



MEETING MINUTES CALIFORNIA ARCHITECTS BOARD REGULATORY AND ENFORCEMENT COMMITTEE

AUGUST 1, 2019
SACRAMENTO
2420 Del Paso Road, Sequoia Room, Suite 109
Sacramento, CA 95834

Committee Members Present

Robert C. Pearman, Jr., Chair
Fred Cullum
Cheryl DeMarco
Gary McGavin

Committee Members Absent

Sylvia Kwan, Vice Chair
Robert Ho
Sheran Voigt

Board Staff Present

Laura Zuniga, Executive Officer
Alicia Hegje, Program Manager, Administration/Enforcement Units
Idris Ahmed, Enforcement Analyst
Reynaldo Castro, Enforcement Technician
Robert Chase, Architect Consultant
Hattie Johnson, Enforcement Analyst
Arleen McKenzie, Administration Cashier
Jasmine Newman, Enforcement Analyst
Sonja Ruffin, Enforcement Analyst
Michael Sganga, Enforcement Analyst
Stacy Townsend, Enforcement Analyst, Landscape Architects Technical Committee (LATC)
Robert Chase, Enforcement Architect Consultant

Guests

Nicki Dennis Stephens, Executive Vice President, The American Institute of Architects, California (AIA California)
Mark Christian, Director of Government Relations, The American Institute of Architects, California Council (AIACC)

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

Regulatory and Enforcement Committee (REC) Chair Robert C. Pearman, Jr., called the meeting to order at 10:00 a.m.

Alicia Hegje called the roll. There being four members present at the time of roll, a quorum was established.

B. Chair's Procedural Remarks and Committee Member Introductory Comments

Mr. Pearman welcomed everyone and requested members provide self-introductions. Mr. Pearman noted that former Chair Barry L. Williams, Robert De Pietro, and Michael Merino are no longer with the REC and Cheryl DeMarco is a new committee member. Nicki Dennis Stephens of AIA California and Board staff introduced themselves.

C. Public Comment on Items Not on the Agenda

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

D. Review and Possible Action on August 23, 2018 REC Meeting Minutes

Mr. Pearman asked if there were any questions, comments, or changes to the August 23, 2018 REC Meeting Minutes. There were none.

Gary McGavin moved to approve the August 23, 2018 REC Meeting Minutes.

Robert C. Pearman, Jr. seconded the motion.

Members Cullum, McGavin and Chair Pearman voted in favor of the motion. Member DeMarco abstained. The motion passed 3-0-1.

E. Enforcement Program Update

Alicia Hegje provided the Enforcement Program update and highlighted the status items of interest to the REC, including: 1) the enforcement unit being fully staffed and that two retired annuitants who were formerly with the Board had been hired; 2) publication of the *New Licensee Information Guide*; 3) the debt service collection contract with Cedars Business Services, LLC; 4) outreach; 5) staff's diligent efforts to recruit subject matter experts; 6) status on regulatory proposals; and, 7) written contract language. Ms. Hegje further described the Enforcement Program data since the last REC meeting

Cheryl DeMarco inquired if architects submit their continuing education certificates yearly. Laura Zuniga explained that certificates are required if a licensee is randomly selected for an audit.

Mr. McGavin commented that the license numbers in the summary of the Final Citations FY 2018/19 attachment seemed to focus on license numbers between 20,000 to 29,999. He was concerned there may be a disconnect with a certain group of licensees. Ms. Zuniga added that was interesting and staff will research further.

Mr. Sganga summarized the final citations since August 2018 which included the following number of violations: 14 continuing education; 8 practice without a license or holding self out as architect; 4 advertising; 4 written contract; 1 negligence; and a few others. There was only one disciplinary case in the last year which dealt with a criminal conviction.

Mr. McGavin commented about the renewal process and self-certifying CE procedure and the likelihood of architects perjuring themselves as the hours may not have been completed within the last renewal period. He added that some architects have admitted that they almost never complete their CE, citing that some of the providers delayed providing the certificate. Ms. Zuniga stated that the Board will in the near future accept electronic submission of these certifications, and licensees will retain their ability to submit their certificate.

