conspicuous absence of any instruction on the architecture of diverse cultures or places, beyond Europe, and the lack of exposure to the work of diverse architects, both nationally and internationally, as part of the design curriculum. This subtle indicator signified for many minority participants a greater sense of exclusion of diverse persons and perspectives from architectural practice." Holland & Knight, *Demographic Diversity Audit Final Report* (October 18, 2005): 59.

25 Meltem Ö. Gürel and Kathryn Anthony, "The Canon and the Void: Gender, Race, and Architectural History Texts, *Journal of Architectural Education* 59, no. 3 (February 2006) : 66, 69.

26 Gürel & Anthony, 2006: 66.

27 Gürel & Anthony, 2006: 66, 69.

28 Brad Grant, "Cultural Invisibility: The African American Experience in Architectural Education," in *Voices in Architectural Education: Cultural Politics and Pedagogy*, ed. Thomas A. Dutton (New York: Bergin & Garvey, 1991): 151.

29 Grant, 1991: 151.

30 Grant, 1991: 150.

31 Grant, 1991: 150.

32 Grant, 1991: 150-151.

33 Grant, 1991: 150, 153.

34 Dutton, 1987: 16.

35 Paulo Freire, *Pedagogy of the Oppressed,* (New York: The Continuum International Publishing Group, Inc., 1970/1993): 109, 72; Henry A. Giroux, *Ideology, Culture, and the Process of Schooling* (Philadelphia, Temple University Press, 1981), 130.

36 Freire, 1970/1993: 45-46, 80.

37 Freire, 1970/1993: 81.

38 Giroux defines ideology thusly: "I… reject

outright the orthodox Marxist notion of ideology as a set of illusions or lies. The concept recaptures its critical spirit if it is viewed as a form of social reconstruction. This means that ideology is a set of beliefs, values, and social practices that contain oppositional assumptions about varying elements of social reality, i.e., society, economics, authority, human nature, politics, etc. Moreover, ideology is now seen as a critical view of the world that is value-laden, a view which points to the contradictions and tensions in a society from the perspective of its own world view: i.e., libralism, communism, socialism, anarchism, and others" (Giroux, *Ideology, Culture, and the Process of Schooling,* 1981: 148, following A. Gouldner, *The Dialectics of Ideology and Technology* (New York, Seabury Press, 1976).

39 Giroux, 1981: 97-98.

40 Giroux, 1981: 97-102.

41 That is, both immigrant youth of Mexican origin and U.S. born Mexican-American youth.

42 Angela Valenzuela, *Subtractive Schooling: U.S.-Mexican Youth and the Politics of Caring*. (Albany, State University of New York Press, 1999): 4-5. See also Giroux, 1981: 97-102.

43 Valenzuela, 1999: 94-95.

44 Valenzuela, 1991: 94.

45 Valenzuela, 1991: 95.

46 Valenzuela, 1991: 4-5.

47 Giroux, *Ideology, Culture, and the Process of Schooling,* 1981: 18.

48 Giroux, 1981: 119-121.

49 See for example Anthony, *Design Juries on Trial* (1991): 158-161, 163-168); Grant, "Cultural Invisibility" (1991); and Dutton, "Design and Studio Pedagogy" (1987):19-25

50 Regina Davis provides a useful example of how the absence of published source information on the contributions of people to the built environment can effect pedagogy. In teaching a multicultural writing course in UC Berkeley's architecture school, Davis and her co-instructor Ken Simmons found that they needed to create new knowledge as a result, which required both students and teachers to adopt unconventional roles; students had to develop their own interpretive frameworks or theories rather than relying on other scholars, and instructors had to become "helpful guides to students' own learning initiatives rather than lecturers on our own narrow, specialized interests" and to "allow students to develop their own sense of value and learning initiatives." Davis's experience and my own therefore seem to confirm prior arguments about how pedagogy and texts can either restrict the architectural discourse or open it up to a culturally inclusive set of voices. See Regina Davis, "Writing Multiculturalism into Architecture Curricula" *Journal of Architectural Education* 47, no. 1 (September 1993), 33, 36.

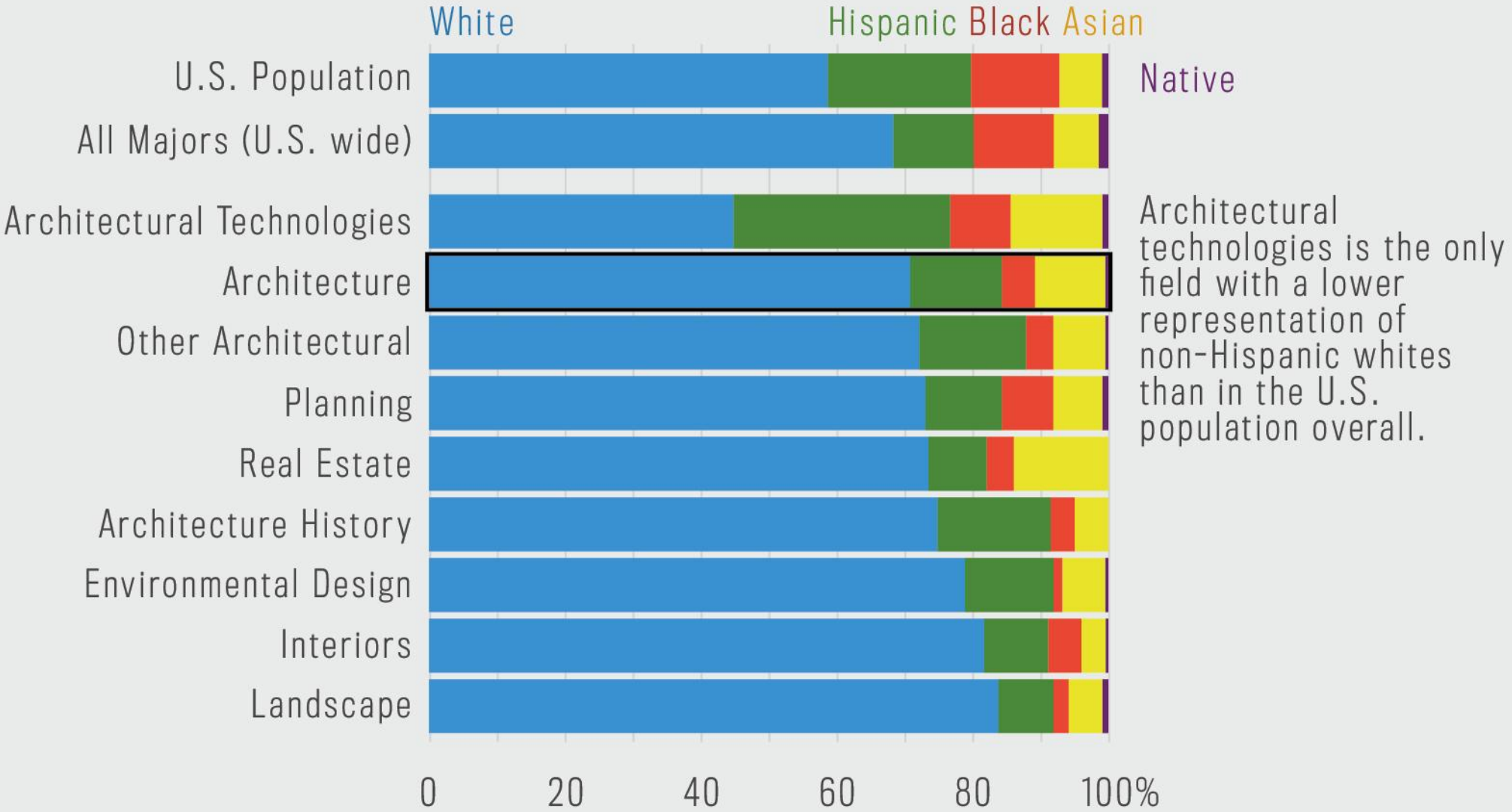
51 Giroux, *Ideology, Culture, and the Process of Schooling,* 1981: 97-102.

52 William Anthony Nericcio. *Tex[t]-Mex: Seductive Hallucinations of the "Mexican" in America.* (Austin: University of Texas Press, 2007). See for example Nericcio's discussion of Orson Welles and his film *Touch of Evil* (Chapter 1) and Rita Hayworth - a.k.a Margarita Carmen Cansino (Chapter 2). Nericcio's book is potentially particularly relevant to questions of race in architectural discourse given his focus on film, and thus the visual and aesthetic in the public realm.

53 Grant, "Cultural Invisibility," 1991: 150.

Racial and Ethnic Diversity in Architectural Education

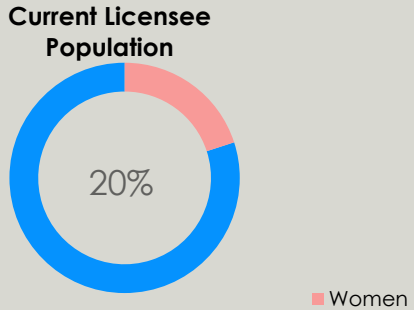
U.S. Graduates in architecture and related fields by race in 2012-13

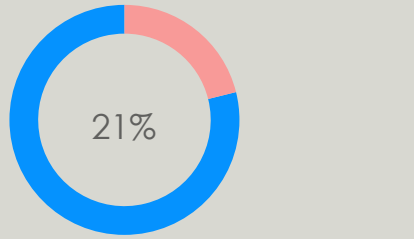


ACSA

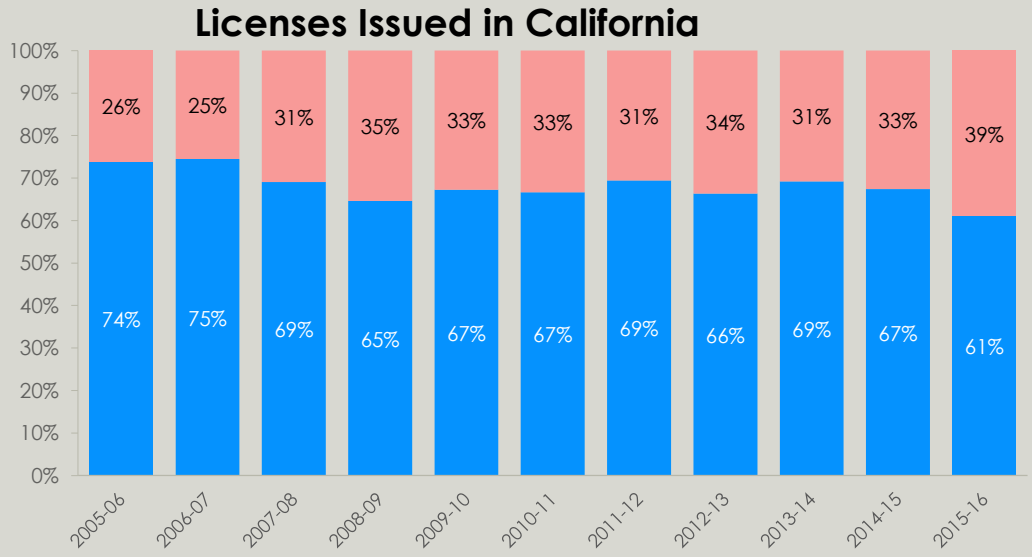
SOURCES: National Center for Education Statistics, U.S. Census NOTE: "Native" includes both American Indians and Pacific Islanders. "U.S. Population" includes only residents aged 25-29. Race data by majors includes only U.S. citizens of known, single race/ethnicity.

California Architects by Sex





Women
Men



Current Licensee Population*

Sex	Licenses Issued
Men	16,735
Women	4,179

Current Licensees with CA Address*

Sex	Licenses Issued
Men	13,344
Women	3,568

*As of July 1, 2016

Licenses Issued to Men

Fiscal Year	Men	Percentage
2015-16	404	61%
2014-15	306	67%
2013-14	333	69%
2012-13	326	66%
2011-12	443	69%
2010-11	288	67%
2009-10	403	67%
2008-09	276	65%
2007-08	295	69%
2006-07	374	75%
2005-06	365	74%

Licenses Issued to Women

Women	Percentage
258	39%
148	33%
148	31%
165	34%
195	31%
144	33%
196	33%
151	35%
132	31%
128	25%
129	26%

***NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS V. FEDERAL TRADE COMMISSION* CASE REVIEW – DEPARTMENT OF CONSUMER AFFAIRS LEGAL COUNSEL**

At this meeting, Department of Consumer Affairs Legal Counsel will provide the Board with information pertaining to the *North Carolina State Board of Dental Examiners v. Federal Trade Commission* case.

Attachments:

1. U.S. Supreme Court Case of *North Carolina State Board of Dental Examiners v. Federal Trade Commission* [February 25, 2015]
2. Office of the Attorney General Opinion No. 15-402 [September 10, 2015]
3. Federal Trade Commission Staff Guidance [October 2015]

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS *v.* FEDERAL TRADE COMMISSION

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 13–534. Argued October 14, 2014—Decided February 25, 2015

North Carolina's Dental Practice Act (Act) provides that the North Carolina State Board of Dental Examiners (Board) is "the agency of the State for the regulation of the practice of dentistry." The Board's principal duty is to create, administer, and enforce a licensing system for dentists; and six of its eight members must be licensed, practicing dentists.

The Act does not specify that teeth whitening is "the practice of dentistry." Nonetheless, after dentists complained to the Board that nondentists were charging lower prices for such services than dentists did, the Board issued at least 47 official cease-and-desist letters to nondentist teeth whitening service providers and product manufacturers, often warning that the unlicensed practice of dentistry is a crime. This and other related Board actions led nondentists to cease offering teeth whitening services in North Carolina.

The Federal Trade Commission (FTC) filed an administrative complaint, alleging that the Board's concerted action to exclude nondentists from the market for teeth whitening services in North Carolina constituted an anticompetitive and unfair method of competition under the Federal Trade Commission Act. An Administrative Law Judge (ALJ) denied the Board's motion to dismiss on the ground of state-action immunity. The FTC sustained that ruling, reasoning that even if the Board had acted pursuant to a clearly articulated state policy to displace competition, the Board must be actively supervised by the State to claim immunity, which it was not. After a hearing on the merits, the ALJ determined that the Board had unreasonably restrained trade in violation of antitrust law. The FTC again sustained the ALJ, and the Fourth Circuit affirmed the FTC in

all respects.

Held: Because a controlling number of the Board's decisionmakers are active market participants in the occupation the Board regulates, the Board can invoke state-action antitrust immunity only if it was subject to active supervision by the State, and here that requirement is not met. Pp. 5–18.

(a) Federal antitrust law is a central safeguard for the Nation's free market structures. However, requiring States to conform to the mandates of the Sherman Act at the expense of other values a State may deem fundamental would impose an impermissible burden on the States' power to regulate. Therefore, beginning with *Parker* v. *Brown*, 317 U. S. 341, this Court interpreted the antitrust laws to confer immunity on the anticompetitive conduct of States acting in their sovereign capacity. Pp. 5–6.

(b) The Board's actions are not cloaked with *Parker* immunity. A nonsovereign actor controlled by active market participants—such as the Board—enjoys *Parker* immunity only if "'the challenged restraint . . . [is] clearly articulated and affirmatively expressed as state policy,' and . . . 'the policy . . . [is] actively supervised by the State.'" *FTC* v. *Phoebe Putney Health System, Inc.*, 568 U. S. ___, ___ (quoting *California Retail Liquor Dealers Assn.* v. *Midcal Aluminum, Inc.,* 445 U. S. 97, 105). Here, the Board did not receive active supervision of its anticompetitive conduct. Pp. 6–17.

