



California Architects Board
Regulatory and Enforcement Committee
November 18, 2022
Teleconference Via WebEx





Committee Members
Ronald A. Jones, Chair
Robert C. Pearman Jr.,
Vice Chair
Robert Chase
Sylvia Kwan
Steven Winkel

NOTICE OF TELECONFERENCE MEETING

November 18, 2022

The Regulatory and Enforcement Committee (Committee) of the California Architects Board (Board) will meet by teleconference at

10:00 a.m., on Friday, November 18, 2022

NOTE: Pursuant to Government Code section 11133, this meeting will be held by teleconference with no physical public locations.

Important Notice to the Public: The Committee will hold a public meeting via WebEx Events.

Teleconference Information to Register/Join Meeting for Members of the Public via WebEx Events. To participate in the WebEx meeting, please log on to this website the date of the meeting:

To access the WebEx event, attendees will need to click the following link and enter their first name, last name, email, and the event password listed below:

<https://dca-meetings.webex.com/dca-meetings/j.php?MTID=m83468eb001069e4ff43bb49b3a5cef43>

If joining using the link above

Webinar number: 2487 036 6697
Webinar password: CAB11182022

If joining by phone: 1-415-655-0001 US Toll

Access code: 248 703 66697
Passcode: 22211182

Due to potential technical difficulties, please consider submitting written comments by November 11, 2022, to cab@dca.ca.gov for consideration.

(Continued)

Instructions to connect to the meeting can be found at the end of this agenda.

Members of the public may, but are not obligated to, provide their names or personal information as a condition of observing or participating in the meeting. When signing into the WebEx platform, participants may be asked for their name and email address. Participants who choose not to provide their names will be required to provide a unique identifier, such as their initials or another alternative, so that the meeting moderator can identify individuals who wish to make public comment. Participants who choose not to provide their email address may utilize a fictitious email address in the following sample format: XXXXX@mailinator.com.

AGENDA

10:00 a.m. to 2:00 p.m.
(or until completion of business)

Action may be taken on any item listed below.

- A. Call to Order / Roll Call / Establishment of a Quorum
- B. Chair's Procedural Remarks and Committee Member Introductory Comments
- C. Public Comment on Items Not on the Agenda
The Committee may not discuss or act 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 January 25, 2022, Committee Meeting Minutes
- E. Enforcement Program Update
- F. Discuss and Update on 2022-2024 Strategic Plan Objectives:
 - 1. Provide more detail on enforcement cases in the Executive Officer report during board meetings regarding decisions on cases, to make information more accessible and inform consumers.
 - 2. Develop narrative discussions and case studies of common violations to educate and inform consumers and architects on what violations to avoid.
 - 3. Better educate practitioners on standards of practice during the renewal process to protect the public.
 - 4. Educate the public and practitioners regarding their roles when contracts are signed with a third party (contractor/developer).

5. Review the current threshold for fines to determine if they are appropriate to deter violations.
6. Monitor social media to proactively enforce against unlicensed advertising.

G. 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.

The Committee plans to webcast the meeting on the Board's website at www.cab.ca.gov. Webcast availability cannot be guaranteed due to limitations on resources or technical difficulties.

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)).

This meeting is being held via WebEx Events. The meeting is accessible to the physically disabled. A person who needs a disability-related accommodation or modification to participate in the meeting may make a request by contacting:

Person: Katie Wiley
Telephone: (916) 471-0762
Email: katie.wiley@dca.ca.gov
Telecommunications Relay Service: Dial 711

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

Providing your request at least five (5) 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).

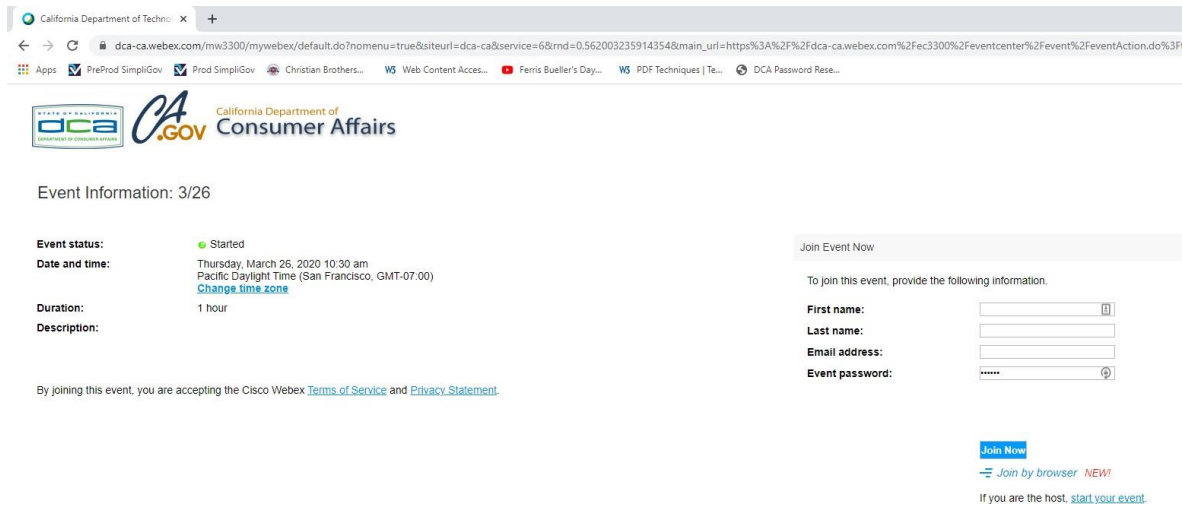
HOW TO – Join – DCA WebEx Event

The following contains instructions on how to join a WebEx event hosted by the Department of Consumer Affairs (DCA).

1. Navigate to the WebEx event link provided by the DCA entity (an example link is provided below for reference) via an internet browser.

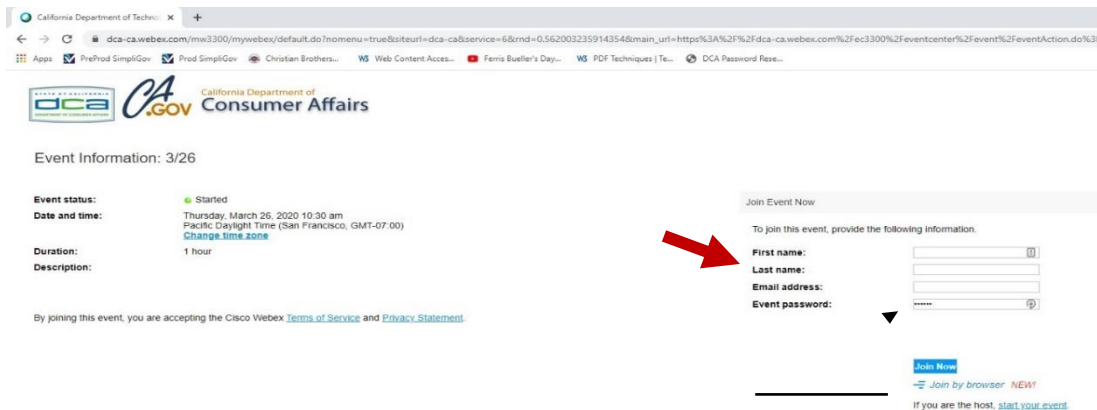
Example link:

<https://dca-ca.webex.com/dca-ca/onstage/g.php?MTID=eb0a73a251f0201d9d5ef3aaa9e978bb5>



2. The details of the event are presented on the left of the screen and the required information for you to complete is on the right.

NOTE: If there is a potential that you will participate in this event during a Public Comment period, you must identify yourself in a manner that the event Host can then identify your line and unmute it so the event participants can hear your public comment. The 'First name', 'Last name' and 'Email address' fields do not need to reflect your identity. The department will use the name or moniker you provide here to identify your communication line should you participate during public comment.



HOW TO – Join – DCA WebEx Event

3. Click the 'Join Now' button.

NOTE: The event password will be entered automatically. If you alter the password by accident, close the browser and click the event link provided again.

Join Event Now

To join this event, provide the following information.

First name:

Last name:

Email address:

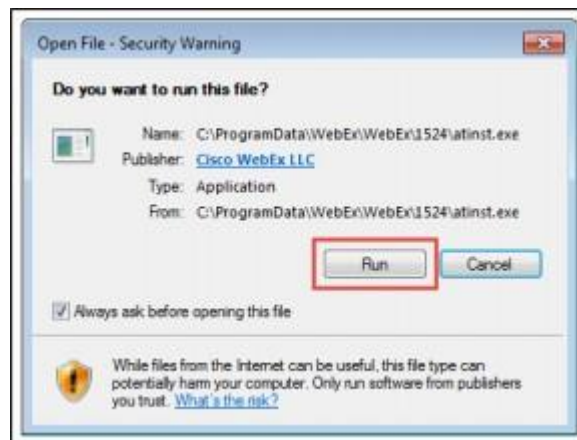
Event password:

Join Now

[Join by browser](#) **NEW!**

If you are the host, [start your event](#).

4. If you do not have the WebEx applet installed for your browser, a new window may open, so make sure your pop-up blocker is disabled. You may see a window asking you to open or run new software. Click 'Run'.



Depending on your computer's settings, you may be blocked from running the necessary software. If this is the case, click 'Cancel' and return to the browser tab that looks like the window below. You can bypass the above process.

HOW TO – Join – DCA WebEx Event

- To bypass step 4, click 'Run a temporary application'.

Starting Webex...



Still having trouble? [Run a temporary application](#) to join this meeting immediately.