Ms. Hegje updated the Committee about two objectives from the 2017-18 Strategic Plan. Firstly, in May, the Board released the *New Licensee Information Guide (Guide)* and the *Guide* is available on the Board's website under *Publications*, and is provided by mail to each newly licensed architect along with their wall and pocket certification. Secondly, the Board and LATC entered into a three-year contract with Cedars Business Services, LLC for collection of outstanding citations.

Ms. Hegje further provided the Committee with an overview of the Board's outreach activities to date. She highlighted the Board's continued presence at AIA California's Large Firm Roundtable; attendance at the California Building Official's (CALBO) association annual meeting that resulted in requests for supplies of *Consumer's Guide to Hiring an Architect* and the *Consumer Tips for Design Projects* distributed to CALBO offices throughout the state. Ms. Hegje also stated Board staff continues to provide licensure presentations in collaboration with NCARB. CSLB continues to disseminate board publications at disaster assistance centers after a natural disaster has been declared.

Mr. McGavin questioned how individuals request the Board's consultants to speak at events. Ms. Hegje explained that the Board currently employs one architect consultant, Bob Chase, and that requests for his attendance be made to Ms. Zuniga, Executive Officer, directly and she could coordinate presentations.

Fred Cullum commented that Paradise is being administered, inspected, and plan checked by third party, 4LEAF, Inc. and wanted to know if the Board had reached out to 4LEAF, Inc. Ms. Zuniga responded that it has not been done or acknowledged but would follow-up. Mr. Cullum recommended that the Board contact them.

Ms. Hegje summarized the recruitment efforts for SMEs. She stated that previously the Board was able to contract with individual architect contracts. With the expiration of an existing contract in June, the Board began recruitment. She explained that SMEs will provide case review, technical evaluations, and courtroom testimony throughout the state. Ms. Hegje stated that an email blast was sent to approximately 28,000 individuals as well as published on the Board's website and via social media.

Mr. McGavin questioned how many SMEs would be hired and asked for clarification as to the general subject areas they would be employed doing. Ms. Hegje explained that this is a new process for the Board; and that Mr. Sganga and she had been working with the Board for Professional Engineers, Land Surveyors, and Geologists (BPELSG) for guidance as they also employ SMEs.

Ms. DeMarco asked if there are any downsides to employing a SME rather than an architect consultant. Ms. Hegje replied that she had not heard of any negatives.

F. Discuss and Possible Action on 2017/2018 Strategic Plan Objective to Update the Building Official Information Guide to Better Educate Local Building Officials on the Architects Practice Act

Ms. Hegje presented this agenda item and reminded the REC that the 2017-2018 Strategic Plan contained an objective to update the Board's *Building Official Information Guide (Guide)* to better educate local building officials on the *Act*. Ms. Hegje stated the *Guide* was reviewed by the Committee at the last meeting, and it was recommended to include a summary about mechanic's liens and how to obtain additional information about the process. Ms. Hege asked committee members to review the proposed revisions contained in the meeting packet and provide feedback to staff.

Ms. DeMarco commented that there is not a clear definition of who can design a three-story structure. She said unlicensed individuals are submitting plans to the California Coastal Commission and planning departments for approval without being licensed and stamping their plans which is required for this type of structure. Mr. Cullum commented there is no design requirement for three stories and information is contained in the residential building code. Mr. Pearman added that building officials are required to verify whether the individual who prepares and submits permit documents for non-exempt projects has a current license and is clearly stated in the *Guide*.

Mr. Chase explained that the Act requires not more than two stories and a basement in height for an unlicensed individual (BPC section 5537(a)(1)). He stated it is the

building official's responsibility to verify if the designer is licensed if a project is over three stories.

Mr. Pearman stated there is an exempt building section in the *Guide*. Mr. Chase stated as a former building official, that they are aware of the exemptions. He stated that at some point, the Board might require statutory change regarding BPC section 5537(a)(1) because it is now acceptable by the building departments to submit metal studs in lieu of wood studs. Mr. Chase said that "wood frame" construction is not quite accurate, and a better term is "conventional" construction.

Ms. Hegje stated that similar language is included in the *Guide* about unlicensed individuals and what they can design. Ms. DeMarco commented that the information on this page regarding the term "nonstructural or nonseismic" additions can include almost any change and would require a structural engineer. Mr. Chase added that the intent of this language goes back several years and pertains to tenant improvements, which are pretty common, and do not require a licensed person to complete that work unless it includes items such as a shear wall, structure, or exterior wall and then an architect would be required. Mr. McGavin explained a lot of nonstructural items are buried in the code and AIA California has a sub-working group reviewing tenant improvements to find ways to clarify nonstructural elements that can cause harm. Mr. Chase confirmed that clarification is warranted.