(1) An entity may not invoke *Parker* immunity unless its actions are an exercise of the State's sovereign power. See *Columbia* v. *Omni Outdoor Advertising, Inc.*, 499 U. S. 365, 374. Thus, where a State delegates control over a market to a nonsovereign actor the Sherman Act confers immunity only if the State accepts political accountability for the anticompetitive conduct it permits and controls. Limits on state-action immunity are most essential when a State seeks to delegate its regulatory power to active market participants, for dual allegiances are not always apparent to an actor and prohibitions against anticompetitive self-regulation by active market participants are an axiom of federal antitrust policy. Accordingly, *Parker* immunity requires that the anticompetitive conduct of nonsovereign actors, especially those authorized by the State to regulate their own profession, result from procedures that suffice to make it the State's own. *Midcal*'s two-part test provides a proper analytical framework to resolve the ultimate question whether an anticompetitive policy is indeed the policy of a State. The first requirement—clear articulation—rarely will achieve that goal by itself, for entities purporting to act under state authority might diverge from the State's considered definition of the public good and engage in private self-dealing. The second *Midcal* requirement—active supervision—seeks to avoid this

harm by requiring the State to review and approve interstitial policies made by the entity claiming immunity. Pp. 6–10.

(2) There are instances in which an actor can be excused from *Midcal*'s active supervision requirement. Municipalities, which are electorally accountable, have general regulatory powers, and have no private price-fixing agenda, are subject exclusively to the clear articulation requirement. See *Hallie* v. *Eau Claire*, 471 U. S. 34, 35. That *Hallie* excused municipalities from *Midcal*'s supervision rule for these reasons, however, all but confirms the rule's applicability to actors controlled by active market participants. Further, in light of *Omni*'s holding that an otherwise immune entity will not lose immunity based on ad hoc and *ex post* questioning of its motives for making particular decisions, 499 U. S., at 374, it is all the more necessary to ensure the conditions for granting immunity are met in the first place, see *FTC* v. *Ticor Title Ins. Co.*, 504 U. S. 621, 633, and *Phoebe Putney, supra,* at ___. The clear lesson of precedent is that *Midcal*'s active supervision test is an essential prerequisite of *Parker* immunity for any nonsovereign entity—public or private—controlled by active market participants. Pp. 10–12.

(3) The Board's argument that entities designated by the States as agencies are exempt from *Midcal*'s second requirement cannot be reconciled with the Court's repeated conclusion that the need for supervision turns not on the formal designation given by States to regulators but on the risk that active market participants will pursue private interests in restraining trade. State agencies controlled by active market participants pose the very risk of self-dealing *Midcal*'s supervision requirement was created to address. See *Goldfarb* v. *Virginia State Bar*, 421 U. S. 773, 791. This conclusion does not question the good faith of state officers but rather is an assessment of the structural risk of market participants' confusing their own interests with the State's policy goals. While *Hallie* stated "it is likely that active state supervision would also not be required" for agencies, 471 U. S., at 46, n. 10, the entity there was more like prototypical state agencies, not specialized boards dominated by active market participants. The latter are similar to private trade associations vested by States with regulatory authority, which must satisfy *Midcal*'s active supervision standard. 445 U. S., at 105–106. The similarities between agencies controlled by active market participants and such associations are not eliminated simply because the former are given a formal designation by the State, vested with a measure of government power, and required to follow some procedural rules. See *Hallie*, *supra*, at 39. When a State empowers a group of active market participants to decide who can participate in its market, and on what terms, the need for supervision is manifest. Thus,

the Court holds today that a state board on which a controlling number of decisionmakers are active market participants in the occupation the board regulates must satisfy *Midcal*'s active supervision requirement in order to invoke state-action antitrust immunity. Pp. 12–14.

(4) The State argues that allowing this FTC order to stand will discourage dedicated citizens from serving on state agencies that regulate their own occupation. But this holding is not inconsistent with the idea that those who pursue a calling must embrace ethical standards that derive from a duty separate from the dictates of the State. Further, this case does not offer occasion to address the question whether agency officials, including board members, may, under some circumstances, enjoy immunity from damages liability. Of course, States may provide for the defense and indemnification of agency members in the event of litigation, and they can also ensure *Parker* immunity is available by adopting clear policies to displace competition and providing active supervision. Arguments against the wisdom of applying the antitrust laws to professional regulation absent compliance with the prerequisites for invoking *Parker* immunity must be rejected, see *Patrick* v. *Burget*, 486 U. S. 94, 105–106, particularly in light of the risks licensing boards dominated by market participants may pose to the free market. Pp. 14–16.

(5) The Board does not contend in this Court that its anticompetitive conduct was actively supervised by the State or that it should receive *Parker* immunity on that basis. The Act delegates control over the practice of dentistry to the Board, but says nothing about teeth whitening. In acting to expel the dentists' competitors from the market, the Board relied on cease-and-desist letters threatening criminal liability, instead of other powers at its disposal that would have invoked oversight by a politically accountable official. Whether or not the Board exceeded its powers under North Carolina law, there is no evidence of any decision by the State to initiate or concur with the Board's actions against the nondentists. P. 17.

(c) Here, where there are no specific supervisory systems to be reviewed, it suffices to note that the inquiry regarding active supervision is flexible and context-dependent. The question is whether the State's review mechanisms provide "realistic assurance" that a nonsovereign actor's anticompetitive conduct "promotes state policy, rather than merely the party's individual interests." *Patrick*, 486 U. S., 100–101. The Court has identified only a few constant requirements of active supervision: The supervisor must review the substance of the anticompetitive decision, see *id.*, at 102–103; the supervisor must have the power to veto or modify particular decisions to ensure they accord with state policy, see *ibid.*; and the "mere potential for state

Syllabus

supervision is not an adequate substitute for a decision by the State," *Ticor*, *supra*, at 638. Further, the state supervisor may not itself be an active market participant. In general, however, the adequacy of supervision otherwise will depend on all the circumstances of a case. Pp. 17–18.

717 F. 3d 359, affirmed.

KENNEDY, J., delivered the opinion of the Court, in which ROBERTS, C. J., and GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. ALITO, J., filed a dissenting opinion, in which SCALIA and THOMAS, JJ., joined.

SUPREME COURT OF THE UNITED STATES

No. 13–534

NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS, PETITIONER *v.* FEDERAL TRADE COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

[February 25, 2015]

JUSTICE KENNEDY delivered the opinion of the Court.

This case arises from an antitrust challenge to the actions of a state regulatory board. A majority of the board's members are engaged in the active practice of the profession it regulates. The question is whether the board's actions are protected from Sherman Act regulation under the doctrine of state-action antitrust immunity, as defined and applied in this Court's decisions beginning with *Parker* v. *Brown*, 317 U. S. 341 (1943).

I

A

In its Dental Practice Act (Act), North Carolina has declared the practice of dentistry to be a matter of public concern requiring regulation. N. C. Gen. Stat. Ann. §90–22(a) (2013). Under the Act, the North Carolina State Board of Dental Examiners (Board) is "the agency of the State for the regulation of the practice of dentistry." §90–22(b).

The Board's principal duty is to create, administer, and enforce a licensing system for dentists. See §§90–29 to

90–41. To perform that function it has broad authority over licensees. See §90–41. The Board's authority with respect to unlicensed persons, however, is more restricted: like "any resident citizen," the Board may file suit to "perpetually enjoin any person from . . . unlawfully practicing dentistry." §90–40.1.

The Act provides that six of the Board's eight members must be licensed dentists engaged in the active practice of dentistry. §90–22. They are elected by other licensed dentists in North Carolina, who cast their ballots in elections conducted by the Board. *Ibid.* The seventh member must be a licensed and practicing dental hygienist, and he or she is elected by other licensed hygienists. *Ibid.* The final member is referred to by the Act as a "consumer" and is appointed by the Governor. *Ibid.* All members serve 3-year terms, and no person may serve more than two consecutive terms. *Ibid.* The Act does not create any mechanism for the removal of an elected member of the Board by a public official. See *ibid.*

Board members swear an oath of office, §138A–22(a), and the Board must comply with the State's Administrative Procedure Act, §150B–1 *et seq.*, Public Records Act, §132–1 *et seq.*, and open-meetings law, §143–318.9 *et seq.* The Board may promulgate rules and regulations governing the practice of dentistry within the State, provided those mandates are not inconsistent with the Act and are approved by the North Carolina Rules Review Commission, whose members are appointed by the state legislature. See §§90–48, 143B–30.1, 150B–21.9(a).

B

In the 1990's, dentists in North Carolina started whitening teeth. Many of those who did so, including 8 of the Board's 10 members during the period at issue in this case, earned substantial fees for that service. By 2003, nondentists arrived on the scene. They charged lower

prices for their services than the dentists did. Dentists soon began to complain to the Board about their new competitors. Few complaints warned of possible harm to consumers. Most expressed a principal concern with the low prices charged by nondentists.

Responding to these filings, the Board opened an investigation into nondentist teeth whitening. A dentist member was placed in charge of the inquiry. Neither the Board's hygienist member nor its consumer member participated in this undertaking. The Board's chief operations officer remarked that the Board was "going forth to do battle" with nondentists. App. to Pet. for Cert. 103a. The Board's concern did not result in a formal rule or regulation reviewable by the independent Rules Review Commission, even though the Act does not, by its terms, specify that teeth whitening is "the practice of dentistry."

Starting in 2006, the Board issued at least 47 cease-and-desist letters on its official letterhead to nondentist teeth whitening service providers and product manufacturers. Many of those letters directed the recipient to cease "all activity constituting the practice of dentistry"; warned that the unlicensed practice of dentistry is a crime; and strongly implied (or expressly stated) that teeth whitening constitutes "the practice of dentistry." App. 13, 15. In early 2007, the Board persuaded the North Carolina Board of Cosmetic Art Examiners to warn cosmetologists against providing teeth whitening services. Later that year, the Board sent letters to mall operators, stating that kiosk teeth whiteners were violating the Dental Practice Act and advising that the malls consider expelling violators from their premises.

These actions had the intended result. Nondentists ceased offering teeth whitening services in North Carolina.

C

In 2010, the Federal Trade Commission (FTC) filed an

administrative complaint charging the Board with violating §5 of the Federal Trade Commission Act, 38 Stat. 719, as amended, 15 U. S. C. §45. The FTC alleged that the Board's concerted action to exclude nondentists from the market for teeth whitening services in North Carolina constituted an anticompetitive and unfair method of competition. The Board moved to dismiss, alleging state-action immunity. An Administrative Law Judge (ALJ) denied the motion. On appeal, the FTC sustained the ALJ's ruling. It reasoned that, even assuming the Board had acted pursuant to a clearly articulated state policy to displace competition, the Board is a "public/private hybrid" that must be actively supervised by the State to claim immunity. App. to Pet. for Cert. 49a. The FTC further concluded the Board could not make that showing.

Following other proceedings not relevant here, the ALJ conducted a hearing on the merits and determined the Board had unreasonably restrained trade in violation of antitrust law. On appeal, the FTC again sustained the ALJ. The FTC rejected the Board's public safety justification, noting, *inter alia*, "a wealth of evidence . . . suggesting that non-dentist provided teeth whitening is a safe cosmetic procedure." *Id.,* at 123a.

The FTC ordered the Board to stop sending the cease-and-desist letters or other communications that stated nondentists may not offer teeth whitening services and products. It further ordered the Board to issue notices to all earlier recipients of the Board's cease-and-desist orders advising them of the Board's proper sphere of authority and saying, among other options, that the notice recipients had a right to seek declaratory rulings in state court.

On petition for review, the Court of Appeals for the Fourth Circuit affirmed the FTC in all respects. 717 F. 3d 359, 370 (2013). This Court granted certiorari. 571 U. S. ___ (2014).

II

Federal antitrust law is a central safeguard for the Nation's free market structures. In this regard it is "as important to the preservation of economic freedom and our free-enterprise system as the Bill of Rights is to the protection of our fundamental personal freedoms." *United States* v. *Topco Associates, Inc.*, 405 U. S. 596, 610 (1972). The antitrust laws declare a considered and decisive prohibition by the Federal Government of cartels, price fixing, and other combinations or practices that undermine the free market.

The Sherman Act, 26 Stat. 209, as amended, 15 U. S. C. §1 *et seq.*, serves to promote robust competition, which in turn empowers the States and provides their citizens with opportunities to pursue their own and the public's welfare. See *FTC* v. *Ticor Title Ins. Co.*, 504 U. S. 621, 632 (1992). The States, however, when acting in their respective realm, need not adhere in all contexts to a model of unfettered competition. While "the States regulate their economies in many ways not inconsistent with the antitrust laws," *id.,* at 635–636, in some spheres they impose restrictions on occupations, confer exclusive or shared rights to dominate a market, or otherwise limit competition to achieve public objectives. If every duly enacted state law or policy were required to conform to the mandates of the Sherman Act, thus promoting competition at the expense of other values a State may deem fundamental, federal antitrust law would impose an impermissible burden on the States' power to regulate. See *Exxon Corp.* v. *Governor of Maryland*, 437 U. S. 117, 133 (1978); see also Easterbrook, Antitrust and the Economics of Federalism, 26 J. Law & Econ. 23, 24 (1983).

For these reasons, the Court in *Parker* v. *Brown* interpreted the antitrust laws to confer immunity on anticompetitive conduct by the States when acting in their sovereign capacity. See 317 U. S., at 350–351. That ruling

recognized Congress' purpose to respect the federal balance and to "embody in the Sherman Act the federalism principle that the States possess a significant measure of sovereignty under our Constitution." *Community Communications Co.* v. *Boulder*, 455 U. S. 40, 53 (1982). Since 1943, the Court has reaffirmed the importance of *Parker*'s central holding. See, *e.g., Ticor*, *supra*, at 632–637; *Hoover* v. *Ronwin*, 466 U. S. 558, 568 (1984); *Lafayette* v. *Louisiana Power & Light Co.*, 435 U. S. 389, 394–400 (1978).

III

In this case the Board argues its members were invested by North Carolina with the power of the State and that, as a result, the Board's actions are cloaked with *Parker* immunity. This argument fails, however. A nonsovereign actor controlled by active market participants—such as the Board—enjoys *Parker* immunity only if it satisfies two requirements: "first that 'the challenged restraint . . . be one clearly articulated and affirmatively expressed as state policy,' and second that 'the policy . . . be actively supervised by the State.'" *FTC* v. *Phoebe Putney Health System, Inc.*, 568 U. S. ___, ___ (2013) (slip op., at 7) (quoting *California Retail Liquor Dealers Assn.* v. *Midcal Aluminum, Inc.,* 445 U. S. 97, 105 (1980)). The parties have assumed that the clear articulation requirement is satisfied, and we do the same. While North Carolina prohibits the unauthorized practice of dentistry, however, its Act is silent on whether that broad prohibition covers teeth whitening. Here, the Board did not receive active supervision by the State when it interpreted the Act as addressing teeth whitening and when it enforced that policy by issuing cease-and-desist letters to nondentist teeth whiteners.

A

Although state-action immunity exists to avoid conflicts

between state sovereignty and the Nation's commitment to a policy of robust competition, *Parker* immunity is not unbounded. "[G]iven the fundamental national values of free enterprise and economic competition that are embodied in the federal antitrust laws, 'state action immunity is disfavored, much as are repeals by implication.'" *Phoebe Putney*, *supra*, at ___ (slip op., at 7) (quoting *Ticor*, *supra,* at 636).

An entity may not invoke *Parker* immunity unless the actions in question are an exercise of the State's sovereign power. See *Columbia* v. *Omni Outdoor Advertising, Inc.*, 499 U. S. 365, 374 (1991). State legislation and "decision[s] of a state supreme court, acting legislatively rather than judicially," will satisfy this standard, and "*ipso facto* are exempt from the operation of the antitrust laws" because they are an undoubted exercise of state sovereign authority. *Hoover*, *supra*, at 567–568.