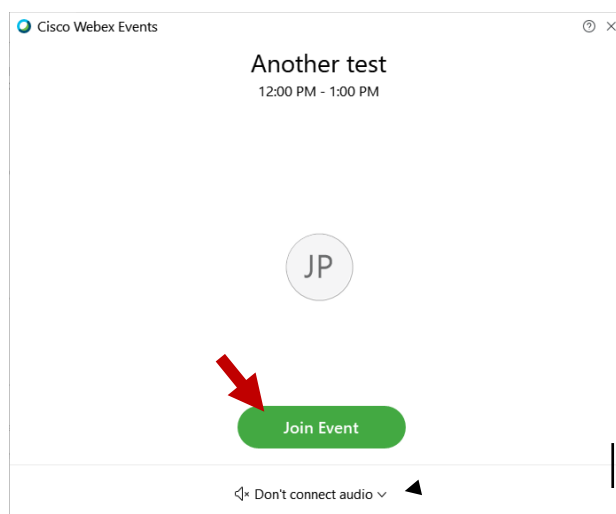
- A dialog box will appear at the bottom of the page, click 'Run'.



The temporary software will run, and the meeting window will open.

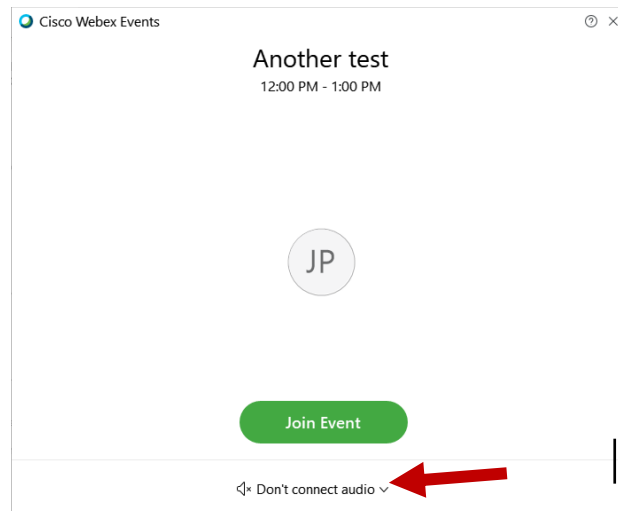
NOTE: The preferred audio connection to our event is via telephone conference or headset. Use of an open microphone and speakers through your computer could result in issue with audio clarity and potential feedback/echo.

- If using a headset plugged into your computer, click the 'Join Event' button.

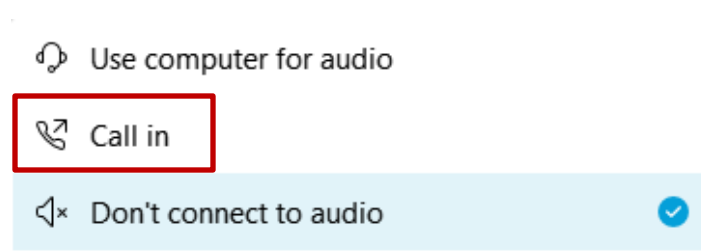


HOW TO – Join – DCA WebEx Event

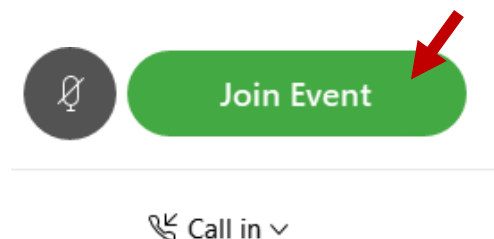
8. If using teleconference via your phone for audio, click the audio menu below the green 'Join Event' button.



9. When the audio menu appears click 'Call in'.

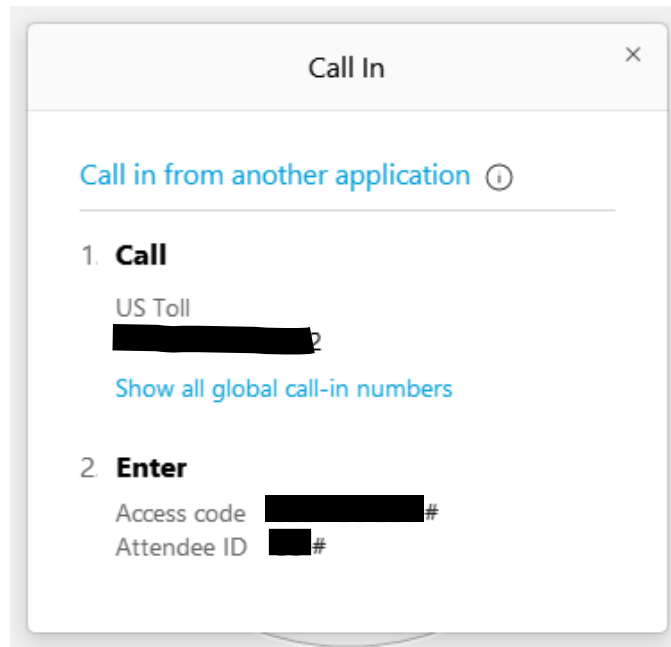


10. Click 'Join Event'. The audio conference call in information will be available after you join the Event.



HOW TO – Join – DCA WebEx Event

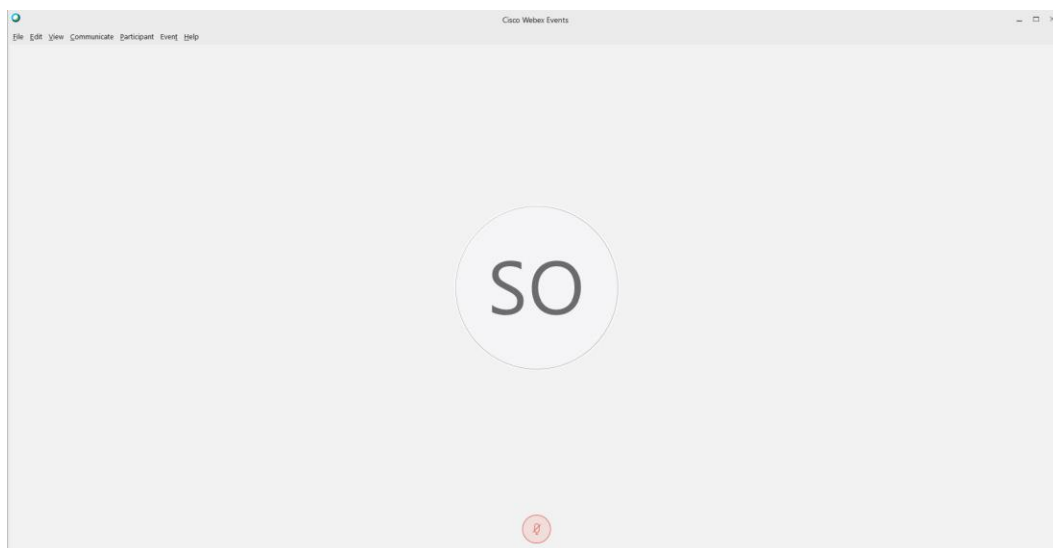
11. Call into the audio conference with the details provided.



NOTE: The audio conference is the preferred method. Using your computer's microphone and speakers is not recommended.

Once you successfully call into the audio conference with the information provided, your screen will look like the screen below and you have joined the event.

Congratulations!

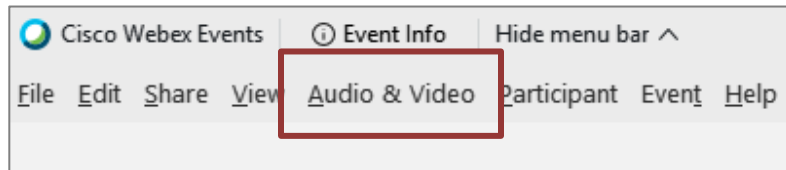


NOTE: Your audio line is muted and can only be unmuted by the event host.

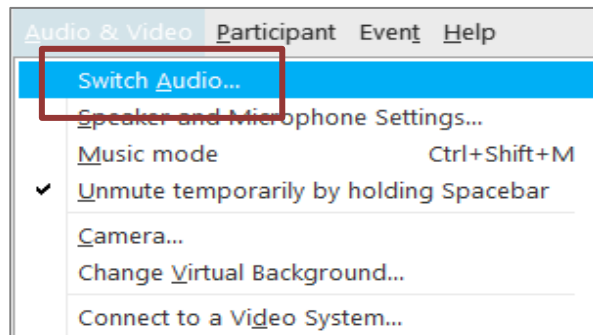
Selecting Audio Connection After Joining

If you join the meeting using your computer's microphone and audio, or you didn't connect audio at all, you can still set that up while you are in the meeting.

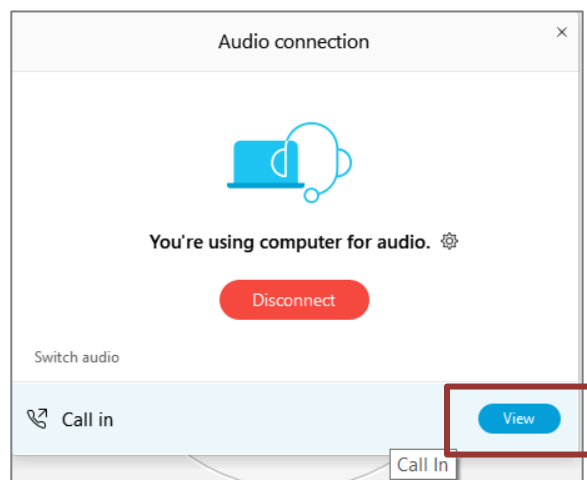
1. Select 'Audio & Video' from the menu bar at the top of your screen.



2. Select "Switch Audio" from the drop-down menu.



3. The 'Call In' information can be displayed by selecting 'View'



You will then be presented the dial in information for you to call in from any phone.