The Committee tabled the item until the end of the meeting.

G. Discuss and Possible Action on the 2019-2021 Strategic Plan Objectives to:

Educate Architects Regarding Their Responsibilities under Business and Professions Code Section 5535.1 (Responsible Control) and California Code of Regulations (CCR) Section 151 (Aiding and Abetting) to Protect Consumers From Unlicensed Practice

Michael Sganga presented this agenda item and explained to the REC that recently, the majority of the Board's responsible control-related cases were coming from the new business model of Design-Build firms. Typically, in these situations, a licensed contractor starts a business offering full-service design and contracts out the non-exempt architectural services. Mr. Sganga explained that this in itself is not prohibited by the *Act*, but that problems arise when the contractor figures out they can make a lot more money by advertising their association with architects, and maybe even name their company XYZ Building and Architecture. California Code of Regulations section 134 (Use of the Term Architect; Responsible Control within Business Entity) prohibits the use of the word architect in a business name or description of services unless there is a licensed architect on staff in management control of all design projects.

He explained the problem then becomes one of aiding and abetting for the architect who considers this a valid collaboration, because they do not have control over the company's exempt projects, yet the company is using their name to justify the

advertising. Mr. Sganga noted that for the consumer, this is an even bigger problem, because they might not even know who their architect is, and explained the consumer has no recourse for professional misconduct, and the Board has no way to determine whether an architect is in responsible control over a given project.

Board staff asked the Committee to discuss these issues in the context of establishing regulatory standards and educating architects regarding their professional responsibilities

Mr. Pearman asked about what “responsible control” means, acknowledging that it might vary on a case-by-case basis. He questioned if responsible control includes an unlicensed person working for an architect and drafting all the plans, attending weekly meeting with the licensed architect, and putting it all together for sign off. Messrs. Sganga and Chase explained that it does require a case-by-case examination. Mr. Chase explained that the architect who is signing has to know that the plans were done as well as if they had done them themselves or they have to understand everything that is in the plans in order to accept the responsible control.

Mr. McGavin described the Design-Build firm as unique wherein the contractor might have control over what the architect designs.

Ms. DeMarco asked whether an architect has to be on staff with the contractor to exercise management control. Mr. Sganga answered that the architect must be a co-owner, officer or employee.

Mr. Pearman questioned how to prove that an architect did not have responsible control. Mr. Chase explained that it is very difficult and used one of the cases Mr. Sganga had referred to as an example. He stated the problem is that with a small project, responsible control might just mean a thorough review of the plans, and that could happen in less than one day.

Mr. Chase returned to the point that BPC section 5536.22 does not require that the “client” be the owner. He stated it could be a contractor or a Design-Build firm and may provide a separation between the architect and the owner.

Mr. Pearman inquired how the proposed Informational Bulletin (bulletin) would be distributed. Mr. Sganga offered that it would be posted on the Board website and emailed via the Board’s e-subscribe list with a link to the document. Ms. DeMarco suggested that the link could be sent to architects throughout the state, as well as to building departments. Mr. Cullum suggested that it could also be sent to representatives of the Design-Build industry, such as the Design-Build Institute of America.

Mr. Pearman called the question of whether the informational bulletin should go out and be distributed as discussed.

Gary McGavin made a motion to accept the proposed Informational Bulletin and present the document to the Board at its next meeting.

Cheryl DeMarco seconded the motion.

Members Cullum, DeMarco, McGavin and Chair Pearman, voted in favor of the motion. The motion passed 4-0.

2. Research and Evaluate Categories of Criminal Convictions as They Relate to the Practice of Architecture and Amend Disciplinary Guidelines and Rehabilitation Criteria to Comply With the Requirements of Assembly Bill (AB) 2138 (Chiu, Chapter 995, Statutes of 2018)

Jasmine Newman provided an update on the status of amending the Board's *Disciplinary Guidelines (Guidelines)* to comply with AB 2138 (Chiu, Chapter 995, Statutes of 2018), which is a 2019-2021 Strategic Plan objective. Ms. Newman noted that this update was purely for informational purposes, and no action was needed by the REC. Ms. Newman reminded the REC that during the February 27, 2019 Board meeting, Board members reviewed and approved the new language, and she reported that staff are currently working on justifications for the changes. These changes would then be sent to the Office of Administrative Law for approval, which is a process that should take about two years.