But while the Sherman Act confers immunity on the States' own anticompetitive policies out of respect for federalism, it does not always confer immunity where, as here, a State delegates control over a market to a nonsovereign actor. See *Parker*, *supra,* at 351 ("[A] state does not give immunity to those who violate the Sherman Act by authorizing them to violate it, or by declaring that their action is lawful"). For purposes of *Parker*, a nonsovereign actor is one whose conduct does not automatically qualify as that of the sovereign State itself. See *Hoover*, *supra*, at 567–568. State agencies are not simply by their governmental character sovereign actors for purposes of state-action immunity. See *Goldfarb* v. *Virginia State Bar*, 421 U. S. 773, 791 (1975) ("The fact that the State Bar is a state agency for some limited purposes does not create an antitrust shield that allows it to foster anticompetitive practices for the benefit of its members"). Immunity for state agencies, therefore, requires more than a mere facade of state involvement, for it is necessary in light of

Parker's rationale to ensure the States accept political accountability for anticompetitive conduct they permit and control. See *Ticor*, 504 U. S., at 636.

Limits on state-action immunity are most essential when the State seeks to delegate its regulatory power to active market participants, for established ethical standards may blend with private anticompetitive motives in a way difficult even for market participants to discern. Dual allegiances are not always apparent to an actor. In consequence, active market participants cannot be allowed to regulate their own markets free from antitrust accountability. See *Midcal*, *supra*, at 106 ("The national policy in favor of competition cannot be thwarted by casting [a] gauzy cloak of state involvement over what is essentially a private price-fixing arrangement"). Indeed, prohibitions against anticompetitive self-regulation by active market participants are an axiom of federal antitrust policy. See, *e.g., Allied Tube & Conduit Corp.* v. *Indian Head, Inc.*, 486 U. S. 492, 501 (1988); *Hoover*, *supra*, at 584 (Stevens, J., dissenting) ("The risk that private regulation of market entry, prices, or output may be designed to confer monopoly profits on members of an industry at the expense of the consuming public has been the central concern of . . . our antitrust jurisprudence"); see also Elhauge, The Scope of Antitrust Process, 104 Harv. L. Rev. 667, 672 (1991). So it follows that, under *Parker* and the Supremacy Clause, the States' greater power to attain an end does not include the lesser power to negate the congressional judgment embodied in the Sherman Act through unsupervised delegations to active market participants. See Garland, Antitrust and State Action: Economic Efficiency and the Political Process, 96 Yale L. J. 486, 500 (1986).

Parker immunity requires that the anticompetitive conduct of nonsovereign actors, especially those authorized by the State to regulate their own profession, result from procedures that suffice to make it the State's own.

See *Goldfarb, supra*, at 790; see also 1A P. Areeda & H. Hovencamp, Antitrust Law ¶226, p. 180 (4th ed. 2013) (Areeda & Hovencamp). The question is not whether the challenged conduct is efficient, well-functioning, or wise. See *Ticor*, *supra*, at 634–635. Rather, it is "whether anti-competitive conduct engaged in by [nonsovereign actors] should be deemed state action and thus shielded from the antitrust laws." *Patrick* v. *Burget*, 486 U. S. 94, 100 (1988).

To answer this question, the Court applies the two-part test set forth in *California Retail Liquor Dealers Assn.* v. *Midcal Aluminum, Inc.*, 445 U. S. 97, a case arising from California's delegation of price-fixing authority to wine merchants. Under *Midcal*, "[a] state law or regulatory scheme cannot be the basis for antitrust immunity unless, first, the State has articulated a clear policy to allow the anticompetitive conduct, and second, the State provides active supervision of [the] anticompetitive conduct." *Ticor*, *supra*, at 631 (citing *Midcal*, *supra*, at 105).

Midcal's clear articulation requirement is satisfied "where the displacement of competition [is] the inherent, logical, or ordinary result of the exercise of authority delegated by the state legislature. In that scenario, the State must have foreseen and implicitly endorsed the anticompetitive effects as consistent with its policy goals." *Phoebe Putney*, 568 U. S., at ___ (slip op., at 11). The active supervision requirement demands, *inter alia*, "that state officials have and exercise power to review particular anticompetitive acts of private parties and disapprove those that fail to accord with state policy." *Patrick*, *supra*, U. S., at 101.

The two requirements set forth in *Midcal* provide a proper analytical framework to resolve the ultimate question whether an anticompetitive policy is indeed the policy of a State. The first requirement—clear articulation—rarely will achieve that goal by itself, for a policy may

satisfy this test yet still be defined at so high a level of generality as to leave open critical questions about how and to what extent the market should be regulated. See *Ticor*, *supra*, at 636–637. Entities purporting to act under state authority might diverge from the State's considered definition of the public good. The resulting asymmetry between a state policy and its implementation can invite private self-dealing. The second *Midcal* requirement—active supervision—seeks to avoid this harm by requiring the State to review and approve interstitial policies made by the entity claiming immunity.

Midcal's supervision rule "stems from the recognition that '[w]here a private party is engaging in anticompetitive activity, there is a real danger that he is acting to further his own interests, rather than the governmental interests of the State.'" *Patrick*, *supra*, at 100. Concern about the private incentives of active market participants animates *Midcal*'s supervision mandate, which demands "realistic assurance that a private party's anticompetitive conduct promotes state policy, rather than merely the party's individual interests." *Patrick*, *supra*, at 101.

B

In determining whether anticompetitive policies and conduct are indeed the action of a State in its sovereign capacity, there are instances in which an actor can be excused from *Midcal*'s active supervision requirement. In *Hallie* v. *Eau Claire*, 471 U. S. 34, 45 (1985), the Court held municipalities are subject exclusively to *Midcal*'s "'clear articulation'" requirement. That rule, the Court observed, is consistent with the objective of ensuring that the policy at issue be one enacted by the State itself. *Hallie* explained that "[w]here the actor is a municipality, there is little or no danger that it is involved in a private price-fixing arrangement. The only real danger is that it will seek to further purely parochial public interests at the

expense of more overriding state goals." 471 U. S., at 47. *Hallie* further observed that municipalities are electorally accountable and lack the kind of private incentives characteristic of active participants in the market. See *id.,* at 45, n. 9. Critically, the municipality in *Hallie* exercised a wide range of governmental powers across different economic spheres, substantially reducing the risk that it would pursue private interests while regulating any single field. See *ibid.* That *Hallie* excused municipalities from *Midcal*'s supervision rule for these reasons all but confirms the rule's applicability to actors controlled by active market participants, who ordinarily have none of the features justifying the narrow exception *Hallie* identified. See 471 U. S., at 45.

Following *Goldfarb*, *Midcal*, and *Hallie*, which clarified the conditions under which *Parker* immunity attaches to the conduct of a nonsovereign actor, the Court in *Columbia* v. *Omni Outdoor Advertising, Inc.*, 499 U. S. 365, addressed whether an otherwise immune entity could lose immunity for conspiring with private parties. In *Omni*, an aspiring billboard merchant argued that the city of Columbia, South Carolina, had violated the Sherman Act—and forfeited its *Parker* immunity—by anticompetitively conspiring with an established local company in passing an ordinance restricting new billboard construction. 499 U. S., at 367–368. The Court disagreed, holding there is no "conspiracy exception" to *Parker*. *Omni, supra*, at 374.

Omni, like the cases before it, recognized the importance of drawing a line "relevant to the purposes of the Sherman Act and of *Parker*: prohibiting the restriction of competition for private gain but permitting the restriction of competition in the public interest." 499 U. S., at 378. In the context of a municipal actor which, as in *Hallie*, exercised substantial governmental powers, *Omni* rejected a conspiracy exception for "corruption" as vague and unworkable, since "virtually all regulation benefits some

segments of the society and harms others" and may in that sense be seen as "'corrupt.'" 499 U. S., at 377. *Omni* also rejected subjective tests for corruption that would force a "deconstruction of the governmental process and probing of the official 'intent' that we have consistently sought to avoid." *Ibid.* Thus, whereas the cases preceding it addressed the preconditions of *Parker* immunity and engaged in an objective, *ex ante* inquiry into nonsovereign actors' structure and incentives, *Omni* made clear that recipients of immunity will not lose it on the basis of ad hoc and *ex post* questioning of their motives for making particular decisions.

Omni's holding makes it all the more necessary to ensure the conditions for granting immunity are met in the first place. The Court's two state-action immunity cases decided after *Omni* reinforce this point. In *Ticor* the Court affirmed that *Midcal*'s limits on delegation must ensure that "[a]ctual state involvement, not deference to private price-fixing arrangements under the general auspices of state law, is the precondition for immunity from federal law." 504 U. S., at 633. And in *Phoebe Putney* the Court observed that *Midcal*'s active supervision requirement, in particular, is an essential condition of state-action immunity when a nonsovereign actor has "an incentive to pursue [its] own self-interest under the guise of implementing state policies." 568 U. S., at ___ (slip op., at 8) (quoting *Hallie*, *supra*, at 46–47). The lesson is clear: *Midcal*'s active supervision test is an essential prerequisite of *Parker* immunity for any nonsovereign entity—public or private—controlled by active market participants.

C

The Board argues entities designated by the States as agencies are exempt from *Midcal*'s second requirement. That premise, however, cannot be reconciled with the Court's repeated conclusion that the need for supervision

turns not on the formal designation given by States to regulators but on the risk that active market participants will pursue private interests in restraining trade.

State agencies controlled by active market participants, who possess singularly strong private interests, pose the very risk of self-dealing *Midcal*'s supervision requirement was created to address. See Areeda & Hovencamp ¶227, at 226. This conclusion does not question the good faith of state officers but rather is an assessment of the structural risk of market participants' confusing their own interests with the State's policy goals. See *Patrick*, 486 U. S., at 100–101.

The Court applied this reasoning to a state agency in *Goldfarb*. There the Court denied immunity to a state agency (the Virginia State Bar) controlled by market participants (lawyers) because the agency had "joined in what is essentially a private anticompetitive activity" for "the benefit of its members." 421 U. S., at 791, 792. This emphasis on the Bar's private interests explains why *Goldfarb*, though it predates *Midcal*, considered the lack of supervision by the Virginia Supreme Court to be a principal reason for denying immunity. See 421 U. S., at 791; see also *Hoover*, 466 U. S., at 569 (emphasizing lack of active supervision in *Goldfarb*); *Bates* v. *State Bar of Ariz.*, 433 U. S. 350, 361–362 (1977) (granting the Arizona Bar state-action immunity partly because its "rules are subject to pointed re-examination by the policymaker").

While *Hallie* stated "it is likely that active state supervision would also not be required" for agencies, 471 U. S., at 46, n. 10, the entity there, as was later the case in *Omni*, was an electorally accountable municipality with general regulatory powers and no private price-fixing agenda. In that and other respects the municipality was more like prototypical state agencies, not specialized boards dominated by active market participants. In important regards, agencies controlled by market partici-

pants are more similar to private trade associations vested by States with regulatory authority than to the agencies *Hallie* considered. And as the Court observed three years after *Hallie*, "[t]here is no doubt that the members of such associations often have economic incentives to restrain competition and that the product standards set by such associations have a serious potential for anticompetitive harm." *Allied Tube*, 486 U. S., at 500. For that reason, those associations must satisfy *Midcal*'s active supervision standard. See *Midcal*, 445 U. S., at 105–106.

The similarities between agencies controlled by active market participants and private trade associations are not eliminated simply because the former are given a formal designation by the State, vested with a measure of government power, and required to follow some procedural rules. See *Hallie*, *supra*, at 39 (rejecting "purely formalistic" analysis). *Parker* immunity does not derive from nomenclature alone. When a State empowers a group of active market participants to decide who can participate in its market, and on what terms, the need for supervision is manifest. See Areeda & Hovencamp ¶227, at 226. The Court holds today that a state board on which a controlling number of decisionmakers are active market participants in the occupation the board regulates must satisfy *Midcal*'s active supervision requirement in order to invoke state-action antitrust immunity.

D

The State argues that allowing this FTC order to stand will discourage dedicated citizens from serving on state agencies that regulate their own occupation. If this were so—and, for reasons to be noted, it need not be so—there would be some cause for concern. The States have a sovereign interest in structuring their governments, see *Gregory* v. *Ashcroft*, 501 U. S. 452, 460 (1991), and may conclude there are substantial benefits to staffing their

agencies with experts in complex and technical subjects, see *Southern Motor Carriers Rate Conference, Inc.* v. *United States*, 471 U. S. 48, 64 (1985). There is, moreover, a long tradition of citizens esteemed by their professional colleagues devoting time, energy, and talent to enhancing the dignity of their calling.

Adherence to the idea that those who pursue a calling must embrace ethical standards that derive from a duty separate from the dictates of the State reaches back at least to the Hippocratic Oath. See generally S. Miles, The Hippocratic Oath and the Ethics of Medicine (2004). In the United States, there is a strong tradition of professional self-regulation, particularly with respect to the development of ethical rules. See generally R. Rotunda & J. Dzienkowski, Legal Ethics: The Lawyer's Deskbook on Professional Responsibility (2014); R. Baker, Before Bioethics: A History of American Medical Ethics From the Colonial Period to the Bioethics Revolution (2013). Dentists are no exception. The American Dental Association, for example, in an exercise of "the privilege and obligation of self-government," has "call[ed] upon dentists to follow high ethical standards," including "honesty, compassion, kindness, integrity, fairness and charity." American Dental Association, Principles of Ethics and Code of Professional Conduct 3–4 (2012). State laws and institutions are sustained by this tradition when they draw upon the expertise and commitment of professionals.

Today's holding is not inconsistent with that idea. The Board argues, however, that the potential for money damages will discourage members of regulated occupations from participating in state government. Cf. *Filarsky* v. *Delia*, 566 U. S. ___, ___ (2012) (slip op., at 12) (warning in the context of civil rights suits that the "the most talented candidates will decline public engagements if they do not receive the same immunity enjoyed by their public employee counterparts"). But this case, which does not

present a claim for money damages, does not offer occasion to address the question whether agency officials, including board members, may, under some circumstances, enjoy immunity from damages liability. See *Goldfarb*, 421 U. S., at 792, n. 22; see also Brief for Respondent 56. And, of course, the States may provide for the defense and indemnification of agency members in the event of litigation.

States, furthermore, can ensure *Parker* immunity is available to agencies by adopting clear policies to displace competition; and, if agencies controlled by active market participants interpret or enforce those policies, the States may provide active supervision. Precedent confirms this principle. The Court has rejected the argument that it would be unwise to apply the antitrust laws to professional regulation absent compliance with the prerequisites for invoking *Parker* immunity:

> "[Respondents] contend that effective peer review is essential to the provision of quality medical care and that any threat of antitrust liability will prevent physicians from participating openly and actively in peer-review proceedings. This argument, however, essentially challenges the wisdom of applying the antitrust laws to the sphere of medical care, and as such is properly directed to the legislative branch. To the extent that Congress has declined to exempt medical peer review from the reach of the antitrust laws, peer review is immune from antitrust scrutiny only if the State effectively has made this conduct its own." *Patrick*, 486 U. S. at 105–106 (footnote omitted).

The reasoning of *Patrick* v. *Burget* applies to this case with full force, particularly in light of the risks licensing boards dominated by market participants may pose to the free market. See generally Edlin & Haw, Cartels by Another Name: Should Licensed Occupations Face Antitrust Scrutiny? 162 U. Pa. L. Rev. 1093 (2014).

E

The Board does not contend in this Court that its anticompetitive conduct was actively supervised by the State or that it should receive *Parker* immunity on that basis.

By statute, North Carolina delegates control over the practice of dentistry to the Board. The Act, however, says nothing about teeth whitening, a practice that did not exist when it was passed. After receiving complaints from other dentists about the nondentists' cheaper services, the Board's dentist members—some of whom offered whitening services—acted to expel the dentists' competitors from the market. In so doing the Board relied upon cease-and-desist letters threatening criminal liability, rather than any of the powers at its disposal that would invoke oversight by a politically accountable official. With no active supervision by the State, North Carolina officials may well have been unaware that the Board had decided teeth whitening constitutes "the practice of dentistry" and sought to prohibit those who competed against dentists from participating in the teeth whitening market. Whether or not the Board exceeded its powers under North Carolina law, cf. *Omni*, 499 U. S., at 371–372, there is no evidence here of any decision by the State to initiate or concur with the Board's actions against the nondentists.