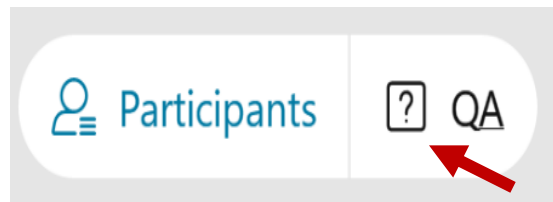
HOW TO – Join – DCA WebEx Event

Participating During a Public Comment Period

At certain times during the event, the facilitator may call for public comment.

Using the Question & Answer feature (Q&A):

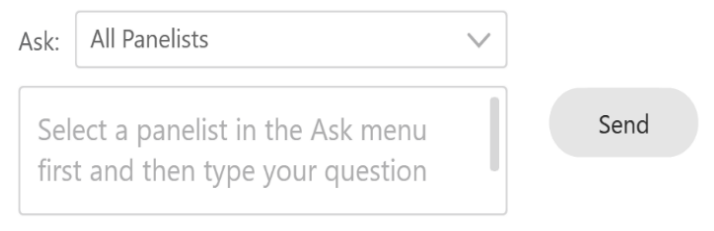
If you would like to make a public comment, click on the 'Q and A' button near the bottom, center of your WebEx session.



This will bring up the 'Q and A' chat box.

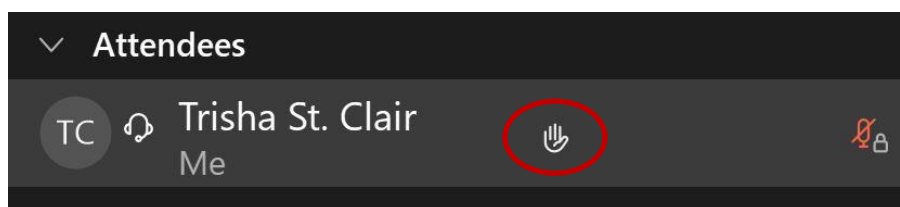
NOTE: The 'Q and A' button will only be available when the event host opens it during a public comment period.

Make sure the 'Ask' menu is set to 'All panelists' and type 'I would like to make a public comment'.



Using the hand raise feature:

If the program elects to allow use of the hand raise feature and you would like to make a public comment, click on the hand icon next to your name.



Please click on the hand icon again once your comment has been presented to lower your hand.

HOW TO – Join – DCA WebEx Event

Attendee lines will be unmuted in the order the requests were received, and you will be allowed to present public comment.

When you are identified as the next commenter, the moderator will unmute your line, sending you a request to unmute yourself. Clicking “unmute me” on the pop-up window will open your microphone. You may then begin providing your public comment.



NOTE: Your line will be muted at the end of the allotted public comment duration. You will be given a warning that your time is about to expire.

AGENDA ITEM A: CALL TO ORDER / ROLL CALL / ESTABLISHMENT OF A QUORUM

Roll will be called by Vice Chair, Robert C. Pearman Jr.

Three members of the Committee constitute a quorum for the transaction of business. The concurrence of three members in attendance during a duly held meeting at which a quorum is established shall be necessary to constitute an act or decision of the Committee.

Committee Members

Ronald A. Jones, Chair
Robert C. Pearman Jr., Vice Chair
Robert Chase
Sylvia Kwan
Steven Winkel

AGENDA ITEM B: CHAIR'S PROCEDURAL REMARKS AND COMMITTEE MEMBER INTRODUCTORY COMMENTS

Committee Chair Ronald A. Jones will review scheduled actions and make appropriate announcements.

AGENDA ITEM C: PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA

Members of the public may address the Committee at this time.

The Committee may not discuss or act 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 or place the matter on the agenda of a future meeting (Government Code sections 11125 and 11125.7(a)).

Public comments will also be taken on agenda items at the time an item is heard and prior to the Committee taking any action. Total time allocated for public comment may be limited at the discretion of the Chair.

**AGENDA ITEM D: REVIEW AND POSSIBLE ACTION ON JANUARY 25, 2022
REGULATORY ENFORCEMENT COMMITTEE MEETING
MINUTES**

Action Requested

Approval of the January 25, 2022 meeting minutes.

Attachment

Draft January 25, 2022 meeting minutes



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

January 25, 2022
Teleconference Meeting

Committee Members Present

Ronald A. Jones, Chair
Robert C. Pearman, Jr., Vice Chair (left early)
Robert Chase
Sylvia Kwan

Committee Members Absent

Steven Winkel

Board Staff Present

Laura Zuniga, Executive Officer
Alicia Kroeger, Program Manager, Enforcement
Jane Kreidler, Program Manager, Administrative
Marccus Reinhardt, Program Manager, Examinations/Licensing
Annamarie Fernandez, Enforcement Technician
Coleen Galvan, Communications Analyst
Darren Dumas, Examination/Licensing Analyst
Idris Ahmed, Enforcement Analyst
Jasmine Steinwert, Enforcement Analyst
Jesse Bruinsma, Continuing Education Analyst
Michael Sganga, Lead Enforcement Analyst
Katie Wiley, Enforcement Analyst

DCA Staff

David Bouilly, Host
Mike Sanchez, Television Specialist, Office of Public Affairs

Guests

Cary Bernstein, Director San Francisco, The American Institute of Architects, California (AIACC)
Mark Christian, Director of Government Relations, AIACC
Mark Paone, VP of Strategic Planning & Research, AIACC
Rona Rothenberg, President, AIACC
Tian Feng, Board President (left early)

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

Regulatory and Enforcement Committee (REC) Chair Ronald A. Jones., called the meeting to order at 12:05 p.m.

Robert Pearman 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. Jones announced the meeting is being held by teleconference and pursuant to the provisions of Governor Gavin Newsom’s Executive Order N-1-22, dated January 5, 2022 a physical meeting location is not being provided.

Mr. Jones welcomed everyone and acknowledged and appreciated the service provided by former committee members Cheryl DeMarco, Robert Ho, and Sheran Voigt. New member Robert Chase provided a self-introduction. Mr. Jones also noted that Mr. Pearman served as committee chair for several years and wanted to recognize his contributions.

C. Public Comment on Items Not on the Agenda

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

D. Review and Possible Action on November 5, 2020 REC Meeting Minutes

Mr. Jones asked if there were any questions, comments, or changes to the November 5, 2020 REC Meeting Minutes. There were none.

Robert Pearman moved to approve the November 5, 2020 REC Meeting Minutes.

Sylvia Kwan seconded the motion.

Members Kwan, Pearman, and Chair Jones voted in favor of the motion. Member Chase abstained. The motion passed 3-0-1.

E. Discuss and Possible Action on 2022-2024 Strategic Plan Objective to:

Mr. Jones provided an overview of the Board’s tasks as it pertains to consumer protection where he defined consumer protection as the practice of safeguarding

buyers of goods and services in the public against unfair practices in the market place.

These objectives will narrow the committee's focus over the next few years and break them into specific categories. Mr. Jones sees them as 1) enforcement mechanisms; 2) educate licensees and consumers about roles, responsibilities, and expectations; and 3) monitoring unlicensed individuals and how they promote themselves. Mr. Jones would like to lean on the historical knowledge of Mr. Chase and Steven Winkel for guidance on these particular areas. Mr. Jones suggested that the Committee narrow their efforts to three elements: education, enforcement, and monitoring to establish achievable goals. Mr. Jones sought to verify the current process to determine how it can be expanded.

1. Provide more detail on decisions made in enforcement cases in the Executive Officer report during board meetings and inform consumers.

Mr. Jones would like to determine how the opinions are formed and how to inform consumers of the standards. Laura Zuniga explained that staff can put information into the next report to determine the Board members expectations are met.

Mr. Pearman discussed that there is an Executive Officer Report provided to the Board where this information is available. He stated that it is a matter of highlighting the information in an informative and educational manner to distribute it to the website and to the Committee. This material should focus on key items that licensees can avoid and provide consumers with awareness of expectations for licensees.

Mr. Jones asked if the enforcement process could be easily defined, specifically, if there was consistency of violations and application of the investigation and enforcement process. Mr. Chase offered that he felt that the decisions of case closure and fines have been consistent. Mr. Pearman interjected that the expanded statistics would offer additional clarity to determine and explain any areas of variations.

Mr. Jones pondered how decisions are reached and wished to understand the complaint process.

Ms. Zuniga offered that providing the types of cases and complaints that come to the Board would provide perspective on the totality of cases and determinations that staff make.

Mr. Jones requested a process narrative of enforcement cases received by the Board to help identify what is subjective and objective. The hope is a better understanding will assist with narrowing the gap between subjectivity and objectivity.

Ms. Kwan mentioned that these discussions have been held in closed session and Board members do not always agree with recommendations at first, but approximately 90 percent of the time the members come around to understand the recommendation provided. Ms. Kwan noted that licensees often do not fight a decision, they come to realize the violations of the Architects Practice Act (Act) and accept the verdict, including the outcome and the fine without too much resistance. There are a few that may appeal the final outcome.

Mr. Jones reflected that it would be important to understand the violations and the fine as it applies to the Act. He feels it is important to understand both the process and the application used to close each case. Staff report clear findings, but it is not clear if there is a blatant disregard for the requirements or a misunderstanding of the requirements by architects.

Ms. Kwan stated that cases are often initiated by clients of the architect and they are never opened due to a licensee self-reporting. There are several ways clients can get assistance by taking the licensee to court with a civil claim, small claims court, or by submitting a complaint to the Board. The Board needs to carefully review the evidence because sometimes it is a he said, she said dynamic. Most of the actions take place when the architect does not meet the contractual obligations and they have already been paid by their client. Ms. Zuniga concurred that complaints are usually based on a contractual dispute.

Mr. Jones added that there are two parallel lanes in the profession, the practice of architecture (design, development, construction documentation, and construction administration) and the business of architecture (business or contractual component). He is an advocate for tying together continuing education with professional practices.