Ms. Hegje noted that the sections include a minimum penalty and a maximum penalty. Mr. McGavin stated that in his opinion the minimum penalty should involve some type of revocation whenever fraud is involved.

Mr. McGavin asked who defines an ethics course. Ms. Hegje explained that it is determined by the judge on a case-by-case basis depending on the situation.

Mr. McGavin asked for clarification on what "subversion of the licensing exam" meant. Ms. Zuniga stated that she considered subversion to be taking materials out of the exam or copying the information.

3. Collaborate With Websites to Restrict Advertisements From Unlicensed Entities

Idris Ahmed provided an overview of the agenda item regarding unlicensed advertising on websites. He explained that BPC section 5536(a) (Practice Without License or Holding Self Out as Architect; Misdemeanor) states that unlicensed persons may not advertise themselves as architects.

Mr. Ahmed presented a graph of the most common websites that unlicensed persons advertise on as an architect, based on a sample of advertisement complaints the Board received. Mr. Ahmed explained that Board staff have contacted Yelp and Houzz to request they modify their websites to make it less likely unlicensed persons inadvertently advertise themselves as architects. These companies provided generic responses stating they would consider implementing the request.

Mr. Ahmed presented three recommendations and noted that the first recommendation needed to be modified as it currently suggests sending a cease and desist letter, but DCA legal informed Board staff that the Board does not have the legal authority to use threatening language so at best it would be an advisory letter.

Mr. Ahmed presented the second recommendation to require an architect to post his or her license number on advertisements which would require a new Board regulation; and third recommendation to continue working with websites to restrict unlicensed advertising. Mr. Pearman asked that since DCA legal informed Board staff of what the Board cannot do, if that meant in general or in specific cases. Mr. Ahmed stated that the Board can advise the websites that an unlicensed person is not an architect, and that information on their website is incorrect and ask them to remove it. Ms. Zuniga stated that the Board does not have the authority over websites and the Board cannot enforce compliance, which other boards in DCA have also struggled with.

Mr. Pearman asked if the second recommendation required license numbers for all advertisements. Mr. Ahmed responded that it was meant for all forms of advertisements. He explained that the intent was the licensed architects could distinguish themselves easily, enabling Board staff to recognize and differentiate between licensees and unlicensed individuals. Mr. Pearman asked if contractors have to post their license number on advertisements and business cards. Ms. Zuniga confirmed that all contractors' advertisements must include their license numbers. Ms. Hegje stated that during the June Board meeting, LATC adopted a requirement to have landscape architects post their license number on all forms of advertisement. Mr. Pearman asked Ms. Stephens if other states require license numbers on advertisements. Ms. Stephens stated to her knowledge, a few other states do require license numbers in advertisements. She stated she was surprised that this was not a requirement of architects, but contractors only.

Ms. DeMarco stated that requiring architects to post their license number on advertisements is a great idea. She stated she includes her license number and sees it as beneficial for other architects. Ms. DeMarco stated that false advertising amongst unlicensed individuals is widespread. She observed that Angie's list or Homeadvisors was not depicted on the graph and added Facebook only allows for a designation of an architect. Ms. DeMarco stated that she met with Houzz at an international building show and spoke with developers about the issue. The developer said it was a very complex issue, but Ms. DeMarco said it is not that complex. She stated Houzz does not want to separate the building designer/architect category and that drafters were also included in the categorization on Houzz. She stated that Homeadvisors want license numbers, but they do not verify if the license number accurate. Ms. DeMarco stated that all forms of advertisement including text messages and Facebook would need to have a license number or it would become an enforcement issue. Ms. Hegje

clarified that the graph depicted complaint cases the Board received for false advertising.

Gary McGavin made a motion to support the three staff recommendations to the Board at its next meeting.

Fred Cullum seconded the motion.

Members Cullum, DeMarco, McGavin and Chair Pearman voted in favor of the motion. The motion passed 4-0.