IV

The Board does not claim that the State exercised active, or indeed any, supervision over its conduct regarding nondentist teeth whiteners; and, as a result, no specific supervisory systems can be reviewed here. It suffices to note that the inquiry regarding active supervision is flexible and context-dependent. Active supervision need not entail day-to-day involvement in an agency's operations or micromanagement of its every decision. Rather, the question is whether the State's review mechanisms provide "realistic assurance" that a nonsovereign actor's anticom-

petitive conduct "promotes state policy, rather than merely the party's individual interests." *Patrick*, *supra,* at 100–101; see also *Ticor*, 504 U. S., at 639–640.

The Court has identified only a few constant requirements of active supervision: The supervisor must review the substance of the anticompetitive decision, not merely the procedures followed to produce it, see *Patrick*, 486 U. S., at 102–103; the supervisor must have the power to veto or modify particular decisions to ensure they accord with state policy, see *ibid.*; and the "mere potential for state supervision is not an adequate substitute for a decision by the State," *Ticor*, *supra*, at 638. Further, the state supervisor may not itself be an active market participant. In general, however, the adequacy of supervision otherwise will depend on all the circumstances of a case.

* * *

The Sherman Act protects competition while also respecting federalism. It does not authorize the States to abandon markets to the unsupervised control of active market participants, whether trade associations or hybrid agencies. If a State wants to rely on active market participants as regulators, it must provide active supervision if state-action immunity under *Parker* is to be invoked.

The judgment of the Court of Appeals for the Fourth Circuit is affirmed.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 13–534

NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS, PETITIONER *v.* FEDERAL TRADE COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

[February 25, 2015]

JUSTICE ALITO, with whom JUSTICE SCALIA and JUSTICE THOMAS join, dissenting.

The Court's decision in this case is based on a serious misunderstanding of the doctrine of state-action antitrust immunity that this Court recognized more than 60 years ago in *Parker* v. *Brown*, 317 U. S. 341 (1943). In *Parker*, the Court held that the Sherman Act does not prevent the States from continuing their age-old practice of enacting measures, such as licensing requirements, that are designed to protect the public health and welfare. *Id.*, at 352. The case now before us involves precisely this type of state regulation—North Carolina's laws governing the practice of dentistry, which are administered by the North Carolina Board of Dental Examiners (Board).

Today, however, the Court takes the unprecedented step of holding that *Parker* does not apply to the North Carolina Board because the Board is not structured in a way that merits a good-government seal of approval; that is, it is made up of practicing dentists who have a financial incentive to use the licensing laws to further the financial interests of the State's dentists. There is nothing new about the structure of the North Carolina Board. When the States first created medical and dental boards, well before the Sherman Act was enacted, they began to staff

them in this way.[1] Nor is there anything new about the suspicion that the North Carolina Board—in attempting to prevent persons other than dentists from performing teeth-whitening procedures—was serving the interests of dentists and not the public. Professional and occupational licensing requirements have often been used in such a way.[2] But that is not what *Parker* immunity is about. Indeed, the very state program involved in that case was unquestionably designed to benefit the regulated entities, California raisin growers.

The question before us is not whether such programs serve the public interest. The question, instead, is whether this case is controlled by *Parker*, and the answer to that question is clear. Under *Parker*, the Sherman Act (and the Federal Trade Commission Act, see *FTC* v. *Ticor Title Ins. Co.*, 504 U. S. 621, 635 (1992)) do not apply to state agencies; the North Carolina Board of Dental Examiners is a state agency; and that is the end of the matter. By straying from this simple path, the Court has not only distorted *Parker*; it has headed into a morass. Determining whether a state agency is structured in a way that militates against regulatory capture is no easy task, and there is reason to fear that today's decision will spawn confusion. The Court has veered off course, and therefore I cannot go along.

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[1] S. White, History of Oral and Dental Science in America 197–214 (1876) (detailing earliest American regulations of the practice of dentistry).

[2] See, *e.g.*, R. Shrylock, Medical Licensing in America 29 (1967) (Shrylock) (detailing the deterioration of licensing regimes in the mid-19th century, in part out of concerns about restraints on trade); Gellhorn, The Abuse of Occupational Licensing, 44 U. Chi. L. Rev. 6 (1976); Shepard, Licensing Restrictions and the Cost of Dental Care, 21 J. Law & Econ. 187 (1978).

I

In order to understand the nature of *Parker* state-action immunity, it is helpful to recall the constitutional landscape in 1890 when the Sherman Act was enacted. At that time, this Court and Congress had an understanding of the scope of federal and state power that is very different from our understanding today. The States were understood to possess the exclusive authority to regulate "their purely internal affairs." *Leisy* v. *Hardin*, 135 U. S. 100, 122 (1890). In exercising their police power in this area, the States had long enacted measures, such as price controls and licensing requirements, that had the effect of restraining trade.[3]

The Sherman Act was enacted pursuant to Congress' power to regulate interstate commerce, and in passing the Act, Congress wanted to exercise that power "to the utmost extent." *United States* v. *South-Eastern Underwriters Assn.*, 322 U. S. 533, 558 (1944). But in 1890, the understanding of the commerce power was far more limited than it is today. See, *e.g., Kidd* v. *Pearson*, 128 U. S. 1, 17–18 (1888). As a result, the Act did not pose a threat to traditional state regulatory activity.

By 1943, when *Parker* was decided, however, the situation had changed dramatically. This Court had held that the commerce power permitted Congress to regulate even local activity if it "exerts a substantial economic effect on interstate commerce." *Wickard* v. *Filburn*, 317 U. S. 111, 125 (1942). This meant that Congress could regulate many of the matters that had once been thought to fall exclusively within the jurisdiction of the States. The new interpretation of the commerce power brought about an expansion of the reach of the Sherman Act. See *Hospital*

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[3] See Handler, The Current Attack on the *Parker* v. *Brown* State Action Doctrine, 76 Colum. L. Rev. 1, 4–6 (1976) (collecting cases).

Building Co. v. *Trustees of Rex Hospital*, 425 U. S. 738, 743, n. 2 (1976) ("[D]ecisions by this Court have permitted the reach of the Sherman Act to expand along with expanding notions of congressional power"). And the expanded reach of the Sherman Act raised an important question. The Sherman Act does not expressly exempt States from its scope. Does that mean that the Act applies to the States and that it potentially outlaws many traditional state regulatory measures? The Court confronted that question in *Parker*.

In *Parker*, a raisin producer challenged the California Agricultural Prorate Act, an agricultural price support program. The California Act authorized the creation of an Agricultural Prorate Advisory Commission (Commission) to establish marketing plans for certain agricultural commodities within the State. 317 U. S., at 346–347. Raisins were among the regulated commodities, and so the Commission established a marketing program that governed many aspects of raisin sales, including the quality and quantity of raisins sold, the timing of sales, and the price at which raisins were sold. *Id.*, at 347–348. The *Parker* Court assumed that this program would have violated "the Sherman Act if it were organized and made effective solely by virtue of a contract, combination or conspiracy of private persons," and the Court also assumed that Congress could have prohibited a State from creating a program like California's if it had chosen to do so. *Id.*, at 350. Nevertheless, the Court concluded that the California program did not violate the Sherman Act because the Act did not circumscribe state regulatory power. *Id.*, at 351.

The Court's holding in *Parker* was not based on either the language of the Sherman Act or anything in the legislative history affirmatively showing that the Act was not meant to apply to the States. Instead, the Court reasoned that "[i]n a dual system of government in which, under the Constitution, the states are sovereign, save only as Con-

gress may constitutionally subtract from their authority, an unexpressed purpose to nullify a state's control over its officers and agents is not lightly to be attributed to Congress." 317 U. S., at 351. For the Congress that enacted the Sherman Act in 1890, it would have been a truly radical and almost certainly futile step to attempt to prevent the States from exercising their traditional regulatory authority, and the *Parker* Court refused to assume that the Act was meant to have such an effect.

When the basis for the *Parker* state-action doctrine is understood, the Court's error in this case is plain. In 1890, the regulation of the practice of medicine and dentistry was regarded as falling squarely within the States' sovereign police power. By that time, many States had established medical and dental boards, often staffed by doctors or dentists,[4] and had given those boards the authority to confer and revoke licenses.[5] This was quintessential police power legislation, and although state laws were often challenged during that era under the doctrine of substantive due process, the licensing of medical professionals easily survived such assaults. Just one year before the enactment of the Sherman Act, in *Dent* v. *West Virginia*, 129 U. S. 114, 128 (1889), this Court rejected such a challenge to a state law requiring all physicians to obtain a certificate from the state board of health attesting to their qualifications. And in *Hawker* v. *New York*, 170 U. S. 189, 192 (1898), the Court reiterated that a law

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[4] Shrylock 54–55; D. Johnson and H. Chaudry, Medical Licensing and Discipline in America 23–24 (2012).

[5] In *Hawker* v. *New York,* 170 U. S. 189 (1898), the Court cited state laws authorizing such boards to refuse or revoke medical licenses. *Id.*, at 191–193, n. 1. See also *Douglas* v. *Noble*, 261 U. S. 165, 166 (1923) ("In 1893 the legislature of Washington provided that only licensed persons should practice dentistry" and "vested the authority to license in a board of examiners, consisting of five practicing dentists").

specifying the qualifications to practice medicine was clearly a proper exercise of the police power. Thus, the North Carolina statutes establishing and specifying the powers of the State Board of Dental Examiners represent precisely the kind of state regulation that the *Parker* exemption was meant to immunize.

II

As noted above, the only question in this case is whether the North Carolina Board of Dental Examiners is really a state agency, and the answer to that question is clearly yes.

- The North Carolina Legislature determined that the practice of dentistry "affect[s] the public health, safety and welfare" of North Carolina's citizens and that therefore the profession should be "subject to regulation and control in the public interest" in order to ensure "that only qualified persons be permitted to practice dentistry in the State." N. C. Gen. Stat. Ann. §90–22(a) (2013).
- To further that end, the legislature created the North Carolina State Board of Dental Examiners "as the agency of the State for the regulation of the practice of dentistry in th[e] State." §90–22(b).
- The legislature specified the membership of the Board. §90–22(c). It defined the "practice of dentistry," §90–29(b), and it set out standards for licensing practitioners, §90–30. The legislature also set out standards under which the Board can initiate disciplinary proceedings against licensees who engage in certain improper acts. §90–41(a).
- The legislature empowered the Board to "maintain an action in the name of the State of North Carolina to perpetually enjoin any person from . . . unlawfully practicing dentistry." §90–40.1(a). It authorized the Board to conduct investigations and to hire legal

counsel, and the legislature made any "notice or statement of charges against any licensee" a public record under state law. §§ 90–41(d)–(g).

- The legislature empowered the Board "to enact rules and regulations governing the practice of dentistry within the State," consistent with relevant statutes. §90–48. It has required that any such rules be included in the Board's annual report, which the Board must file with the North Carolina secretary of state, the state attorney general, and the legislature's Joint Regulatory Reform Committee. §93B–2. And if the Board fails to file the required report, state law demands that it be automatically suspended until it does so. *Ibid.*

As this regulatory regime demonstrates, North Carolina's Board of Dental Examiners is unmistakably a state agency created by the state legislature to serve a prescribed regulatory purpose and to do so using the State's power in cooperation with other arms of state government.

The Board is not a private or "nonsovereign" entity that the State of North Carolina has attempted to immunize from federal antitrust scrutiny. *Parker* made it clear that a State may not "'give immunity to those who violate the Sherman Act by authorizing them to violate it, or by declaring that their action is lawful.'" *Ante,* at 7 (quoting *Parker*, 317 U. S., at 351). When the *Parker* Court disapproved of any such attempt, it cited *Northern Securities Co.* v. *United States*, 193 U. S. 197 (1904), to show what it had in mind. In that case, the Court held that a State's act of chartering a corporation did not shield the corporation's monopolizing activities from federal antitrust law. *Id.*, at 344–345. Nothing similar is involved here. North Carolina did not authorize a private entity to enter into an anticompetitive arrangement; rather, North Carolina *created a state agency* and gave that agency the power to regulate a particular subject affecting public health and

safety.

Nothing in *Parker* supports the type of inquiry that the Court now prescribes. The Court crafts a test under which state agencies that are "controlled by active market participants," *ante*, at 12, must demonstrate active state supervision in order to be immune from federal antitrust law. The Court thus treats these state agencies like private entities. But in *Parker*, the Court did not examine the structure of the California program to determine if it had been captured by private interests. If the Court had done so, the case would certainly have come out differently, because California conditioned its regulatory measures on the participation and approval of market actors in the relevant industry.

Establishing a prorate marketing plan under California's law first required the petition of at least 10 producers of the particular commodity. *Parker*, 317 U. S., at 346. If the Commission then agreed that a marketing plan was warranted, the Commission would "select a program committee *from among nominees chosen by the qualified producers*." *Ibid.* (emphasis added). That committee would then formulate the proration marketing program, which the Commission could modify or approve. But even after Commission approval, the program became law (and then, automatically) only if it gained the approval of 65 percent of the relevant producers, representing at least 51 percent of the acreage of the regulated crop. *Id.*, at 347. This scheme gave decisive power to market participants. But despite these aspects of the California program, *Parker* held that California was acting as a "sovereign" when it "adopt[ed] and enforc[ed] the prorate program." *Id.*, at 352. This reasoning is irreconcilable with the Court's today.

III

The Court goes astray because it forgets the origin of the

Parker doctrine and is misdirected by subsequent cases that extended that doctrine (in certain circumstances) to private entities. The Court requires the North Carolina Board to satisfy the two-part test set out in *California Retail Liquor Dealers Assn.* v. *Midcal Aluminum, Inc.*, 445 U. S. 97 (1980), but the party claiming *Parker* immunity in that case was not a state agency but a private trade association. Such an entity is entitled to *Parker* immunity, *Midcal* held, only if the anticompetitive conduct at issue was both "'clearly articulated'" and "'actively supervised by the State itself.'" 445 U. S., at 105. Those requirements are needed where a State authorizes private parties to engage in anticompetitive conduct. They serve to identify those situations in which conduct *by private parties* can be regarded as the conduct of a State. But when the conduct in question is the conduct of a state agency, no such inquiry is required.

This case falls into the latter category, and therefore *Midcal* is inapposite. The North Carolina Board is not a private trade association. It is a state agency, created and empowered by the State to regulate an industry affecting public health. It would not exist if the State had not created it. And for purposes of *Parker*, its membership is irrelevant; what matters is that it is part of the government of the sovereign State of North Carolina.

Our decision in *Hallie* v. *Eau Claire*, 471 U. S. 34 (1985), which involved Sherman Act claims against a municipality, not a State agency, is similarly inapplicable. In *Hallie,* the plaintiff argued that the two-pronged *Midcal* test should be applied, but the Court disagreed. The Court acknowledged that municipalities "are not themselves sovereign." 471 U. S., at 38. But recognizing that a municipality is "an arm of the State," *id.*, at 45, the Court held that a municipality should be required to satisfy only the first prong of the *Midcal* test (requiring a clearly articulated state policy), 471 U. S., at 46. That municipalities

are not sovereign was critical to our analysis in *Hallie*, and thus that decision has no application in a case, like this one, involving a state agency.

Here, however, the Court not only disregards the North Carolina Board's status as a full-fledged state agency; it treats the Board less favorably than a municipality. This is puzzling. States are sovereign, *Northern Ins. Co. of N. Y.* v. *Chatham County*, 547 U. S. 189, 193 (2006), and California's sovereignty provided the foundation for the decision in *Parker*, *supra,* at 352. Municipalities are not sovereign. *Jinks* v. *Richland County*, 538 U. S. 456, 466 (2003). And for this reason, federal law often treats municipalities differently from States. Compare *Will* v. *Michigan Dept. of State Police*, 491 U. S. 58, 71 (1989) ("[N]either a State nor its officials acting it their official capacities are 'persons' under [42 U. S. C.] §1983"), with *Monell* v. *City Dept. of Social Servs., New York*, 436 U. S. 658, 694 (1978) (municipalities liable under §1983 where "execution of a government's policy or custom . . . inflicts the injury").