Mr. Pearman remarked that mitigating factors, source of the complaint, or how the amount of the fine (minimum/maximum) and how that was decided would be helpful information to include in the enforcement process presentation. Mr. Jones agreed and stated that objectives one and five are tied together and will support each other in providing feedback.

Mr. Chase commented that the Act specifies three different levels of violations and fine amounts. This Act determines the minimum and maximum citation

amount per type of violation as referenced in the California Code of Regulations section 152 (Citations).

2. Develop narrative discussions and case studies of common violations to educate and inform consumers and architects on what violations to avoid.

Mr. Jones pointed out two key elements 1) most cases are against unlicensed residential designers, as opposed to large firm practitioners who are protected by the veil of their employer's corporate structure and 2) roughly 25 percent of all violations apply to unlicensed individuals.

Ms. Zuniga explained this objective may take a little more effort to identify what type of information can be retrieved from the enforcement cases and transform that into an educational narrative.

Mr. Jones believes education should be available to licensees and consumers. He would like to be able to capture the most common types of violations and the types of construction so the Committee can focus a targeted campaign to reach specific types of professionals. Mr. Chase commented that contract violations are the most prominent violation due to lack of communication between the licensee and the client.

Mr. Jones suggested the mechanisms for education will include printed and digital, such as printed publications and small video vignettes. Mr. Pearman inquired if there are any volunteer senior architect types that could counsel a licensee as part of discipline to provide hands on practical advice and knowledge on how to run the business side and suggested that we work with The American Institute of Architects (AIA) or other organization to find a similar type of program.

Mr. Jones explained that once we identify where licensees are lacking knowledge then we can direct violators to specific coursework. Ms. Zuniga stated that we could explore this option. Ms. Kwan added that a video or seminar with best business practices of architecture would be useful to prevent violations. Mr. Jones agreed the the Board needs to identify the vehicles to communicate and educate including reaching out to colleges and universities for assistance.

Alicia Kroeger mentioned the Board has published the *Architect Licensure Handbook* which could be updated with information on common violations, prevention, and compliance. Mr. Jones questioned if there are ways during the renewal process to acknowledge actions such as providing a Business Entity Report Form (BERF) or reviewing a informational document. Ms. Zuniga clarified that during the renewal process the Board can publicize information, but she was not sure there was a way for the licensee to attest to the completion of the item

and staff can research that request. Mr. Jones wanted to know if the renewal process could include a BERF confirmation.

Ms. Kwan suggested the use of architect consultants or Board staff to provide questions for the California Supplemental Exam (CSE) which the Board has control over to include questions, such as “are you familiar with the architects handbook?” Mr. Jones wondered if there was still a professional practice category. Ms. Zuniga agreed to check with the Licensing Unit on the matter.

3. Better educate practitioners on standards of practice during the renewal process to protect the public.

Mr. Jones described that he wants licensees to be aware of their roles and responsibilities. He often wonders if these licensees in violation of services and professional practices are due to ignorance or negligence. Mr. Jones wants a better understanding whether those in violation are from malfeasance or ignorance with the intent provide educational resources that will help reduce future violations.

Ms. Zuniga explained that staff can identify and develop required information to be included in the renewal process. The intent is to educate licensees of requirements and recent changes to the law. Committee members are welcome to provide feedback of topics that may be included in the educational resources.

4. Educate the public and practitioners regarding their rights and roles when contracts are signed.

Mr. Jones explained this objective is to educate consumers of the connections between the licensee and services provided to the consumer by licensed professionals. Architects often contract their services through developers, contractors, and design build entities. The Committee is asked to clarify the relationship between the consumer and the architect in those structures and to ensure both parties understand their roles in the relationship.

Mr. Jones described himself as a residential design professional that mostly designs houses. He explained that contracts involving other parties provide the most challenges for consumers. Additionally, he questions who is responsible to the consumer when a gap exists. Mr. Chase commented that issues do arise when you have an architect who contracted with a developer and there is not a contract between the architect and the consumer that buys the home. The law states the architect must have a contract with the client, and in some cases the client is the developer, not the consumer. Ms. Kwan suggested that the contract be between the consumer and the architect and would outline the expectations

for the relationship and contractual terms. Mr. Jones and Ms. Kwan emphasized the importance and need of educational videos pertaining to these issues.

Mr. Jones noted that it is not uncommon for a home owner in a subdivision to contact the architect for the plans to their home. To release the plans the home owner would need authorization from the client (developer) to release those plans to the home owner.

5. Review the current threshold for fines to determine if they are appropriate to deter violations.

Mr. Jones discussed that the threshold for fine amounts are tied to the violation. He opined there should be some correlation between the fine amount and the type of violation.

Ms. Zuniga requested the Committee to provide feedback on the amounts included in the fine structure, and specifically how it should evolve.

6. Monitor social media to proactively enforce against unlicensed advertising.

Mr. Jones pointed out that about one third of violations involve unlicensed individuals and questioned how we monitor unlicensed practice. Based on the minutes from prior meetings, it is clear that many of the unlicensed individuals fail to pay their fines. Mr. Jones stated there is not a lot of recourse, because it is expensive and cumbersome to pursue collection on fines ensued by unlicensed individuals.

Ms. Zuniga explained that this objective can be completed by staff, but requested the Committee provide a scope for for a better understanding of achieving this objective.

Mr. Jones pointed out there is software that could assist staff with determining those who are unlicensed and advertise online. The software is capable of a mass online search, but he was unsure of the requirements of using this software and it's capability.

Ms. Kwan commented that social media is used to advertise architectural services for unlicensed individuals. Ms. Zuniga confirmed these types of complaints do get reported to the Board by consumers, or noticed by staff. Mr. Jones restated that a huge portion of violations come from unlicensed individuals advertising architectural services. Ms. Kroeger pointed out that advertising cases are also generated from other architects when they notice a

website or business card of an unlicensed individual offering and/or providing architectural services. She questioned if the Enforcement Unit had the man power to search and monitor the internet for these types of offenses. Ms. Kroeger mentioned the Board is currently working on a regulation that requires licensees to include their license number on any advertisements with the intent to more efficiently to determine the individuals who are licensed.

Mr. Jones referred to the *Building Official Information Guide* and pointed out that he felt that was important for building officials to report violations of unlicensed individuals. He further stated the importance and obligation of a writer to confirm the individual is licensed before publishing an article. Mr. Chase commented that in the past he has contacted an author and/or an editor of an article and requested a correction to the article when an error is made by identifying the individual as an architect.

Mr. Jones would like to know the current process of staff for monitoring to determine how it could be improved. Ms. Zuniga suggested that staff could reach out to other boards to examine their best practices. Mr. Chase recognized the challenges for Board staff to request corrections for professional service categories on various social media platforms by unlicensed individuals. Mr. Jones discussed the possibility of co-publishing documents with other organizations such as AIA or the California Building Officials (CALBO).

Mr. Pearman requested that Mr. Jones identify the software program that allows an easier search of the internet to determine the unlicensed individuals advertising architectural services. Additionally, he suggested that after the regulation for adding a license number to all advertising becomes effective publications for consumers can be created to include directions of how to determine an advertisement for architectural services is a licensed professional.

F. Discussion and Possible Action on Revising the Building Official Information Guide

Cary Bernstein discussed some concerns AIA has with the *Building Official Information Guide* and is requesting revisions. AIA sent a letter dated July 27, 2021, to the Board that focused on unlicensed individuals regarding Business and Professions Code (BPC) section 5538 (Planning or Design Affecting Safety of Building or Its Occupants; Nonstructural Store Front or Interior Alterations or Additions Excepted) and Chapter 16 Structural Design, Building Code section 1613 (Earthquake Loads). Unlicensed individuals are not permitted to furnish or design plans for alterations or structures for renovations or those that require other types of engineering beyond conventional woodframe construction. The building code has been updated to include the primary structure along with secondary and

tertiary structures including parts that are fixed to a building. For example, suspended ceilings in commercial spaces requires seismic attachments. AIA believes this would prevent unlicensed individuals from pursuing work and obtaining building permits.

Mark Paone with AIA is asking that the Board to align the Building Code and BPC 5538 regarding work allowed by unlicensed individuals. Mr. Paone explained that he believes BPC section 5538 is written wisely and focuses on seismic forces, but it does not define building elements like the Building Code. The Building Code is constantly updated. He used an example of earthquakes that occurred in the 1980s and 1990s where research shows which building elements experience seismic forces.

BPC section 5538 and Building Code section 1613.1 use almost identical language to describe non-structural elements of a building, which are commonly referred to as tenant improvements (TI). These changes make unlicensed individuals ineligible for the non-seismic exemption in BPC section 5538. During the last update made in 1990 to BPC section 5538 were not updated in the code.

AIA would like the *Building Official Information Guide* to be updated to include a reference to Building Code 1613.1 everytime BPC section 5538 is mentioned and specifically outline which elements do and do not experience seismic forces.

Ms. Kwan agreed that many building officials would not be aware of the elements that do and do not experience seismic forces.

Mr. Jones questioned if these are common violations for commercial projects and suggested engagement between building officials and CALBO.

Mr. Chase stated that when reaching out to building officials there needs to be consistency between what is in the Act and what is in statute. Mr. Chase suggested a better approach would be to reach out to CALBO and convey this information to the building officials. Mr. Chase mentioned that Mark Christian with AIA commonly attends CALBO on AIA's behalf.

Mr. Paone stated that CALBO wanted clarification from the Board on this issue.

Ms. Zuniga interjected that this is the first time she has heard of this request from CALBO and will have staff look into it.

Mr. Paone summarized that he is concerned about safety. Specifically on high rises that are impacted by earthquakes. There was a hospital recently that did not suffer

primary damage due to an earthquake but suffered 150 million dollars in interior damage.

Ms. Bernstein stated that she is just as concerned with smaller scale buildings including residential and commercial projects, and unenforced masonry buildings as commercial TI projects.