H. Legislative Update:

Assembly Bill (AB) 1076 (Ting, 2019) Criminal Records: Automatic Relief

Jasmine Newman provided a legislative update for AB 1076 to the REC, noting that the bill is currently in the Senate Appropriations Committee. Ms. Newman noted that this update was for informational purposes and no action was needed by the REC.

Senate Bill (SB) 608 (Glazer, 2019) Architects and Landscape Architects

Jasmine Newman provided a legislative update for Senate Bill 608, noting that the bill extends the sunset date for the Board and LATC and beginning January 1, 2021, requires the Board to fingerprint candidates for licensure. Ms. Newman noted that this update was for informational purposes, and no action was needed by the REC. Ms. Newman stated that the Board supported the bill and had submitted a letter in support.

Ms. DeMarco questioned who was responsible for the increased costs to implement fingerprinting. Ms. Hegje explained that the increased costs for fingerprinting and background checks would be a cost to the candidate.

Mr. McGavin asked about BPC section 5552.5 (Implementation of Intern Development Program), which stated, "the Board may, by regulation, implement an intern development program" to provide a training experience. He inquired if the Board would continue to offer the work experience only path whereby candidates work full time for five years under the direct supervision of a licensed US architect. Ms. Zuniga clarified that the change was only technical and that the Intern Development Program (IDP) had changed its name. She confirmed that the Board would continue to allow the work experience only pathway.

Mr. Pearman asked if the bill was expected to pass. Ms. Zuniga answered in the affirmative.

The committee discussed the procedure for background checks and fingerprinting.

SB 721 (Hill, Chapter 445, Statutes of 2018) Building Standards: Decks and Balconies: Inspection

Michael Sganga presented this item and reminded the Committee that they had previously discussed the legislative response to the 2015 Berkeley Balcony Collapse. The Committee last year expressed concerns about the involvement of architects in the new inspection criteria, and their potential liability. SB 721 became effective September 17, 2018 and has been incorporated into Health and Safety Code section 17973 (Exterior Elevated Elements: Inspections) and part of Civil Code section 1954 (Hiring of Real Property).

He explained with regard to the effect on architects: they are listed as one of the four types of professionals who are authorized to perform the required inspections of Exterior Elevated Elements and provide a written evaluation to the property owner within 45 days. The law provides for a Building Safety Lien against the property owner if the recommended repairs are not done within 180 days, but it does not address any liability of the inspector.

Mr. McGavin asked whether any of the architectural insurance companies voiced an issue with the term “inspection,” which they do not generally allow as part of an architect’s description of services. Mr. Sganga pointed out that the word “inspection” is very clearly defined in the law. Mr. McGavin asked whether this had come up at any AIA California board meetings. A member of the public representing the AIA California said that she would follow up with the issue.

***F. Discuss and Possible Action on 2017/2018 Strategic Plan Objective to Update the Building Official Information Guide to Better Educate Local Building Officials on the Architects Practice Act**

The Committee continued to discuss exempt building and structures. Mr. McGavin commented that BPC section 5536.2 requires verification of licensure and states it should be done at the time of initial submittal of the plans and specifications, and the building department will require the architect to stamp and sign the plans before a permit will be issued. He stated the California Coastal Commission has different jurisdiction than the planning departments. Ms. Zuniga commented that additional outreach can be done to include the California Coastal Commission to reiterate this information.

Ms. DeMarco referred to page 12 in the *Guide* which includes information about building designers, as well as page 31 regarding interior designers to discuss the services and title they may use. Ms. DeMarco suggested adding more information on page 12 of the *Guide*. Ms. Hegje pointed out that additional information can be found on about unlicensed individuals on page 40.

Mr. Cullum commented that the Building Standards Commission should be contacted for potential changes to the California Residential Code (CRC) and California Building Code; specifically, regarding CRC R101.2 (Townhouse; Scope). Ms. Zuniga commented that staff could research this issue.

Fred Cullum made a motion to accept the proposed revisions to the Building Official Information Guide and bring the Guide to the Board at its next meeting.

Gary McGavin seconded the motion.

Members Cullum, DeMarco, McGavin and Chair Pearman voted in favor of the motion. The motion passed 4-0.

I. Adjournment

The meeting adjourned at 12:47 p.m.

**Agenda item "F" was continued for this meeting and taken out of order to accommodate presenters of items. The order of business conducted herein follows the transaction of business.*