The Court recognizes that municipalities, although not sovereign, nevertheless benefit from a more lenient standard for state-action immunity than private entities. Yet under the Court's approach, the North Carolina Board of Dental Examiners, a full-fledged state agency, is treated like a private actor and must demonstrate that the State actively supervises its actions.

The Court's analysis seems to be predicated on an assessment of the varying degrees to which a municipality and a state agency like the North Carolina Board are likely to be captured by private interests. But until today, *Parker* immunity was never conditioned on the proper use of state regulatory authority. On the contrary, in *Columbia* v. *Omni Outdoor Advertising, Inc.,* 499 U. S. 365 (1991), we refused to recognize an exception to *Parker* for cases in which it was shown that the defendants had

engaged in a conspiracy or corruption or had acted in a way that was not in the public interest. *Id.,* at 374. The Sherman Act, we said, is not an anticorruption or good-government statute. 499 U. S., at 398. We were unwilling in *Omni* to rewrite *Parker* in order to reach the allegedly abusive behavior of city officials. 499 U. S., at 374–379. But that is essentially what the Court has done here.

III

Not only is the Court's decision inconsistent with the underlying theory of *Parker*; it will create practical problems and is likely to have far-reaching effects on the States' regulation of professions. As previously noted, state medical and dental boards have been staffed by practitioners since they were first created, and there are obvious advantages to this approach. It is reasonable for States to decide that the individuals best able to regulate technical professions are practitioners with expertise in those very professions. Staffing the State Board of Dental Examiners with certified public accountants would certainly lessen the risk of actions that place the well-being of dentists over those of the public, but this would also compromise the State's interest in sensibly regulating a technical profession in which lay people have little expertise.

As a result of today's decision, States may find it necessary to change the composition of medical, dental, and other boards, but it is not clear what sort of changes are needed to satisfy the test that the Court now adopts. The Court faults the structure of the North Carolina Board because "active market participants" constitute "a controlling number of [the] decisionmakers," *ante,* at 14, but this test raises many questions.

What is a "controlling number"? Is it a majority? And if so, why does the Court eschew that term? Or does the Court mean to leave open the possibility that something less than a majority might suffice in particular circum-

stances? Suppose that active market participants constitute a voting bloc that is generally able to get its way? How about an obstructionist minority or an agency chair empowered to set the agenda or veto regulations?

Who is an "active market participant"? If Board members withdraw from practice during a short term of service but typically return to practice when their terms end, does that mean that they are not active market participants during their period of service?

What is the scope of the market in which a member may not participate while serving on the board? Must the market be relevant to the particular regulation being challenged or merely to the jurisdiction of the entire agency? Would the result in the present case be different if a majority of the Board members, though practicing dentists, did not provide teeth whitening services? What if they were orthodontists, periodontists, and the like? And how much participation makes a person "active" in the market?

The answers to these questions are not obvious, but the States must predict the answers in order to make informed choices about how to constitute their agencies.

I suppose that all this will be worked out by the lower courts and the Federal Trade Commission (FTC), but the Court's approach raises a more fundamental question, and that is why the Court's inquiry should stop with an examination of the structure of a state licensing board. When the Court asks whether market participants control the North Carolina Board, the Court in essence is asking whether this regulatory body has been captured by the entities that it is supposed to regulate. Regulatory capture can occur in many ways.[6] So why ask only whether

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[6] See, *e.g.,* R. Noll, Reforming Regulation 40–43, 46 (1971); J. Wilson, The Politics of Regulation 357–394 (1980). Indeed, it has even been

the members of a board are active market participants? The answer may be that determining when regulatory capture has occurred is no simple task. That answer provides a reason for relieving courts from the obligation to make such determinations at all. It does not explain why it is appropriate for the Court to adopt the rather crude test for capture that constitutes the holding of today's decision.

IV

The Court has created a new standard for distinguishing between private and state actors for purposes of federal antitrust immunity. This new standard is not true to the *Parker* doctrine; it diminishes our traditional respect for federalism and state sovereignty; and it will be difficult to apply. I therefore respectfully dissent.

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charged that the FTC, which brought this case, has been captured by entities over which it has jurisdiction. See E. Cox, "The Nader Report" on the Federal Trade Commission vii–xiv (1969); Posner, Federal Trade Commission, Chi. L. Rev. 47, 82–84 (1969).

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

KAMALA D. HARRIS
Attorney General

OPINION	:	No. 15-402
of	:	September 10, 2015
KAMALA D. HARRIS Attorney General	:	
SUSAN DUNCAN LEE Deputy Attorney General	:	

THE HONORABLE JERRY HILL, MEMBER OF THE STATE SENATE, has requested an opinion on the following question:

What constitutes "active state supervision" of a state licensing board for purposes of the state action immunity doctrine in antitrust actions, and what measures might be taken to guard against antitrust liability for board members?

CONCLUSIONS

"Active state supervision" requires a state official to review the substance of a regulatory decision made by a state licensing board, in order to determine whether the decision actually furthers a clearly articulated state policy to displace competition with regulation in a particular market. The official reviewing the decision must not be an active member of the market being regulated, and must have and exercise the power to approve, modify, or disapprove the decision.

Measures that might be taken to guard against antitrust liability for board members include changing the composition of boards, adding lines of supervision by state officials, and providing board members with legal indemnification and antitrust training.

ANALYSIS

In *North Carolina State Board of Dental Examiners v. Federal Trade Commission*,[1] the Supreme Court of the United States established a new standard for determining whether a state licensing board is entitled to immunity from antitrust actions.

Immunity is important to state actors not only because it shields them from adverse judgments, but because it shields them from having to go through litigation. When immunity is well established, most people are deterred from filing a suit at all. If a suit is filed, the state can move for summary disposition of the case, often before the discovery process begins. This saves the state a great deal of time and money, and it relieves employees (such as board members) of the stresses and burdens that inevitably go along with being sued. This freedom from suit clears a safe space for government officials and employees to perform their duties and to exercise their discretion without constant fear of litigation. Indeed, allowing government actors freedom to exercise discretion is one of the fundamental justifications underlying immunity doctrines.[2]

Before *North Carolina Dental* was decided, most state licensing boards operated under the assumption that they were protected from antitrust suits under the state action immunity doctrine. In light of the decision, many states—including California—are reassessing the structures and operations of their state licensing boards with a view to determining whether changes should be made to reduce the risk of antitrust claims. This opinion examines the legal requirements for state supervision under the *North Carolina Dental* decision, and identifies a variety of measures that the state Legislature might consider taking in response to the decision.

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[1] *North Carolina State Bd. of Dental Examiners v. F.T.C.* (2015) ___ U.S. ___, 135 S. Ct. 1101 (*North Carolina Dental*).

[2] See *Mitchell v. Forsyth* (1985) 472 U.S. 511, 526; *Harlow v. Fitzgerald* (1982) 457 U.S. 800, 819.

I. *North Carolina Dental* Established a New Immunity Standard for State Licensing Boards

A. The *North Carolina Dental* Decision

The North Carolina Board of Dental Examiners was established under North Carolina law and charged with administering a licensing system for dentists. A majority of the members of the board are themselves practicing dentists. North Carolina statutes delegated authority to the dental board to regulate the practice of dentistry, but did not expressly provide that teeth-whitening was within the scope of the practice of dentistry.

Following complaints by dentists that non-dentists were performing teeth-whitening services for low prices, the dental board conducted an investigation. The board subsequently issued cease-and-desist letters to dozens of teeth-whitening outfits, as well as to some owners of shopping malls where teeth-whiteners operated. The effect on the teeth-whitening market in North Carolina was dramatic, and the Federal Trade Commission took action.

In defense to antitrust charges, the dental board argued that, as a state agency, it was immune from liability under the federal antitrust laws. The Supreme Court rejected that argument, holding that a state board on which a controlling number of decision makers are active market participants must show that it is subject to "active supervision" in order to claim immunity.[3]

B. State Action Immunity Doctrine Before *North Carolina Dental*

The Sherman Antitrust Act of 1890[4] was enacted to prevent anticompetitive economic practices such as the creation of monopolies or restraints of trade. The terms of the Sherman Act are broad, and do not expressly exempt government entities, but the Supreme Court has long since ruled that federal principles of dual sovereignty imply that federal antitrust laws do not apply to the actions of states, even if those actions are anticompetitive.[5]

This immunity of states from federal antitrust lawsuits is known as the "state action doctrine."[6] The state action doctrine, which was developed by the Supreme Court

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[3] *North Carolina Dental*, *supra*, 135 S.Ct. at p. 1114.

[4] 15 U.S.C. §§ 1, 2.

[5] *Parker v. Brown* (1943) 317 U.S. 341, 350-351.

[6] It is important to note that the phrase "state action" in this context means something

in *Parker v. Brown*,[7] establishes three tiers of decision makers, with different thresholds for immunity in each tier.

In the top tier, with the greatest immunity, is the state itself: the sovereign acts of state governments are absolutely immune from antitrust challenge.[8] Absolute immunity extends, at a minimum, to the state Legislature, the Governor, and the state's Supreme Court.

In the second tier are subordinate state agencies,[9] such as executive departments and administrative agencies with statewide jurisdiction. State agencies are immune from antitrust challenge if their conduct is undertaken pursuant to a "clearly articulated" and "affirmatively expressed" state policy to displace competition.[10] A state policy is sufficiently clear when displacement of competition is the "inherent, logical, or ordinary result" of the authority delegated by the state legislature.[11]

The third tier includes private parties acting on behalf of a state, such as the members of a state-created professional licensing board. Private parties may enjoy state action immunity when two conditions are met: (1) their conduct is undertaken pursuant to a "clearly articulated" and "affirmatively expressed" state policy to displace competition, and (2) their conduct is "actively supervised" by the state.[12] The

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very different from "state action" for purposes of analysis of a civil rights violation under section 1983 of title 42 of the United States Code. Under section 1983, *liability* attaches to "state action," which may cover even the inadvertent or unilateral act of a state official not acting pursuant to state policy. In the antitrust context, a conclusion that a policy or action amounts to "state action" results in *immunity* from suit.

[7] *Parker v. Brown*, *supra*, 317 U.S. 341.

[8] *Hoover v. Ronwin* (1984) 466 U.S. 558, 574, 579-580.

[9] Distinguishing the state itself from subordinate state agencies has sometimes proven difficult. Compare the majority opinion in *Hoover v. Ronwin*, *supra*, 466 U.S. at p. 581 with dissenting opinion of Stevens, J., at pp. 588-589. (See *Costco v. Maleng* (9th Cir. 2008) 522 F.3d 874, 887, subseq. hrg. 538 F.3d 1128; *Charley's Taxi Radio Dispatch Corp. v. SIDA of Haw., Inc.* (9th Cir. 1987) 810 F.2d 869, 875.)

[10] See *Town of Hallie v. City of Eau Claire* (1985) 471 U.S. 34, 39.

[11] *F.T.C. v. Phoebe Putney Health Systems, Inc.* (2013) ___ U.S. ___, 133 S.Ct. 1003, 1013; see also *Southern Motor Carriers Rate Conference, Inc. v. U.S.* (1985) 471 U.S. 48, 57 (state policy need not compel specific anticompetitive effect).

[12] *Cal. Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc.* (1980) 445 U.S. 97, 105 (*Midcal*).

fundamental purpose of the supervision requirement is to shelter only those private anticompetitive acts that the state approves as actually furthering its regulatory policies.[13] To that end, the mere possibility of supervision—such as the existence of a regulatory structure that is not operative, or not resorted to—is not enough. "The active supervision prong . . . requires that state officials have and exercise power to review particular anticompetitive acts of private parties and disapprove those that fail to accord with state policy."[14]

C. State Action Immunity Doctrine After *North Carolina Dental*

Until the Supreme Court decided *North Carolina Dental*, it was widely believed that most professional licensing boards would fall within the second tier of state action immunity, requiring a clear and affirmative policy, but not active state supervision of every anticompetitive decision. In California in particular, there were good arguments that professional licensing boards[15] were subordinate agencies of the state: they are formal, ongoing bodies created pursuant to state law; they are housed within the Department of Consumer Affairs and operate under the Consumer Affairs Director's broad powers of investigation and control; they are subject to periodic sunset review by the Legislature, to rule-making review under the Administrative Procedure Act, and to administrative and judicial review of disciplinary decisions; their members are appointed by state officials, and include increasingly large numbers of public (non-professional) members; their meetings and records are subject to open-government laws and to strong prohibitions on conflicts of interest; and their enabling statutes generally provide well-guided discretion to make decisions affecting the professional markets that the boards regulate.[16]

Those arguments are now foreclosed, however, by *North Carolina Dental*. There, the Court squarely held, for the first time, that "a state board on which a controlling

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[13] *Patrick v. Burget* (1988) 486 U.S. 94, 100-101.

[14] *Ibid*.

[15] California's Department of Consumer Affairs includes some 25 professional regulatory boards that establish minimum qualifications and levels of competency for licensure in various professions, including accountancy, acupuncture, architecture, medicine, nursing, structural pest control, and veterinary medicine—to name just a few. (See http://www.dca.ca.gov/about_ca/entities.shtml.)

[16] Cf. 1A Areeda & Hovenkamp, *supra*, ¶ 227, p. 208 (what matters is not what the body is called, but its structure, membership, authority, openness to the public, exposure to ongoing review, etc.).

number of decisionmakers are active market participants in the occupation the board regulates must satisfy *Midcal*'s active supervision requirement in order to invoke state-action antitrust immunity."[17] The effect of *North Carolina Dental* is to put professional licensing boards "on which a controlling number of decision makers are active market participants" in the third tier of state-action immunity. That is, they are immune from antitrust actions as long as they act pursuant to clearly articulated state policy to replace competition with regulation of the profession, *and* their decisions are actively supervised by the state.

Thus arises the question presented here: What constitutes "active state supervision"?[18]

D. Legal Standards for Active State Supervision

The active supervision requirement arises from the concern that, when active market participants are involved in regulating their own field, "there is a real danger" that they will act to further their own interests, rather than those of consumers or of the state.[19] The purpose of the requirement is to ensure that state action immunity is afforded to private parties only when their actions actually further the state's policies.[20]

There is no bright-line test for determining what constitutes active supervision of a professional licensing board: the standard is "flexible and context-dependent."[21] Sufficient supervision "need not entail day-to-day involvement" in the board's operations or "micromanagement of its every decision."[22] Instead, the question is whether the review mechanisms that are in place "provide 'realistic assurance'" that the anticompetitive effects of a board's actions promote state policy, rather than the board members' private interests.[23]

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[17] *North Carolina Dental*, *supra*, 135 S.Ct. at p. 1114; *Midcal*, *supra*, 445 U.S at p. 105.

[18] Questions about whether the State's anticompetitive policies are adequately articulated are beyond the scope of this Opinion.

[19] *Patrick v. Burget*, *supra*, 486 U.S. at p. 100, citing *Town of Hallie v. City of Eau Claire*, *supra*, 471 U.S. at p. 47; see *id.* at p. 45 ("A private party . . . may be presumed to be acting primarily on his or its own behalf").

[20] *Patrick v. Burget*, *supra*, 486 U.S. at pp. 100-101.

[21] *North Carolina Dental*, *supra*, 135 S.Ct. at p. 1116.