Mr. Chase explained that it is building department's design review's responsibility to confirm if a licensed architect is required for a project.

Rona Rothenberg commented that she has been in practice for several decades and she has seen a pattern in the types of common violations. It is the client's burden to verify that professional is licensed. Engage through small and large firms to ensure they are aware of the standards of care. She also referred to Civil Code section 2782.8(a) regarding duty to defend so practitioners of all levels are aware of the standards of practice. This will be beneficial to the public to ensure health, welfare, and life safety.

Mr. Jones asked that staff look into this topic a little further.

I. Adjournment

The meeting adjourned at 1:53 p.m.

AGENDA ITEM E: ENFORCEMENT PROGRAM UPDATE

Summary

Attached is the Enforcement Program Update, which is a synopsis of Board and Enforcement Program activities and projects of interest to the Regulatory and Enforcement Committee.

Also included in this item is an overview of Final Citations (July 2021-September 2022) and Final Administrative Actions (July 2021-September 2022) that became effective in the last fiscal year.

Attachment(s)

1. Enforcement Program Update (July 2021 through September 2022)
2. Citations (July 2021 through September 2022)
3. Final Administrative Actions (July 2021 through September 2022)

ENFORCEMENT PROGRAM UPDATE

July 2021 through September 2022

Building Official Information Guide The Board updated the *Building Official Information Guide (Guide)* in 2019. The purpose of this Guide is to aid building officials and others in understanding and enforcing the laws and regulations governing the practice of architecture in California. The Guide is available online and last revised September 22, 2020 to include additional information regarding landscape architects. The Board is in the process of collecting contact information for all Building Officials to remind them of this Guide and to offer a copy for their department.

California Code of Regulations (CCR) Section 154 (Disciplinary Guidelines) Initial documents for the regulatory package were submitted to LAD on September 19, 2019. Staff incorporated LAD's feedback and the initial budget document was approved by the BO on October 19, 2020. On November 18, 2020 LAD forwarded the initial documents to the next level of review in the process and edits were required. Staff sent documents to LAD on September 8 and October 10, 2021. LAD is currently reviewing the regulatory language in light of edits made on LATC's Disciplinary Guidelines so the language in these two regulatory packages are better aligned.

CCR Section 135 (Architectural Advertising) This regulatory proposal establishes the requirement for architect licensees to include their name and license number on any public advertisement or presentment. The Board considered REC's recommendation at its February 28, 2020 meeting to adopt a regulation to require architects to include their license number on all forms of advertisement solicitation or other presentments to the public in connection with the rendition of architectural services. During the meeting, staff presented proposed regulatory text for CCR section 135 (Presentment and Advertising Requirements) for the Board's consideration. The Board expressed concern regarding how the regulation's implementation and whether it would protect consumers, and asked the issue be returned to the REC to find data on how such a regulation would increase consumer protection. At the November 5, 2020 REC meeting, staff presented research addressing the Board's concerns and the committee discussed the regulatory package. The Board approved the proposed regulatory language for CCR section 135 at its December 11, 2020 meeting. Board staff submitted the initial regulatory package to LAD in April 2021. LAD's suggested changes were presented and approved at the September 10, 2021 Board meeting. The 45-day public comment period ended February 15, 2022. A public hearing was requested and held February 18, 2022. Staff worked with LAD to prepare proposed modified text to address concerns raised in the public comments, and a memo to the Board responding to adverse public comments both of which were on the February 18, 2022 Board meeting agenda. The Board decided to postpone consideration of this item to the June 8, 2022 Board meeting. During the September 16, 2022 meeting, the Board voted to hear this item in the December 9, 2022 Board meeting.

CCR Section 152 (Citations) was amended effective October 1, 2022. In addition to citations for advertising violations and unlicensed practice (BPC 5536), CCR 152 now allows the Board to issue citations to unlicensed persons for the following:

BPC 5536.1 – Failure of persons preparing or being in responsible control of plans, specifications, and instruments of service for others to sign those plans, specifications, and instruments of service and all contracts therefor.

BPC 5536.4 - Use of an architect's instruments of service, as those professional services are described in paragraph (2) of subdivision (b) of Section 5500.1, without the consent of the architect in a written contract, written agreement, or written license specifically authorizing that use.

BPC 5536.5 – Violation of subdivision (a) of Section 5536 in connection with the offer or performance of architectural services for the repair of damage to a residential or nonresidential structure caused by a natural disaster for which a state of emergency is proclaimed by the Governor or President.

The text for CCR 152 can be found at:

[https://govt.westlaw.com/calregs/Document/I76F6AEC0354F11EDBEE8EA2E26D1DB2B?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/Document/I76F6AEC0354F11EDBEE8EA2E26D1DB2B?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default))

Enforcement Subject Matter Expert (SME) Program Since November 2019, the Board has been using a pool of qualified SMEs to provide case review, technical evaluation, and courtroom testimony. With the success of the SME Program the Board has decided to renew contracts with the contractors that are available to for case review. This process has enabled a more efficient use of the Board's Staff resources. The Board has a pool of SMEs some of which have completed numerous expert opinion reports. Staff continue to assign cases on an ongoing basis, as needed.

Architects Complaints and Enforcement Actions

Category	July 2021 – Sept. 2022	Previous FY 21–22
Complaints		
Received	72	267
Opened	72	267
Closed	96	264
Average Days to Close	390	166
Pending	123	147
Citations		
Issued	2	25
Final	8	23
Attorney General		
Pending Attorney General	3	4
Final	0	5

Complaints Received

Type of Complaint Received	FY 2022/23 (as of 9/30/22)	FY 2021/22
Advertising	12	47
Continuing Education	0	0
Licensee	21	77
Settlement	7	34
Unlicensed	27	109

Complaints Closed

Type of Closure	FY 2022/23 (as of 9/30/22)	FY 2021/2022
Cease/Desist Compliance	10	14
Citation Issued	2	25
Complaint Withdrawn	1	3
Insufficient Evidence	15	14
Letter of Advisement	26	93
No Jurisdiction	10	20
No Violation	23	84
Referred for Disciplinary Action	0	2
Other (i.e., Duplicate, Mediated, etc.)	9	8

Final Citations

James Adams (Bonsall) – The Board issued a two-count citation that included a \$2,500 administrative fine to James Adams, an unlicensed individual, dba Archavision International, for alleged violations of Business and Professions Code sections 5536(a) and 5536.1(c), and California Code of Regulations title 16, section 134(a). On or about January 7, 2020, Adams executed a contract with J.W. (client) to provide design services for a commercial winery project in Fallbrook, California. Adams' scope of work included the preparation of plans, elevations, sketches, and renderings for four different venues. Adams quoted the client \$342,500 for these services, of which \$157,250 was paid.

Adams' offering to and preparing plans for a new commercial winery project, which is not a building exempt from the licensing requirements of the Architects Practice Act, constituted a violation of Business and Professions Code section 5536(a) and 5536.1(c).

Adams' use of a business name, which includes an abbreviation of the term "architect" without a California licensed architect who is in management control of the services that are offered and provided by the business entity and either the owner, a part-owner, an officer, or an employee of the business entity, constitutes a violation of California Code of Regulations title 16, section 134(a). His contract and online profiles using that name, including his company LinkedIn profile, which also stated "Archavision International is an architecture & planning company" and his company Google profile which described him as "Architect in Newport Beach, California," are devices that might indicate to the public that Adams is qualified to engage in the practice of architecture in California in violation of Business and Professions Code section 5536(a). The citation became final on May 13, 2022.

Biayna Bogosian (Los Angeles) – The Board issued a one-count citation that included a \$1,000 administrative fine to Biayna Bogosian, an unlicensed individual, for violations of Business and Professions Code section 5536(a) (Practice Without License or Holding Self Out as Architect) and Title 16, California Code of Regulations section 134(a) (Use of the Term Architect). The action alleged that on and between February 4, 2020 and September 1, 2021, Bogosian used the title "architect" on her personal website which also stated, "Complementary to my academic studies have been my teaching experience and architectural design practice called Somewhere Something." Bogosian's LinkedIn profile used the title of "Architect" and listed "Architecture" under her Skills and Endorsements. Bogosian's Woodbury University profile stated "Biayna Bogosian is an architect and interactive media designer." The citation became final on October 28, 2021.

Alberto Bohon (Los Angeles) The Board issued a one-count citation that included a \$1,500 administrative fine to Alberto Bohon, an unlicensed individual, doing business as Alberto's Design, for alleged violations of Business and Professions Code section 5536(a).

In or around August 2020, Bohon provided Ms. C.M. with a “project bid proposal” for a residential project located in Los Angeles, California. Bohon’s proposal offered to complete “architectural drawings” and to provide “ARCHITECTURAL SERVICES.”, Bohon’s personal LinkedIn profile also identified him as a “Project Architect.”

In response to the Board’s investigation, Bohon revised his proposal template, but failed to change his LinkedIn profile. In October 2018, Bohon had previously been issued a Letter of Advisement regarding his use of the word “architectural” in his business devices and was cautioned that future violations would result in enforcement action.

Bohon’s proposal and profile, wherein he identified himself as a “Project Architect” and described his services as “Architectural,” are devices that might indicate to the public that Bohon is an architect or qualified to engage in the practice of architecture in California. Such conduct constitutes violations of Business and Professions Code section 5536(a). The citation became final on April 28, 2022.

Jefferson J. Choi (Irvine) – The Board issued a one-count citation that included a \$300 administrative fine to Jefferson J. Choi, architect license number C-31631, for alleged violations of Business and Professions Code (BPC) section 5536.4(a). The Board received a complaint on or about April 17, 2020, from an architectural firm alleging that Choi had used the firm’s plans to design a shopping center in Long Beach without the consent of the firm or the licensed architect who prepared them.