[22] *Ibid.*

[23] *Ibid.*

The *North Carolina Dental* opinion and pre-existing authorities allow us to identify "a few constant requirements of active supervision":[24]

- The state supervisor who reviews a decision must have the power to reverse or modify the decision.[25]
- The "mere potential" for supervision is not an adequate substitute for supervision.[26]
- When a state supervisor reviews a decision, he or she must review the substance of the decision, not just the procedures followed to reach it.[27]
- The state supervisor must not be an active market participant.[28]

Keeping these requirements in mind may help readers evaluate whether California law already provides adequate supervision for professional licensing boards, or whether new or stronger measures are desirable.

II. Threshold Considerations for Assessing Potential Responses to *North Carolina Dental*

There are a number of different measures that the Legislature might consider in response to the *North Carolina Dental* decision. We will describe a variety of these, along with some of their potential advantages or disadvantages. Before moving on to

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[24] *Id. at* pp. 1116-1117.

[25] *Ibid.*

[26] *Id.* at p. 1116, citing *F.T.C. v. Ticor Title Ins. Co.* (1992) 504 U.S. 621, 638. For example, a passive or negative-option review process, in which an action is considered approved as long as the state supervisor raises no objection to it, may be considered inadequate in some circumstances. (*Ibid.*)

[27] *Ibid.*, citing *Patrick v. Burget*, *supra*, 486 U.S. at pp. 102-103. In most cases, there should be some evidence that the state supervisor considered the particular circumstances of the action before making a decision. Ideally, there should be a factual record and a written decision showing that there has been an assessment of the action's potential impact on the market, and of whether the action furthers state policy. (See *In the Matter of Indiana Household Moves and Warehousemen, Inc.* (2008) 135 F.T.C. 535, 555-557; see also Federal Trade Commission, Report of the State Action Task Force (2003) at p. 54.)

[28] *North Carolina Dental*, *supra*, 135 S.Ct. at pp. 1116-1117.

those options, however, we should put the question of immunity into proper perspective. There are two important things keep in mind: (1) the loss of immunity, if it is lost, does not mean that an antitrust violation has been committed, and (2) even when board members participate in regulating the markets they compete in, many—if not most—of their actions do not implicate the federal antitrust laws.

In the context of regulating professions, "market-sensitive" decisions (that is, the kinds of decisions that are most likely to be open to antitrust scrutiny) are those that create barriers to market participation, such as rules or enforcement actions regulating the scope of unlicensed practice; licensing requirements imposing heavy burdens on applicants; marketing programs; restrictions on advertising; restrictions on competitive bidding; restrictions on commercial dealings with suppliers and other third parties; and price regulation, including restrictions on discounts.

On the other hand, we believe that there are broad areas of operation where board members can act with reasonable confidence—especially once they and their state-official contacts have been taught to recognize actual antitrust issues, and to treat those issues specially. Broadly speaking, promulgation of regulations is a fairly safe area for board members, because of the public notice, written justification, Director review, and review by the Office of Administrative Law that are required by the Administrative Procedure Act. Also, broadly speaking, disciplinary decisions are another fairly safe area because of due process procedures; participation of state actors such as board executive officers, investigators, prosecutors, and administrative law judges; and availability of administrative mandamus review.

We are not saying that the procedures that attend these quasi-legislative and quasi-judicial functions make the licensing boards altogether immune from antitrust claims. Nor are we saying that rule-making and disciplinary actions are per se immune from antitrust laws. What we are saying is that, assuming a board identifies its market-sensitive decisions and gets active state supervision for those, then ordinary rule-making and discipline (faithfully carried out under the applicable rules) may be regarded as relatively safe harbors for board members to operate in. It may require some education and experience for board members to understand the difference between market-sensitive and "ordinary" actions, but a few examples may bring in some light.

North Carolina Dental presents a perfect example of a market-sensitive action. There, the dental board decided to, and actually succeeded in, driving non-dentist teeth-whitening service providers out of the market, even though nothing in North Carolina's laws specified that teeth-whitening constituted the illegal practice of dentistry. Counter-examples—instances where no antitrust violation occurs—are far more plentiful. For example, a regulatory board may legitimately make rules or impose discipline to prohibit

license-holders from engaging in fraudulent business practices (such as untruthful or deceptive advertising) without violating antitrust laws.[29] As well, suspending the license of an individual license-holder for violating the standards of the profession is a reasonable restraint and has virtually no effect on a large market, and therefore would not violate antitrust laws.[30]

Another area where board members can feel safe is in carrying out the actions required by a detailed anticompetitive statutory scheme.[31] For example, a state law prohibiting certain kinds of advertising or requiring certain fees may be enforced without need for substantial judgment or deliberation by the board. Such detailed legislation leaves nothing for the state to supervise, and thus it may be said that the legislation itself satisfies the supervision requirement.[32]

Finally, some actions will not be antitrust violations because their effects are, in fact, pro-competitive rather than anticompetitive. For instance, the adoption of safety standards that are based on objective expert judgments have been found to be pro-competitive.[33] Efficiency measures taken for the benefit of consumers, such as making information available to the purchasers of competing products, or spreading development costs to reduce per-unit prices, have been held to be pro-competitive because they are pro-consumer.[34]

III. Potential Measures for Preserving State Action Immunity

A. Changes to the Composition of Boards

The *North Carolina Dental* decision turns on the principle that a state board is a group of private actors, not a subordinate state agency, when "a controlling number of decisionmakers are active market participants in the occupation the board regulates."[35]

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[29] See generally *California Dental Assn. v. F.T.C.* (1999) 526 U.S. 756.

[30] See *Oksanen v. Page Memorial Hospital* (4th Cir. 1999) 945 F.2d 696 (*en banc*).

[31] See *324 Liquor Corp. v. Duffy* (1987) 479 U.S. 335, 344, fn. 6.

[32] 1A Areeda & Hovenkamp, Antitrust Law, *supra*, ¶ 221, at p. 66; ¶ 222, at pp. 67, 76.

[33] See *Allied Tube & Conduit Corp. v. Indian Head, Inc.* (1988) 486 U.S. 492, 500-501.

[34] *Broadcom Corp. v. Qualcomm Inc.* (3rd Cir. 2007) 501 F.3d 297, 308-309; see generally Bus. & Prof. Code, § 301.

[35] 135 S.Ct. at p. 1114.

This ruling brings the composition of boards into the spotlight. While many boards in California currently require a majority of public members, it is still the norm for professional members to outnumber public members on boards that regulate healing-arts professions. In addition, delays in identifying suitable public-member candidates and in filling public seats can result in de facto market-participant majorities.

In the wake of *North Carolina Dental*, many observers' first impulse was to assume that reforming the composition of professional boards would be the best resolution, both for state actors and for consumer interests. Upon reflection, however, it is not obvious that sweeping changes to board composition would be the most effective solution.[36]

Even if the Legislature were inclined to decrease the number of market-participant board members, the current state of the law does not allow us to project accurately how many market-participant members is too many. This is a question that was not resolved by the *North Carolina Dental* decision, as the dissenting opinion points out:

> What is a "controlling number"? Is it a majority? And if so, why does the Court eschew that term? Or does the Court mean to leave open the possibility that something less than a majority might suffice in particular circumstances? Suppose that active market participants constitute a voting bloc that is generally able to get its way? How about an obstructionist minority or an agency chair empowered to set the agenda or veto regulations?[37]

Some observers believe it is safe to assume that the *North Carolina Dental* standard would be satisfied if public members constituted a majority of a board. The

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[36] Most observers believe that there are real advantages in staffing boards with professionals in the field. The combination of technical expertise, practiced judgment, and orientation to prevailing ethical norms is probably impossible to replicate on a board composed entirely of public members. Public confidence must also be considered. Many consumers would no doubt share the sentiments expressed by Justice Breyer during oral argument in the *North Carolina Dental* case: "[W]hat the State says is: We would like this group of brain surgeons to decide who can practice brain surgery in this State. I don't want a group of bureaucrats deciding that. I would like brain surgeons to decide that." (*North Carolina Dental*, *supra*, transcript of oral argument p. 31, available at http://www.supremecourt.gov/oral_arguments/argument_transcripts/13-534_l6h1.pdf (hereafter, Transcript).)

[37] *North Carolina Dental*, *supra*, 135 S.Ct. at p. 1123 (dis. opn. of Alito, J.).

obvious rejoinder to that argument is that the Court pointedly did not use the term "majority;" it used "controlling number." More cautious observers have suggested that "controlling number" should be taken to mean the majority of a quorum, at least until the courts give more guidance on the matter.

North Carolina Dental leaves open other questions about board composition as well. One of these is: Who is an "active market participant"?[38] Would a retired member of the profession no longer be a participant of the market? Would withdrawal from practice during a board member's term of service suffice? These questions were discussed at oral argument,[39] but were not resolved. Also left open is the scope of the market in which a member may not participate while serving on the board.[40]

Over the past four decades, California has moved decisively to expand public membership on licensing boards.[41] The change is generally agreed to be a salutary one for consumers, and for underserved communities in particular.[42] There are many good reasons to consider continuing the trend to increase public membership on licensing boards—but we believe a desire to ensure immunity for board members should not be the decisive factor. As long as the legal questions raised by *North Carolina Dental* remain unresolved, radical changes to board composition are likely to create a whole new set of policy and practical challenges, with no guarantee of resolving the immunity problem.

B. Some Mechanisms for Increasing State Supervision

Observers have proposed a variety of mechanisms for building more state oversight into licensing boards' decision-making processes. In considering these alternatives, it may be helpful to bear in mind that licensing boards perform a variety of

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[38] *Ibid*.

[39] Transcript, *supra*, at p. 31.

[40] *North Carolina Dental*, *supra*, 135 S.Ct. at p. 1123 (dis. opn. of Alito, J.). Some observers have suggested that professionals from one practice area might be appointed to serve on the board regulating another practice area, in order to bring their professional expertise to bear in markets where they are not actively competing.

[41] See Center for Public Interest Law, A Guide to California's Health Care Licensing Boards (July 2009) at pp. 1-2; Shimberg, Occupational Licensing: A Public Perspective (1982) at pp. 163-165.

[42] See Center for Public Interest Law, *supra*, at pp. 15-17; Shimberg, *supra*, at pp. 175-179.

distinct functions, and that different supervisory structures may be appropriate for different functions.

For example, boards may develop and enforce standards for licensure; receive, track, and assess trends in consumer complaints; perform investigations and support administrative and criminal prosecutions; adjudicate complaints and enforce disciplinary measures; propose regulations and shepherd them through the regulatory process; perform consumer education; and more. Some of these functions are administrative in nature, some are quasi-judicial, and some are quasi-legislative. Boards' quasi-judicial and quasi-legislative functions, in particular, are already well supported by due process safeguards and other forms of state supervision (such as vertical prosecutions, administrative mandamus procedures, and public notice and scrutiny through the Administrative Procedure Act). Further, some functions are less likely to have antitrust implications than others: decisions affecting only a single license or licensee in a large market will rarely have an anticompetitive effect within the meaning of the Sherman Act. For these reasons, it is worth considering whether it is less urgent, or not necessary at all, to impose additional levels of supervision with respect to certain functions.

Ideas for providing state oversight include the concept of a superagency, such as a stand-alone office, or a committee within a larger agency, which has full responsibility for reviewing board actions de novo. Under such a system, the boards could be permitted to carry on with their business as usual, except that they would be required to refer each of their decisions (or some subset of decisions) to the superagency for its review. The superagency could review each action file submitted by the board, review the record and decision in light of the state's articulated regulatory policies, and then issue its own decision approving, modifying, or vetoing the board's action.

Another concept is to modify the powers of the boards themselves, so that all of their functions (or some subset of functions) would be advisory only. Under such a system, the boards would not take formal actions, but would produce a record and a recommendation for action, perhaps with proposed findings and conclusions. The recommendation file would then be submitted to a supervising state agency for its further consideration and formal action, if any.

Depending on the particular powers and procedures of each system, either could be tailored to encourage the development of written records to demonstrate executive discretion; access to administrative mandamus procedures for appeal of decisions; and the development of expertise and collaboration among reviewers, as well as between the reviewers and the boards that they review. Under any system, care should be taken to structure review functions so as to avoid unnecessary duplication or conflicts with other agencies and departments, and to minimize the development of super-policies not

adequately tailored to individual professions and markets. To prevent the development of "rubber-stamp" decisions, any acceptable system must be designed and sufficiently staffed to enable plenary review of board actions or recommendations at the individual transactional level.

As it stands, California is in a relatively advantageous position to create these kinds of mechanisms for active supervision of licensing boards. With the boards centrally housed within the Department of Consumer Affairs (an "umbrella agency"), there already exists an organization with good knowledge and experience of board operations, and with working lines of communication and accountability. It is worth exploring whether existing resources and minimal adjustments to procedures and outlooks might be converted to lines of active supervision, at least for the boards' most market-sensitive actions.

Moreover, the Business and Professions Code already demonstrates an intention that the Department of Consumer Affairs will protect consumer interests as a means of promoting "the fair and efficient functioning of the free enterprise market economy" by educating consumers, suppressing deceptive and fraudulent practices, fostering competition, and representing consumer interests at all levels of government.[43] The free-market and consumer-oriented principles underlying *North Carolina Dental* are nothing new to California, and no bureaucratic paradigms need to be radically shifted as a result.

The Business and Professions Code also gives broad powers to the Director of Consumer Affairs (and his or her designees)[44] to protect the interests of consumers at every level.[45] The Director has power to investigate the work of the boards and to obtain their data and records;[46] to investigate alleged misconduct in licensing examinations and qualifications reviews;[47] to require reports;[48] to receive consumer complaints;[49] and to initiate audits and reviews of disciplinary cases and complaints about licensees.[50]

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[43] Bus. & Prof. Code, § 301.

[44] Bus. & Prof. Code, §§ 10, 305.

[45] See Bus. & Prof. Code, § 310.

[46] Bus. & Prof. Code, § 153.

[47] Bus. & Prof. Code, § 109.

[48] Bus. & Prof. Code, § 127.

[49] Bus. & Prof. Code, § 325.

[50] Bus. & Prof. Code, § 116.

In addition, the Director must be provided a full opportunity to review all proposed rules and regulations (except those relating to examinations and licensure qualifications) before they are filed with the Office of Administrative Law, and the Director may disapprove any proposed regulation on the ground that it is injurious to the public.[51] Whenever the Director (or his or her designee) actually exercises one of these powers to reach a substantive conclusion as to whether a board's action furthers an affirmative state policy, then it is safe to say that the active supervision requirement has been met.[52]

It is worth considering whether the Director's powers should be amended to make review of certain board decisions mandatory as a matter of course, or to make the Director's review available upon the request of a board. It is also worth considering whether certain existing limitations on the Director's powers should be removed or modified. For example, the Director may investigate allegations of misconduct in examinations or qualification reviews, but the Director currently does not appear to have power to review board decisions in those areas, or to review proposed rules in those areas.[53] In addition, the Director's power to initiate audits and reviews appears to be limited to disciplinary cases and complaints about licensees.[54] If the Director's initiative is in fact so limited, it is worth considering whether that limitation continues to make sense. Finally, while the Director must be given a full opportunity to review most proposed regulations, the Director's disapproval may be overridden by a unanimous vote of the board.[55] It is worth considering whether the provision for an override maintains its utility, given that such an override would nullify any "active supervision" and concomitant immunity that would have been gained by the Director's review.[56]

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[51] Bus. & Prof. Code, § 313.1.

[52] Although a written statement of decision is not specifically required by existing legal standards, developing a practice of creating an evidentiary record and statement of decision would be valuable for many reasons, not the least of which would be the ability to proffer the documents to a court in support of a motion asserting state action immunity.

[53] Bus. & Prof. Code, §§ 109, 313.1.

[54] Bus. & Prof. Code, § 116.

[55] Bus. & Prof. Code, § 313.1.

[56] Even with an override, proposed regulations are still subject to review by the Office of Administrative Law.

C. Legislation Granting Immunity

From time to time, states have enacted laws expressly granting immunity from antitrust laws to political subdivisions, usually with respect to a specific market.[57] However, a statute purporting to grant immunity to private persons, such as licensing board members, would be of doubtful validity. Such a statute might be regarded as providing adequate authorization for anticompetitive activity, but active state supervision would probably still be required to give effect to the intended immunity. What is quite clear is that a state cannot grant blanket immunity by fiat. "[A] state does not give immunity to those who violate the Sherman Act by authorizing them to violate it, or by declaring that their action is lawful . . . ."[58]

IV. Indemnification of Board Members

So far we have focused entirely on the concept of immunity, and how to preserve it. But immunity is not the only way to protect state employees from the costs of suit, or to provide the reassurance necessary to secure their willingness and ability to perform their duties. Indemnification can also go a long way toward providing board members the protection they need to do their jobs. It is important for policy makers to keep this in mind in weighing the costs of creating supervision structures adequate to ensure blanket state action immunity for board members. If the costs of implementing a given supervisory structure are especially high, it makes sense to consider whether immunity is an absolute necessity, or whether indemnification (with or without additional risk-management measures such as training or reporting) is an adequate alternative.

As the law currently stands, the state has a duty to defend and indemnify members of licensing boards against antitrust litigation to the same extent, and subject to the same exceptions, that it defends and indemnifies state officers and employees in general civil litigation. The duty to defend and indemnify is governed by the Government Claims Act.[59] For purposes of the Act, the term "employee" includes officers and uncompensated servants.[60] We have repeatedly determined that members of a board,

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[57] See 1A Areeda & Hovenkamp, Antitrust Law, *supra*, 225, at pp. 135-137; e.g. *A1 Ambulance Service, Inc. v. County of Monterey* (9th Cir. 1996) 90 F.3d 333, 335 (discussing Health & Saf. Code, § 1797.6).

[58] *Parker v. Brown, supra,* 317 U.S. at 351.

[59] Gov. Code, §§ 810-996.6.

[60] See Gov. Code § 810.2.

commission, or similar body established by statute are employees entitled to defense and indemnification.[61]

A. Duty to Defend

Public employees are generally entitled to have their employer provide for the defense of any civil action "on account of an act or omission in the scope" of employment.[62] A public entity may refuse to provide a defense in specified circumstances, including where the employee acted due to "actual fraud, corruption, or actual malice."[63] The duty to defend contains no exception for antitrust violations.[64] Further, violations of antitrust laws do not inherently entail the sort of egregious behavior that would amount to fraud, corruption, or actual malice under state law. There would therefore be no basis to refuse to defend an employee on the bare allegation that he or she violated antitrust laws.

B. Duty to Indemnify

The Government Claims Act provides that when a public employee properly requests the employer to defend a claim, and reasonably cooperates in the defense, "the public entity shall pay any judgment based thereon or any compromise or settlement of the claim or action to which the public entity has agreed."[65] In general, the government is liable for an injury proximately caused by an act within the scope of employment,[66] but is not liable for punitive damages.[67]

One of the possible remedies for an antitrust violation is an award of treble damages to a person whose business or property has been injured by the violation.[68] This raises a question whether a treble damages award equates to an award of punitive damages within the meaning of the Government Claims Act. Although the answer is not

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[61] E.g., 81 Ops.Cal.Atty.Gen. 199, 200 (1998); 57 Ops.Cal.Atty.Gen. 358, 361 (1974).

[62] Gov. Code, § 995.

[63] Gov. Code, § 995.2, subd. (a).

[64] Cf. *Mt. Hawley Insurance Co. v. Lopez* (2013) 215 Cal.App.4th 1385 (discussing Ins. Code, § 533.5).

[65] Gov. Code, § 825, subd. (a).

[66] Gov. Code, § 815.2.

[67] Gov. Code, § 818.

[68] 15 U.S.C. § 15(a).

entirely certain, we believe that antitrust treble damages do *not* equate to punitive damages.

The purposes of treble damage awards are to deter anticompetitive behavior and to encourage private enforcement of antitrust laws.[69] An award of treble damages is automatic once an antitrust violation is proved.[70] In contrast, punitive damages are "uniquely justified by and proportioned to the actor's particular reprehensible conduct as well as that person or entity's net worth . . . in order to adequately make the award 'sting' . . . ."[71] Also, punitive damages in California must be premised on a specific finding of malice, fraud, or oppression.[72] In our view, the lack of a malice or fraud element in an antitrust claim, and the immateriality of a defendant's particular conduct or net worth to the treble damage calculation, puts antitrust treble damages outside the Government Claims Act's definition of punitive damages.[73]

C. Possible Improvements to Indemnification Scheme

As set out above, state law provides for the defense and indemnification of board members to the same extent as other state employees. This should go a long way toward reassuring board members and potential board members that they will not be exposed to undue risk if they act reasonably and in good faith. This reassurance cannot be complete, however, as long as board members face significant uncertainty about how much litigation they may have to face, or about the status of treble damage awards.

Uncertainty about the legal status of treble damage awards could be reduced significantly by amending state law to specify that treble damage antitrust awards are not punitive damages within the meaning of the Government Claims Act. This would put them on the same footing as general damages, and thereby remove any uncertainty as to whether the state would provide indemnification for them.[74]

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[69] *Clayworth v. Pfizer, Inc.* (2010) 49 Cal.4th 758, 783-784 (individual right to treble damages is "incidental and subordinate" to purposes of deterrence and vigorous enforcement).

[70] 15 U.S.C. § 15(a).

[71] *Piscitelli v. Friedenberg* (2001) 87 Cal.App.4th 953, 981-982.

[72] Civ. Code, §§ 818, 3294.

[73] If treble damage awards were construed as constituting punitive damages, the state would still have the option of paying them under Government Code section 825.

[74] Ideally, treble damages should not be available at all against public entities and public officials. Since properly articulated and supervised anticompetitive behavior is

As a complement to indemnification, the potential for board member liability may be greatly reduced by introducing antitrust concepts to the required training and orientation programs that the Department of Consumer Affairs provides to new board members.[75] When board members share an awareness of the sensitivity of certain kinds of actions, they will be in a much better position to seek advice and review (that is, active supervision) from appropriate officials. They will also be far better prepared to assemble evidence and to articulate reasons for the decisions they make in market-sensitive areas. With training and practice, boards can be expected to become as proficient in making and demonstrating sound market decisions, and ensuring proper review of those decisions, as they are now in making and defending sound regulatory and disciplinary decisions.

V. Conclusions

North Carolina Dental has brought both the composition of licensing boards and the concept of active state supervision into the public spotlight, but the standard it imposes is flexible and context-specific. This leaves the state with many variables to consider in deciding how to respond.

Whatever the chosen response may be, the state can be assured that *North Carolina Dental*'s "active state supervision" requirement is satisfied when a non-market-

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permitted to the state and its agents, the deterrent purpose of treble damages does not hold in the public arena. Further, when a state indemnifies board members, treble damages go not against the board members but against public coffers. "It is a grave act to make governmental units potentially liable for massive treble damages when, however 'proprietary' some of their activities may seem, they have fundamental responsibilities to their citizens for the provision of life-sustaining services such as police and fire protection." (*City of Lafayette, La. v. Louisiana Power & Light Co.* (1978) 435 U.S. 389, 442 (dis. opn. of Blackmun, J.).)

In response to concerns about the possibility of treble damage awards against municipalities, Congress passed the Local Government Antitrust Act (15 U.S.C. §§ 34-36), which provides that local governments and their officers and employees cannot be held liable for treble damages, compensatory damages, or attorney's fees. (See H.R. Rep. No. 965, 2nd Sess., p. 11 (1984).) For an argument that punitive sanctions should never be levied against public bodies and officers under the Sherman Act, see 1A Areeda & Hovenkamp, *supra*, ¶ 228, at pp. 214-226. Unfortunately, because treble damages are a product of federal statute, this problem is not susceptible of a solution by state legislation.

[75] Bus. & Prof. Code, § 453.

participant state official has and exercises the power to substantively review a board's action and determines whether the action effectuates the state's regulatory policies.

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FTC Staff Guidance on Active Supervision of State Regulatory Boards Controlled by Market Participants*

I. Introduction

States craft regulatory policy through a variety of actors, including state legislatures, courts, agencies, and regulatory boards. While most regulatory actions taken by state actors will not implicate antitrust concerns, some will. Notably, states have created a large number of regulatory boards with the authority to determine who may engage in an occupation (*e.g.*, by issuing or withholding a license), and also to set the rules and regulations governing that occupation. Licensing, once limited to a few learned professions such as doctors and lawyers, is now required for over 800 occupations including (in some states) locksmiths, beekeepers, auctioneers, interior designers, fortune tellers, tour guides, and shampooers.[1]

In general, a state may avoid all conflict with the federal antitrust laws by creating regulatory boards that serve only in an advisory capacity, or by staffing a regulatory board exclusively with persons who have no financial interest in the occupation that is being regulated. However, across the United States, "licensing boards are largely dominated by active members of their respective industries . . ."[2] That is, doctors commonly regulate doctors, beekeepers commonly regulate beekeepers, and tour guides commonly regulate tour guides.

Earlier this year, the U.S. Supreme Court upheld the Federal Trade Commission's determination that the North Carolina State Board of Dental Examiners ("NC Board") violated the federal antitrust laws by preventing non-dentists from providing teeth whitening services in competition with the state's licensed dentists. *N.C. State Bd. of Dental Exam'rs v. FTC*, 135 S. Ct. 1101 (2015). NC Board is a state agency established under North Carolina law and charged with administering and enforcing a licensing system for dentists. A majority of the members of this state agency are themselves practicing dentists, and thus they have a private incentive to limit

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* This document sets out the views of the Staff of the Bureau of Competition. The Federal Trade Commission is not bound by this Staff guidance and reserves the right to rescind it at a later date. In addition, FTC Staff reserves the right to reconsider the views expressed herein, and to modify, rescind, or revoke this Staff guidance if such action would be in the public interest.

[1] Aaron Edlin & Rebecca Haw, *Cartels By Another Name: Should Licensed Occupations Face Antitrust Scrutiny*, 162 U. PA. L. REV. 1093, 1096 (2014).

[2] *Id.* at 1095.

competition from non-dentist providers of teeth whitening services. NC Board argued that, because it is a state agency, it is exempt from liability under the federal antitrust laws. That is, the NC Board sought to invoke what is commonly referred to as the "state action exemption" or the "state action defense." The Supreme Court rejected this contention and affirmed the FTC's finding of antitrust liability.

In this decision, the Supreme Court clarified the applicability of the antitrust state action defense to state regulatory boards controlled by market participants:

> "The Court holds today that a state board on which a controlling number of decisionmakers are active market participants in the occupation the board regulates must satisfy *Midcal's* [*Cal. Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc.*, 445 U.S. 97 (1980)] active supervision requirement in order to invoke state-action antitrust immunity." *N.C. Dental*, 135 S. Ct. at 1114.

In the wake of this Supreme Court decision, state officials have requested advice from the Federal Trade Commission regarding antitrust compliance for state boards responsible for regulating occupations. This outline provides FTC Staff guidance on two questions. *First*, when does a state regulatory board require active supervision in order to invoke the state action defense? *Second*, what factors are relevant to determining whether the active supervision requirement is satisfied?

Our answers to these questions come with the following caveats.

- Vigorous competition among sellers in an open marketplace generally provides consumers with important benefits, including lower prices, higher quality services, greater access to services, and increased innovation. For this reason, a state legislature should empower a regulatory board to restrict competition only when necessary to protect against a credible risk of harm, such as health and safety risks to consumers. The Federal Trade Commission and its staff have frequently advocated that states avoid unneeded and burdensome regulation of service providers.[3]

- Federal antitrust law does <u>not</u> require that a state legislature provide for active supervision of any state regulatory board. A state legislature may, and generally should, prefer that a regulatory board be subject to the requirements of the federal antitrust

[3] *See, e.g.*, Fed. Trade Comm'n Staff Policy Paper, *Policy Perspectives: Competition and the Regulation of Advanced Practice Registered Nurses* (Mar. 2014), https://www.ftc.gov/system/files/documents/reports/policy-perspectives-competition-regulation-advanced-practice-nurses/140307aprnpolicypaper.pdf; Fed. Trade Comm'n & U.S. Dept. of Justice, Comment before the South Carolina Supreme Court Concerning Proposed Guidelines for Residential and Commercial Real Estate Closings (Apr. 2008), https://www.ftc.gov/news-events/press-releases/2008/04/ftcdoj-submit-letter-supreme-court-south-carolina-proposed.

laws. If the state legislature determines that a regulatory board should be subject to antitrust oversight, then the state legislature need not provide for active supervision.

- Antitrust analysis – including the applicability of the state action defense – is fact-specific and context-dependent. The purpose of this document is to identify certain overarching legal principles governing when and how a state may provide active supervision for a regulatory board. We are not suggesting a mandatory or one-size-fits-all approach to active supervision. Instead, we urge each state regulatory board to consult with the Office of the Attorney General for its state for customized advice on how best to comply with the antitrust laws.

- This FTC Staff guidance addresses only the active supervision prong of the state action defense. In order successfully to invoke the state action defense, a state regulatory board controlled by market participants must also satisfy the clear articulation prong, as described briefly in Section II. below.

- This document contains guidance developed by the staff of the Federal Trade Commission. Deviation from this guidance does not necessarily mean that the state action defense is inapplicable, or that a violation of the antitrust laws has occurred.

II. Overview of the Antitrust State Action Defense

"Federal antitrust law is a central safeguard for the Nation's free market structures . . . . The antitrust laws declare a considered and decisive prohibition by the Federal Government of cartels, price fixing, and other combinations or practices that undermine the free market." *N.C. Dental*, 135 S. Ct. at 1109.

Under principles of federalism, "the States possess a significant measure of sovereignty." *N.C. Dental*, 135 S. Ct. at 1110 (*quoting Community Communications Co. v. Boulder*, 455 U.S. 40, 53 (1982)). In enacting the antitrust laws, Congress did not intend to prevent the States from limiting competition in order to promote other goals that are valued by their citizens. Thus, the Supreme Court has concluded that the federal antitrust laws do not reach anticompetitive conduct engaged in by a State that is acting in its sovereign capacity. *Parker v. Brown*, 317 U.S. 341, 351-52 (1943). For example, a state legislature may "impose restrictions on occupations, confer exclusive or shared rights to dominate a market, or otherwise limit competition to achieve public objectives." *N.C. Dental*, 135 S. Ct. at 1109.

Are the actions of a state regulatory board, like the actions of a state legislature, exempt from the application of the federal antitrust laws? In *North Carolina State Board of Dental Examiners*, the Supreme Court reaffirmed that a state regulatory board is not the sovereign. Accordingly, a state regulatory board is not necessarily exempt from federal antitrust liability.

More specifically, the Court determined that "a state board on which a controlling number of decisionmakers are active market participants in the occupation the board regulates" may invoke the state action defense only when two requirements are satisfied: first, the challenged restraint must be clearly articulated and affirmatively expressed as state policy; and second, the policy must be actively supervised by a state official (or state agency) that is not a participant in the market that is being regulated. *N.C. Dental*, 135 S. Ct. at 1114.

- The Supreme Court addressed the clear articulation requirement most recently in *FTC v. Phoebe Putney Health Sys., Inc.*, 133 S. Ct. 1003 (2013). The clear articulation requirement is satisfied "where the displacement of competition [is] the inherent, logical, or ordinary result of the exercise of authority delegated by the state legislature. In that scenario, the State must have foreseen and implicitly endorsed the anticompetitive effects as consistent with its policy goals." *Id*. at 1013.

- The State's clear articulation of the intent to displace competition is not alone sufficient to trigger the state action exemption. The state legislature's clearly-articulated delegation of authority to a state regulatory board to displace competition may be "defined at so high a level of generality as to leave open critical questions about how

and to what extent the market should be regulated." There is then a danger that this delegated discretion will be used by active market participants to pursue private interests in restraining trade, in lieu of implementing the State's policy goals. *N.C. Dental*, 135 S. Ct. at 1112.