Choi had obtained the plans from his client after the original architect had withdrawn for lack of payment and made minor changes to them without first obtaining permission from the previous architect. Choi’s use of another architect’s instruments of service without obtaining the consent of the architect in a written contract, written agreement, or written license specifically authorizing that use is a violation of BPC section 5536.4(a). Choi paid the fine, satisfying the citation. The citation became final on December 3, 2021.

Anthony G. Cutri (San Diego) – The Board issued a one-count citation that included a \$3,000 administrative fine to Anthony G. Cutri, architect license number C-11116, for an alleged violation of Business and Professions Code (BPC) section 5536.22(a).

In November 2013, Cutri agreed to design a \$600,000 single-story residence, casita, and garage for a plot of land his cousin and her husband (Clients) were going to buy in the city of Santee. Cutri told them no contract was necessary because they were “famiglia.” By July 19, 2014, the Clients had paid the agreed upon total price of \$35,000.

On or about April 27, 2015, Cutri surprised his clients with a “proposal” to take over additional services, including entitlements, grading plan, plan check/building permits and construction administration.

The Clients had believed that many of these services were included in their original agreement, but there was no initial written contract establishing the original scope or the method for accommodating additional services. The additional fees resulted in a total of \$40,175 that the Clients paid to Cutri.

Cutri took until April 2018 to finish the plans. He initially told his Clients that there “wasn’t a lot involved” in the plan check process and that he would “cover it.” In fact, the plans were rejected by the city’s plan review service. Cutri then delayed the project further by denying responsibility for the corrections. Finally in late 2018, the plans were approved, but when the Clients sent them out for bids, the construction estimates all came back at well over \$1,000,000. They never pulled the permits and eventually had to sell their land.

Cutri’s failure to execute a written contract prior to providing professional services constituted a violation of Business and Professions Code section 5536.22(a), and caused tremendous confusion surrounding the project details including: the cost and scope of architectural services, the estimated construction costs, the timeline for completion, responsibility for coordinating with consultants, plan check corrections, and other aspects of the project, such as Title 24, structural calculations, entitlements, grading plans, construction administration, printing and submission to the city of Santee.

In addition to the architectural fees, none of which was returned, there was significant financial injury to the Clients, in that they were left with a fully graded pad of land that they could not afford to build on and were forced to sell. Both Clients are senior citizens, and one is disabled, facts of which Cutri was aware. Cutri entered into a stipulated settlement with the Board which became effective on February 16, 2022.

Cynthia Easton (Sacramento) – The Board issued a two-count citation that included a \$750 administrative fine to Cynthia Easton, architect license number C-10344, for alleged violations of Business and Professions Code section 5536.22(a)(4) (Written Contract) and California Code of Regulations, title 16, section 160(f)(1) (Rules of Professional Conduct – Informed Consent).

The action alleged that on or around May 16, 2019, Respondent entered into a written contract to provide Mr. V.A. (client) with architectural and engineering services related to the construction of a new garage, revisions to an existing garage and a new second floor unit above the existing garage for a residence located in Sacramento, California for a total fee of \$20,600.

Provisions were made for additional costs including messenger and other delivery fees, travel expenses, photocopying and other reproduction costs, but the contract did not include a description of the procedure that the architect and the client would use to accommodate additional design services. Respondent's failure to include an additional services provision in the written contract for the above-referenced project constituted a violation of Business and Professions Code section 5536.22(a)(4).

During the course of the project, Respondent invoiced her client for additional design services in the amount of \$5,237.50 when there was no written authorization for them.

Billing for a material alteration to the scope of the project without first fully informing her client and obtaining the consent of her client in writing, constituted a violation of California Code of Regulations section 160(f)(1). Easton paid the fine satisfying the citation. The citation became final on November 5, 2021.

Adam Ezrachi (Woodland Hills) – The Board issued a one-count citation that included a \$1,500 administrative fine to Adam Ezrachi, an unlicensed individual, doing business as Creation Builders, Inc. for alleged violations of Business and Professions Code section 5536(a) and California Code of Regulations title 16, section 134(a).

On or about May 11, 2018, Respondent provided Ms. J. B. (client) with a home improvement contract agreeing to provide “architectural plans” for the extension of an existing balcony and an addition to a residence located on Vista Panorama in Santa Ana, California for a fixed fee of \$6,500.

Creation Builders, Inc. used a change order form dated July 23, 2018, to explain that the foundation needed to be reinforced at an additional fee of \$4,500, and that the remaining balance due was \$5,100 upon receipt of the plans approved by the county. The change order form, under the company’s letterhead, included a checkbox labeled “Architect,” implying that the company employed a licensee on the project.

A review of Board records failed to show that a licensed architect provides professional services through the business entity Creation Builders, Inc.

Respondent’s home improvement agreement and change order form wherein Respondent described his services as “Architectural” and “Architect,” are devices that might indicate to the public that Respondent is an architect or qualified to engage in the practice of architecture in California. Such conduct constitutes violations of Business and Professions Code section 5536(a) and California Code of Regulations title 16, section 134(a). The citation became final on March 31, 2022.

Kenneth F. Ibarra (San Bruno) – The Board issued a one-count citation that included a \$500 administrative fine to Kenneth F. Ibarra, Architect license number C-15478, doing business as Ibarra Associates Architecture & Planning, for alleged violations of Business and Professions Code sections 5536.22(a)(8), 5558, and 5584 and Title 16, California Code of Regulations sections 160(a)(2) and 160(b)(1).

On or about February 26, 2020, Ibarra entered into a written contract to provide architectural services related to the remodel and addition to an existing one-story single-family residence

located in San Bruno, California for an estimated fee of \$6,000. Ibarra agreed to complete the project in one week but took approximately ten months to present his first set of two schematic design drawings. His lack of communication with his clients and failure to timely complete the work constituted a violation of Business and Professions Code Section 5584 and California Code of Regulations sections 160(a)(2) (Incompetence) and 160(b)(1) (Negligence).

Board records revealed that Ibarra had not filed the proper and current name and address of the entity through which he provided architectural services, Ibarra Associates Architecture & Planning, a violation of Business and Professions Code section 5558. Ibarra also failed to include a statement in at least 12-point type that reads: "Architects are licensed and regulated by the California Architects Board located at 2420 Del Paso Road, Suite 105, Sacramento, CA 95834." in his written contract for the above-referenced project, a violation of Business and Professions Code section 5536.22(a)(8). Ibarra paid the fine, satisfying the citation. The citation became final on September 15, 2022.

Georgiy Novitskiy (San Jose) – The Board issued a one-count citation that included a \$1,500 administrative fine to Georgiy Novitskiy, an unlicensed individual, dba Geo Design, for alleged violations of Business and Professions Code section 5536(a) (Holding himself out as an architect).

Between January and April 2022, Novitskiy's company website stated, "Thank you for visiting my Architectural Portfolio and business website" and referenced his Facebook profile "facebook.com/geo.design.arch." Novitskiy's website and Facebook profile wherein Novitskiy described his services as "Arch" and "Architectural," are devices that might indicate to the public that Novitskiy is an architect or qualified to engage in the practice of architecture in California. Such conduct constitutes violations of Business and Professions Code section 5536(a).

Between February 1, 2022, and March 10, 2022, the Board sent letters via certified and regular mail to Novitskiy which requested a written response to the allegations and documentation of revisions to his business devices. A certified delivery receipt was returned to the Board with Novitskiy's signature, but he never replied. The citation became final on June 16, 2022.

Joseph Phan (Fountain Valley) – The Board issued a one-count citation that included a \$1,500 administrative fine to Joseph Phan, an unlicensed individual, doing business as Joseph Phan & Associates, for alleged violations of Business and Professions Code section 5536(a) and California Code of Regulations title 16, section 134(a).

On or about June 11, 2018, Respondent, doing business as "Joseph Phan & Associates," provided a contract to Mr. D.P. and Mrs. T.N. (clients) for a single-family residential project located on Ardsley Circle in Huntington Beach, California.

The services offered in the agreement included "Architecture and Planning" and "Architectural design & construction documents." The total cost of the contract was estimated at \$24,750.

On or about May 6, 2021, Respondent's advertising signage placed outside of the Ardsley Project identified him as an "ARCHITECT." Respondent's Houzz profile under the business name "Joseph Phan & Associates" was categorized under "Architects."

Further, in documents filed with the City of Huntington Beach Building Division, the Respondent's company was referred to as an "Architectural Designer" on the cover page document submitted for the Ardsley Project.

Respondent's advertising signage, contract, Houzz profile, and design plan cover sheet, wherein Respondent described his services as "Architects" and "Architectural," are devices that might indicate to the public that Respondent is an architect or qualified to engage in the practice of architecture in California. Such conduct constitutes violations of Business and Professions Code section 5536(a).

A review of Board records failed to show that a licensed architect provides professional services through the business entity Joseph Phan & Associates.

Respondent used the business name "Joseph Phan & Associates" which included the terms "architects" and "architectural" in its description of services, without an architect who is in management control of the services that are offered and provided by the business entity and either the owner, a part-owner, an officer, or an employee of the business entity. Such constitutes a violation of, Title 16, California Code of Regulations section 134(a). The citation became final on March 31, 2022.

Andrew Roteman (Goleta) – The Board issued a two-count citation that included a \$1,500 administrative fine to Andrew Roteman, architect license number C-14544, for alleged violations of Business and Professions Code section 5584, California Code of Regulations title 16, section 150 (Willful Misconduct), and California Code of Regulations title 16, section 160(c)(1) (Failure to Respond to Board).

Mr. Roteman was hired in 2019 to provide architectural services for an addition to his client's existing residence. The plans were submitted to the city of La Puente, who issued a six-page list of corrections on October 24, 2019. Mr. Roteman failed to complete the architectural services and stopped responding to his client, halting completion of the project.

Mr. Roteman's failure to make corrections required by the city of La Puente for the project constitutes a violation of Business and Professions Code section 5584 and California Code of Regulations, title 16, section 150, Willful Misconduct.

Between July 26, 2021, and January 28, 2022, the Board sent Mr. Roteman four requests for a response to the allegations via certified mail, regular mail, email, and telephone. Mr. Roteman's failure to respond to the Board's requests for information regarding an investigation within 30

days constitutes a violation of California Code of Regulations, title 16, section 160(c)(1). The citation became final on February 25, 2022.

Sam Saleh (Oakland) The Board issued a one-count citation that included a \$1,000 administrative fine to Sam Saleh, an unlicensed individual, doing business as Altus Draft & Design, for alleged violations of Business and Professions Code section 5536(a) and California Code of Regulations, title 16, section 134(a).

On and between January 22, 2021, and August 31, 2021, Saleh’s company website stated, “We offer drafting services specializing in: Architectural, Engineering, Construction Documents, Permit Sets, Title 24 and Calgreen analysis” and described his process for “preparing the architectural portion of your project.” Saleh’s company profile on Thumbtack offered architectural services and was categorized under “Architects.” His company profile on Yelp was categorized under “Architects.”

Saleh’s company website, Thumbtack and Yelp profiles, wherein he described himself as providing “architectural services,” and categorized himself under “Architects,” are devices that might indicate to the public that Saleh is an architect or qualified to engage in the practice of architecture in California. Such conduct constitutes violations of Business and Professions Code section 5536(a). His use of the term “architectural” in his company’s description of services, without an architect in management control of the services offered and provided by the business entity and either an owner, part-owner, officer, or employee of the business entity constitutes a violation of California Code of Regulations, title 16, section 134(a). The citation became final on April 1, 2022.

Armen Sarkisian (Glendale) – The Board issued a one-count citation that included a \$1,500 administrative fine to Armen Sarkisian, a licensed engineer, doing business as Unkle Design and Build, for alleged violations of Business and Professions Code section 5536(a). On or about October 14, 2021, Sarkisian’s personal Facebook and LinkedIn profiles identified him as an “Architectural Designer.” Licensed professional engineers are exempt from many provisions of the Architects Practice Act but may not use the title “Architectural Designer” under Business and Professions Code section 5537.4.

Sarkisian has failed to respond to the Board’s multiple requests for a written response and information related to the allegations.

Sarkisian’s online profiles, wherein he described himself as an “Architectural Designer” are devices that might indicate to the public that he is a licensed architect in California. Such conduct constitutes violations of Business and Professions Code section 5536(a). The citation became final on April 28, 2022.

Anat Shmariahu (Cupertino) – The Board issued a one-count citation that included a \$2,000 administrative fine to Anat Shmariahu, an unlicensed person, for alleged violation of Business and Professions Code section 5536(a). The action alleges Shmariahu misrepresented herself as an architect and Anav Design as an architectural firm in California. The Complainant was seeking design services to be completed by a licensed architect. The Complainant located Shmariahu online using a Google search for a local “Architect.” Only after the Complainant contacted Shmariahu was the Complainant informed that the Respondent was not licensed. Shmariahu’s designs posted on dwell.com for the “Japan House” project identified her as the “architect.”

Shmariahu’s personal LinkedIn profile listed “Architecture” and “Architectural” services under Skills & Endorsements. Shmariahu’s advertisement on Home Builder Digest, stated “ANAV Design is a Cupertino-based architecture and interior design studio servicing California’s Bay Area.” Shmariahu’s Houzz profile is categorized under “Architects” and includes the statement, “Peninsula’s Forward- Thinking Architect.” Shmariahu’s online profiles which include Dwell, Home Builder Digest, Houzz, and LinkedIn, wherein Shmariahu describes her skills in “Architecture” and “Architectural” services, and identifies her as an “architect,” are devices that might indicate to the public that Shmariahu is an architect or qualified to engage in the practice of architecture in California. Such conduct constitutes a violation of Business and Professions Code section 5536(a). The citation became final on September 11, 2021.

Donald Statham (North Hills) – The Board issued a one-count citation that included a \$1,500 administrative fine to Donald Statham, an unlicensed individual, dba Artisan Studio Architects, for alleged violations of Business and Professions Code section 5536(a). (Holding himself out as an architect).

On or about October 7, 2019, Statham, doing business as Artisan Studio Architects, entered into a contract with Mr. B. V. (client) to provide plans for a residential garage remodel in Altadena, California for a fixed fee of \$4,800. The client paid Statham through his contractor. The plans were never delivered, and Statham stopped returning his client’s emails and calls.

On or about December 7, 2021, Statham’s personal Facebook, LinkedIn, Alignable and Twitter profiles stated that he was the owner of “Artisan Studio Architects.” A review of Board records failed to show that a licensed architect provides professional services through the business entity Artisan Studio Architects.

A website maintained by Statham reports: “Statham tells the story of being in an early studio with a French design professor. Statham presented his project using metal trusses – which the professor had not yet covered in class. The professor asked, “Mr. Statham, why did you use these materials?” Statham produced a sketch and said, “the architect of this shopping center (on Hillsborough Street) used them very successfully.” The professor said, “What makes you

think you're as qualified as the architect of this shopping center?" Whereupon Statham replied, "I am the architect of this shopping center."

Statham's business name, contract, and online profiles, wherein he described his services and company as "Architecture" and "Architects," are devices that might indicate to the public that Statham is an architect or qualified to engage in the practice of architecture in California. Such conduct constitutes violations of Business and Professions Code section 5536(a) and California Code of Regulations title 16, section 134(a). The citation became final on June 30, 2022.

Daniel Swain (Oakland) – The Board issued a one-count citation that included a \$700 administrative fine to Daniel Swain, architect license number C -28776, for an alleged violation of California Code of Regulations, title 16, section 160(b)(2) (Failure to Respond to Board).

Swain executed a contract for architectural services on or about June 6, 2017.

After the project was completed in or around October 2018, disputes arose between the client and Swain regarding the settlement of the retainer for the project. Swain returned a partial refund of the retainer amount which the client disputed.

On or about September 2, 2020, the Board sent Swain a description of the allegations against him and a request for a written response and documentation in regard to the complaint. Swain failed to provide a response to the request. Between May 11, 2021 and August 6, 2021, the Board sent Swain six additional requests for a response and documentation via certified mail, regular mail, telephone, and email using the most recent information in his licensee record. Swain failed to provide a response to the Board. The Respondent's failure to respond to the Board's requests for information regarding an investigation within 30 days constitutes a violation of California Code of Regulations, title 16, section 160(b)(2). The citation became final on February 25, 2022

Shiv Talwar (Chino) – The Board adopted a proposed decision imposing a \$1,000 administrative fine on Shiv Talwar, architect license number C-23417, for violations of Business and Professions Code sections 5536.22 (Written Contract) and 5558 (Business Entity Report). After an administrative hearing it was found that Talwar had used a written contract to provide professional services to a client which failed to include his license number and a description of the procedure to accommodate additional services. It was also found that Talwar failed to file with the Board the name and address of the business entity through which he provided architectural services. The order of adoption became effective on October 11, 2021.

Kevin Waters (Los Angeles) – The Board issued a one-count citation that included a \$750 administrative fine to Kevin Waters, architect license number C -25786, for an alleged violation of Business and Professions Code (BPC) section 5588.

On or about June 20, 2019, the Board was notified of a \$4,000,000 settlement Waters had entered into on or about June 7, 2019, which had not been reported to the Board. Waters acknowledged the settlement on or about March 12, 2020, in response to a contact letter from the Board dated February 14, 2020.

Waters explained that the CEO of the firm he worked for, Walker Parking Consultants, had handled the claim, and that although Waters had his deposition taken and was in attendance at an early mitigation meeting, he was “unaware the claim was settled.” Waters’ failure to report a settlement over the amount of \$5,000 in a case alleging fraud, deceit, negligence, incompetence, or recklessness is a violation of BPC section 5588. Waters paid the fine, satisfying the citation. The citation became final on February 7, 2022.

Archibald C. Woo (San Francisco) – The Board issued a two-count citation that included a \$500 administrative fine to Archibald C. Woo, architect license number C-25649, for alleged violations of Business and Professions Code section 5536.22(a)(3) (Written Contract) and section 5558 (Mailing Address and Name and Address of Entity Through Which License Holder Provides Architectural Services; Filing Requirements). The action alleged that Woo was hired to provide architectural services for a renovation of an existing space located on Grant Avenue in San Francisco, California for a total fee of \$8,000. The contract failed to include Woo’s name, address, and license number.

Woo’s failure to include his name, address, and license number in the written contract for the above-referenced project constitutes a violation of Business and Professions Code section 5536.22(a)(3). Woo paid the fine, satisfying the citation. The citation became final on September 11, 2021.

Stella Wu (San Mateo) – The Board issued a one-count citation that included a \$1,000 administrative fine to Stella Wu, an unlicensed individual, dba Eano Home Renovations, for alleged violations of Business and Professions Code section 5536(a) (Holding herself out as an architect).

On or about December 2, 2021 Wu’s company website stated, “Meet with our architectural and project management team and receive a quote” and offered, “an Eano architect to share your vision for the project” and “Your architectural and project management team.”

In addition, Wu’s company Apollo website profile stated, “For homeowners, we deliver reliable and seamless custom design and build solutions, including architectural designs...” and under Employees included a “Project Architect,” “Architectural Project Manager,” and “Architectural Designer.” Wu’s company LinkedIn profile stated “For homeowners, we deliver reliable and seamless custom design and build solutions, including architectural designs...” Further, Wu’s company Yelp profile was categorized under “Architects” and stated under Specialties, “We

provide an all-in-one experience from city permit processing to design and planning with in-house architects and experienced contractor team with 10+ year's of experience.”