- The active supervision requirement "seeks to avoid this harm by requiring the State to review and approve interstitial policies made by the entity claiming [antitrust] immunity." *Id.*

Where the state action defense does not apply, the actions of a state regulatory board controlled by active market participants may be subject to antitrust scrutiny. Antitrust issues may arise where an unsupervised board takes actions that restrict market entry or restrain rivalry. The following are some scenarios that have raised antitrust concerns:

- A regulatory board controlled by dentists excludes non-dentists from competing with dentists in the provision of teeth whitening services. *Cf. N.C. Dental,* 135 S. Ct. 1101.

- A regulatory board controlled by accountants determines that only a small and fixed number of new licenses to practice the profession shall be issued by the state each year. *Cf. Hoover v. Ronwin*, 466 U.S. 558 (1984).

- A regulatory board controlled by attorneys adopts a regulation (or a code of ethics) that prohibits attorney advertising, or that deters attorneys from engaging in price competition. *Cf. Bates v. State Bar of Ariz.*, 433 U.S. 350 (1977); *Goldfarb v. Va. State Bar*, 421 U.S. 773 (1975).

III. Scope of FTC Staff Guidance

A. This Staff guidance addresses the applicability of the state action defense under the federal antitrust laws. Concluding that the state action defense is inapplicable does not mean that the conduct of the regulatory board necessarily violates the federal antitrust laws. A regulatory board may assert defenses ordinarily available to an antitrust defendant.

1. **Reasonable restraints on competition do not violate the antitrust laws, even where the economic interests of a competitor have been injured.**

Example 1: A regulatory board may prohibit members of the occupation from engaging in fraudulent business practices without raising antitrust concerns. A regulatory board also may prohibit members of the occupation from engaging in untruthful or deceptive advertising. *Cf. Cal. Dental Ass'n v. FTC*, 526 U.S. 756 (1999).

Example 2: Suppose a market with several hundred licensed electricians. If a regulatory board suspends the license of one electrician for substandard work, such action likely does not unreasonably harm competition. *Cf. Oksanen v. Page Mem'l Hosp.*, 945 F.2d 696 (4th Cir. 1991) (en banc).

2. **The ministerial (non-discretionary) acts of a regulatory board engaged in good faith implementation of an anticompetitive statutory regime do not give rise to antitrust liability. See 324 Liquor Corp. v. Duffy, 479 U.S. 335, 344 n. 6 (1987).**

Example 3: A state statute requires that an applicant for a chauffeur's license submit to the regulatory board, among other things, a copy of the applicant's diploma and a certified check for $500. An applicant fails to submit the required materials. If for this reason the regulatory board declines to issue a chauffeur's license to the applicant, such action would not be considered an unreasonable restraint. In the circumstances described, the denial of a license is a ministerial or non-discretionary act of the regulatory board.

3. **In general, the initiation and prosecution of a lawsuit by a regulatory board does not give rise to antitrust liability unless it falls within the "sham exception." Professional Real Estate Investors v. Columbia Pictures Industries, 508 U.S. 49 (1993); California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508 (1972).**

Example 4: A state statute authorizes the state's dental board to maintain an action in state court to enjoin an unlicensed person from practicing dentistry. The members of the dental board have a basis to believe that a particular individual is practicing dentistry but does not hold a valid license. If the dental board files a lawsuit against that individual, such action would not constitute a violation of the federal antitrust laws.

B. Below, FTC Staff describes when active supervision of a state regulatory board is required in order successfully to invoke the state action defense, and what factors are relevant to determining whether the active supervision requirement has been satisfied.

1. When is active state supervision of a state regulatory board required in order to invoke the state action defense?

***General Standard*:** "[A] state board on which a controlling number of decisionmakers are active market participants in the occupation the board regulates must satisfy *Midcal*'s active supervision requirement in order to invoke state-action antitrust immunity." *N.C. Dental*, 135 S. Ct. at 1114.

***Active Market Participants*:** A member of a state regulatory board will be considered to be an active market participant in the occupation the board regulates if such person (i) is licensed by the board or (ii) provides any service that is subject to the regulatory authority of the board.

- If a board member participates in any professional or occupational sub-specialty that is regulated by the board, then that board member is an active market participant for purposes of evaluating the active supervision requirement.

- It is no defense to antitrust scrutiny, therefore, that the board members themselves are not directly or personally affected by the challenged restraint. For example, even if the members of the NC Dental Board were orthodontists who do not perform teeth whitening services (as a matter of law or fact or tradition), their control of the dental board would nevertheless trigger the requirement for active state supervision. This is because these orthodontists are licensed by, and their services regulated by, the NC Dental Board.

- A person who temporarily suspends her active participation in an occupation for the purpose of serving on a state board that regulates her former (and intended future) occupation will be considered to be an active market participant.

***Method of Selection*:** The method by which a person is selected to serve on a state regulatory board is not determinative of whether that person is an active market participant in the occupation that the board regulates. For example, a licensed dentist is deemed to be an active market participant regardless of whether the dentist (i) is appointed to the state dental board by the governor or (ii) is elected to the state dental board by the state's licensed dentists.

***A Controlling Number, Not Necessarily a Majority, of Actual Decisionmakers*:**

- Active market participants need not constitute a numerical majority of the members of a state regulatory board in order to trigger the requirement of active supervision. A decision that is controlled, either as a matter of law, procedure, or fact, by active participants in the regulated market (*e.g.*, through veto power, tradition, or practice) must be actively supervised to be eligible for the state action defense.

- Whether a particular restraint has been imposed by a "controlling number of decisionmakers [who] are active market participants" is a fact-bound inquiry that must be made on a case-by-case basis. FTC Staff will evaluate a number of factors, including:

  - ✓ The structure of the regulatory board (including the number of board members who are/are not active market participants) and the rules governing the exercise of the board's authority.

  - ✓ Whether the board members who are active market participants have veto power over the board's regulatory decisions.

Example 5: The state board of electricians consists of four non-electrician members and three practicing electricians. Under state law, new regulations require the approval of five board members. Thus, no regulation may become effective without the assent of at least one electrician member of the board. In this scenario, the active market participants effectively have veto power over the board's regulatory authority. The active supervision requirement is therefore applicable.

  - ✓ The level of participation, engagement, and authority of the non-market participant members in the business of the board – generally and with regard to the particular restraint at issue.

  - ✓ Whether the participation, engagement, and authority of the non-market participant board members in the business of the board differs from that of board members who are active market participants – generally and with regard to the particular restraint at issue.

  - ✓ Whether the active market participants have in fact exercised, controlled, or usurped the decisionmaking power of the board.

Example 6: The state board of electricians consists of four non-electrician members and three practicing electricians. Under state law, new regulations require the approval of a majority of board members. When voting on proposed regulations, the non-electrician members routinely defer to the preferences of the electrician members. Minutes of

board meetings show that the non-electrician members generally are not informed or knowledgeable concerning board business – and that they were not well informed concerning the particular restraint at issue. In this scenario, FTC Staff may determine that the active market participants have exercised the decisionmaking power of the board, and that the active supervision requirement is applicable.

Example 7: The state board of electricians consists of four non-electrician members and three practicing electricians. Documents show that the electrician members frequently meet and discuss board business separately from the non-electrician members. On one such occasion, the electrician members arranged for the issuance by the board of written orders to six construction contractors, directing such individuals to cease and desist from providing certain services. The non-electrician members of the board were not aware of the issuance of these orders and did not approve the issuance of these orders. In this scenario, FTC Staff may determine that the active market participants have exercised the decisionmaking power of the board, and that the active supervision requirement is applicable.

2. What constitutes active supervision?

FTC Staff will be guided by the following principles:

- "[T]he purpose of the active supervision inquiry . . . is to determine whether the State has exercised sufficient independent judgment and control" such that the details of the regulatory scheme "have been established as a product of deliberate state intervention" and not simply by agreement among the members of the state board. "Much as in causation inquiries, the analysis asks whether the State has played a substantial role in determining the specifics of the economic policy." The State is not obliged to "[meet] some normative standard, such as efficiency, in its regulatory practices." *Ticor*, 504 U.S. at 634-35. "The question is not how well state regulation works but whether the anticompetitive scheme is the State's own." *Id*. at 635.

- It is necessary "to ensure the States accept political accountability for anticompetitive conduct they permit and control." *N.C. Dental*, 135 S. Ct. at 1111. *See also Ticor*, 504 U.S. at 636.

- "The Court has identified only a few constant requirements of active supervision: The supervisor must review the substance of the anticompetitive decision, not merely the procedures followed to produce it; the supervisor must have the power to veto or modify particular decisions to ensure they accord with state policy; and the 'mere potential for state supervision is not an adequate substitute for a decision by the State.' Further, the state supervisor may not itself be an active market participant." *N.C. Dental*, 135 S. Ct. at 1116–17 (citations omitted).

- The active supervision must precede implementation of the allegedly anticompetitive restraint.

- "[T]he inquiry regarding active supervision is flexible and context-dependent." "[T]he adequacy of supervision . . . will depend on all the circumstances of a case." *N.C. Dental*, 135 S. Ct. at 1116–17. Accordingly, FTC Staff will evaluate each case in light of its own facts, and will apply the applicable case law and the principles embodied in this guidance reasonably and flexibly.

3. What factors are relevant to determining whether the active supervision requirement has been satisfied?

FTC Staff will consider the presence or absence of the following factors in determining whether the active supervision prong of the state action defense is satisfied.

- The supervisor has obtained the information necessary for a proper evaluation of the action recommended by the regulatory board. As applicable, the supervisor has ascertained relevant facts, collected data, conducted public hearings, invited and received public comments, investigated market conditions, conducted studies, and reviewed documentary evidence.

  - ✓ The information-gathering obligations of the supervisor depend in part upon the scope of inquiry previously conducted by the regulatory board. For example, if the regulatory board has conducted a suitable public hearing and collected the relevant information and data, then it may be unnecessary for the supervisor to repeat these tasks. Instead, the supervisor may utilize the materials assembled by the regulatory board.

- The supervisor has evaluated the substantive merits of the recommended action and assessed whether the recommended action comports with the standards established by the state legislature.

- The supervisor has issued a written decision approving, modifying, or disapproving the recommended action, and explaining the reasons and rationale for such decision.

  - ✓ A written decision serves an evidentiary function, demonstrating that the supervisor has undertaken the required meaningful review of the merits of the state board's action.

  - ✓ A written decision is also a means by which the State accepts political accountability for the restraint being authorized.

Scenario 1: Example of satisfactory active supervision of a state board regulation designating teeth whitening as a service that may be provided only by a licensed dentist, where state policy is to protect the health and welfare of citizens and to promote competition.

- The state legislature designated an executive agency to review regulations recommended by the state regulatory board. Recommended regulations become effective only following the approval of the agency.

- The agency provided notice of (i) the recommended regulation and (ii) an opportunity to be heard, to dentists, to non-dentist providers of teeth whitening, to the public (in a newspaper of general circulation in the affected areas), and to other interested and affected persons, including persons that have previously identified themselves to the agency as interested in, or affected by, dentist scope of practice issues.

- The agency took the steps necessary for a proper evaluation of the recommended regulation. The agency:

  - ✓ Obtained the recommendation of the state regulatory board and supporting materials, including the identity of any interested parties and the full evidentiary record compiled by the regulatory board.

  - ✓ Solicited and accepted written submissions from sources other than the regulatory board.

  - ✓ Obtained published studies addressing (i) the health and safety risks relating to teeth whitening and (ii) the training, skill, knowledge, and equipment reasonably required in order to safely and responsibly provide teeth whitening services (if not contained in submission from the regulatory board).

  - ✓ Obtained information concerning the historic and current cost, price, and availability of teeth whitening services from dentists and non-dentists (if not contained in submission from the regulatory board). Such information was verified (or audited) by the Agency as appropriate.

  - ✓ Held public hearing(s) that included testimony from interested persons (including dentists and non-dentists). The public hearing provided the agency with an opportunity (i) to hear from and to question providers, affected customers, and experts and (ii) to supplement the evidentiary record compiled by the state board. (As noted above, if the state regulatory board has previously conducted a suitable public hearing, then it may be unnecessary for the supervising agency to repeat this procedure.)

- The agency assessed all of the information to determine whether the recommended regulation comports with the State's goal to protect the health and

welfare of citizens and to promote competition.

- The agency issued a written decision accepting, rejecting, or modifying the scope of practice regulation recommended by the state regulatory board, and explaining the rationale for the agency's action.

Scenario 2: Example of satisfactory active supervision of a state regulatory board administering a disciplinary process.

A common function of state regulatory boards is to administer a disciplinary process for members of a regulated occupation. For example, the state regulatory board may adjudicate whether a licensee has violated standards of ethics, competency, conduct, or performance established by the state legislature.

Suppose that, acting in its adjudicatory capacity, a regulatory board controlled by active market participants determines that a licensee has violated a lawful and valid standard of ethics, competency, conduct, or performance, and for this reason, the regulatory board proposes that the licensee's license to practice in the state be revoked or suspended. In order to invoke the state action defense, the regulatory board would need to show both clear articulation and active supervision.

- In this context, active supervision may be provided by the administrator who oversees the regulatory board (*e.g.*, the secretary of health), the state attorney general, or another state official who is not an active market participant. The active supervision requirement of the state action defense will be satisfied if the supervisor: (i) reviews the evidentiary record created by the regulatory board; (ii) supplements this evidentiary record if and as appropriate; (iii) undertakes a de novo review of the substantive merits of the proposed disciplinary action, assessing whether the proposed disciplinary action comports with the policies and standards established by the state legislature; and (iv) issues a written decision that approves, modifies, or disapproves the disciplinary action proposed by the regulatory board.

Note that a disciplinary action taken by a regulatory board affecting a single licensee will typically have only a de minimis effect on competition. A pattern or program of disciplinary actions by a regulatory board affecting multiple licensees may have a substantial effect on competition.

The following do <u>not</u> constitute active supervision of a state regulatory board that is controlled by active market participants:

- The entity responsible for supervising the regulatory board is itself controlled by active market participants in the occupation that the board regulates. *See N.C. Dental*, 135 S. Ct. at 1113-14.

- A state official monitors the actions of the regulatory board and participates in deliberations, but lacks the authority to disapprove anticompetitive acts that fail to accord with state policy. *See Patrick v. Burget*, 486 U.S. 94, 101 (1988).

- A state official (*e.g.*, the secretary of health) serves ex officio as a member of the regulatory board with full voting rights. However, this state official is one of several members of the regulatory board and lacks the authority to disapprove anticompetitive acts that fail to accord with state policy.

- The state attorney general or another state official provides advice to the regulatory board on an ongoing basis.

- An independent state agency is staffed, funded, and empowered by law to evaluate, and then to veto or modify, particular recommendations of the regulatory board. However, in practice such recommendations are subject to only cursory review by the independent state agency. The independent state agency perfunctorily approves the recommendations of the regulatory board. *See Ticor*, 504 U.S. at 638.

- An independent state agency reviews the actions of the regulatory board and approves all actions that comply with the procedural requirements of the state administrative procedure act, without undertaking a substantive review of the actions of the regulatory board. *See Patrick*, 486 U.S. at 104-05.

CLOSED SESSION

1. Review and Possible Action on June 9, 2016, and July 28, 2016, Closed Session Minutes

2. Pursuant to Government Code Section 11126(e)(1), the Board will Confer with Legal Counsel to Discuss and Take Possible Action on Litigation Regarding *Marie Lundin vs. California Architects Board, et al.*, Department of Fair Employment and Housing, Case No. 585824-164724

3. Pursuant to Government Code Section 11126(c)(3), the Board will Deliberate on Disciplinary Matters

RECONVENE OPEN SESSION

The Board will reconvene open session following closed session.

ADJOURNMENT

Time: _____