Wu’s company website, Apollo, LinkedIn, and Yelp profiles, wherein Wu described herself as providing “architectural” services and designs, used the titles of “Project Architect,” “Architectural Project Manager,” and “Architectural Designer,” and categorized her company under “Architects,” are devices that might indicate to the public that Wu is an architect or qualified to engage in the practice of architecture in California. Such conduct constitutes violations of Business and Professions Code section 5536(a). The citation became final on June 2, 2022.

Administrative Actions

Geoffrey Elliott Butler (Mill Valley) – Effective January 9, 2022, and in accordance with a stipulated settlement, Geoffrey Elliott Butler’s architect license number C-21228 was revoked. However, the revocation was stayed, his license suspended for 30 days, and he was placed on probation for three years with specific terms and conditions, including reimbursing the Board for the amount of \$8,964.75 for investigative costs. An Accusation filed against Butler alleged four causes for discipline for violations of: (1) Business and Professions Code (BPC) section 5583 (Fraud/Deceit); (2) BPC section 5584 (Negligence); (3) BPC section 5584 and California Code of Regulations (CCR), title 16, section 150 (Willful Misconduct – Refusal to Provide CAD Files); and (4) BPC section 5584 and CCR, title 16, section 150 (Willful Misconduct - Refusal to Work with Engineer).

The Accusation alleged that on or about June 3, 2017, Butler entered into a contract with his clients to prepare design plans and obtain design approval by the planning commission for a proposed development in Mill Valley, California. The agreement provided that design approval would be achieved by October 2017. On or about July 14, 2017, Butler represented to his clients that he had submitted design plans to the planning commission, and requested and received payment from his clients for performance of that portion of the contract. In actuality, Butler did not submit the plans to the planning department until January 24, 2018.

During the planning process, Butler became uncommunicative for months at a time. Butler also refused to work with the engineer whom his clients had hired to work on the project. His clients ultimately elected to terminate their agreement. Butler then refused to turn over the CAD files that he had created for the project, in violation of the terms of his contract. At Butler’s request, on or about August 9, 2019, his clients signed an additional document which limited their use of the CAD files. Butler nevertheless did not turn over the CAD files until on or about August 13, 2020. Butler entered into a stipulated settlement and the Board adopted the Proposed Disciplinary Order on December 10, 2021. The action became effective on January 9, 2022.

James W. Fenske (South Pasadena) – Effective January 9, 2022, and in accordance with a stipulated settlement, James W. Fenske’s architect license number C-25524 was revoked. However, the revocation was stayed, his license suspended for 30 days, and he was placed on probation for five years with specific terms and conditions, including reimbursing the Board for the amount of \$8,000 for investigative costs. An Accusation filed against Fenske alleged seven causes for discipline for violations of: (1) Business and Professions Code (BPC) section 5583 (Fraud in the Practice of Architecture); (2) California Code of Regulations (CCR), title 16, section 160(c)(2) (Conflict of Interest); (3) BPC section 5584 and CCR, title 16, section 160(a)(2) (Negligence); (4) CCR, title 16, section 160(f)(1) (Informed Consent); (5) CCR, title 16, section 160(b)(1) (Willful Misconduct); (6) BPC sections 5536.22(a)(3) and 5536.22(a)(5) (Written Contract); (7) BPC section 143.5 (Settlement Agreement Provision Requiring Withdrawal of Complaint).

The Accusation alleged that on or about January 18, 2017, Fenske entered into an architectural services agreement with his client K.N. whereby he agreed to provide services including architectural design, construction documentation, and construction administration for a four-story, approximately 2,500 square foot home. Fenske was paid on an hourly basis for architectural services. On or about June 2, 2017, the client hired JWF Construction, Fenske's General Contracting firm, to build the home for a fixed fee of \$865,000 to \$890,000. Following the commencement of construction there were significant problems including: A. Significant errors found in the topographic work of prior surveys provided by the client. These errors necessitated corrective surveying, architectural and structural redesign. B. The late discovery during the foundation caisson drilling operations that the depth from grade of unconsolidated fill material was substantially deeper than originally presumed by the original geotechnical investigation. These conditions required compensatory foundation construction that increased construction costs. C. Incorporation of architectural design modifications while construction was already underway. D. Reported vandalism of onsite work, which primarily consisted of the relocation of survey markers to disrupt the foundation construction layout. In addition, Fenske improperly placed 12 of 13 foundation caissons due to design error, resulting in the need for partial demolition and reconstruction of two caissons, incurring additional cost and delays. Fenske also modified the construction documents to include a roof deck in violation of a 35 feet maximum building height restriction. Finally, Fenske made changes to the construction documents without the client's approval, specifically removing crawl space walls that were required by the County of Los Angeles.

The project eventually exceeded the client's budget, such that its final completion with available funding resources became impossible. The project was therefore suspended at approximately 25% completion status, with Fenske having received approximately 49% - 53% of the total construction contract fixed price. On or about October 18, 2018, K.N. terminated both the June 2, 2017, construction contract and the January 18, 2017, architectural services contract with Respondent.

Thereafter, the client and Fenske executed a civil settlement that required the client to withdraw the complaint filed with the Board. Fenske entered into a stipulated settlement and the Board adopted the Proposed Disciplinary Order on December 10, 2021. The action became effective on January 9, 2022.

Zeden M. Jones (Redwood City) Effective April 17, 2022, Zeden M. Jones' architect license number C-34705 was revoked. The action came after a Default Decision was issued by the Board in connection with two complaints the Board received.

An Accusation filed against Jones on April 22, 2021, alleged four causes for discipline for violations of: (1) Business and Professions Code (BPC) section 5583 (Fraud in Practice of Architecture), (2) BPC section 5584 and California Code of Regulations title 16 section 150 (Willful Misconduct), (3) BPC section 5582.1 (Signing and Stamping Other's Plans), (4) BPC section 5584 and California Code of Regulations title 16 section 160(b)(2)¹ (Failure to Respond to the Board).

The Accusation alleged that on or about February 24, 2018, Jones executed a contract with homeowner D.P. for architectural services related to a kitchen relocation and home addition for a residential property in San Jose, California.

As part of the project, Jones entered into a written contract with Vector Engineers for structural calculations and drawings. Vector Engineers prepared the initial structural calculations and drawings, but Jones never paid them.

Following the payment dispute, Jones needed additional engineering calculations performed. Rather than ask Vector Engineering to do the calculations, Jones plagiarized their calculations from a nearby unrelated project. Jones submitted structural calculations to the building department dated April 5, 2019, of which two pages were copied after removing Vector Engineers' logo and copyright notice. Jones replaced the Vector Engineer's logo with his own, then stamped and signed the sheets as his own. The building department did not approve Jones' structural calculations.

On or about July 5, 2019, the Board received a second complaint against Jones alleging professional misconduct associated with his design of tenant improvements for a restaurant in San Jose. Jones failed to comply with the Board's multiple requests for a response and information related to the project.

The Board's Default Decision and Order was issued on March 18, 2022, and became effective on April 17, 2022.

William K. Spencer (Rancho Mirage) – Effective February 10, 2022, William K. Spencer's architect license number C-4943 was surrendered, and he thereby loses all rights and privileges of an architect in California. The action was the result of a Stipulated Surrender of License and Order, which was adopted by the Board.

On January 7, 2021, an Accusation was filed against Spencer for alleged violations of Business and Professions Code sections 5583 (Fraud in Practice of Architecture), 5584 (Willful Misconduct), 5584 (Negligence), 5585 (Incompetence and/or Recklessness), 5536.22(a)(4), (a)(5), and (a)(6) (Written Contract Requirements), and 5588 (Failure to Report Arbitration Award).

The Accusation alleged that on or about June 17, 2014, Spencer entered into an initial architectural services contract to provide preliminary analysis for a project involving a 32-unit senior affordable housing complex in Los Angeles. The June 17, 2014 contract did not include Spencer's license number, the land owner's address, a description of the procedure to accommodate additional services, or a description of the procedure to terminate the contract.

On or about July 14, 2014, Spencer entered into a second contract with the land owner to proceed with developing the final design for permit and construction of the project, assist with the permit approval process, and prepare drawings in accordance with the applicable codes and regulations, and

obtain approval of affordable senior housing, density bonus, and reduced parking covenants. The contract price was \$148,000, which was based upon 5% of the estimated construction costs of \$2.8 million. The July 14, 2014 contract did not contain Spencer's license number.

Between July 22 and September 30, 2014, Spencer falsely represented to the land owner that the project was progressing in a manner consistent with the contract and applicable building code and regulation requirements, when in fact Spencer failed to adequately verify building codes and regulations. Upon Spencer's request, the land owner paid Spencer a total of \$147,000 over the course of the project.

On or about June 15, 2015, the plans were submitted to the Los Angeles Department of Building and Safety, who rejected the plans on or about July 31, 2015, issuing approximately 174 plan check corrections and comments, noting a number of significant design deficiencies.

On or about August 26, 2017, Spencer sent the land owner a statement of services receipt, indicating that Spencer had completed the Phase 1 plans for 31 units with engineering and preliminary plan design for 30 units with no engineering as required by the contract, and had been paid \$147,000. However, Spencer failed to address the LADBS comments to correct the rejected plans, and therefore produced no useable plans for the land owner, a permit was not obtained, and the project was not constructed. The lot remains vacant and unconstructed.

On or about September 29, 2017, the land owner filed suit against Spencer in Los Angeles Superior Court.

On or about July 18, 2019, the parties stipulated to the case proceeding by binding arbitration. Spencer failed to appear at the arbitration hearing on September 23, 2019, and in a binding arbitration decision dated October 19, 2019, the land owner was awarded damages in the amount of \$152,250, plus attorney's fees and court costs, which were estimated to be an additional \$20,164.13. Spencer failed to report the arbitration award to the Board in writing within 30 days of the arbitration decision. On January 11, 2022, the Board adopted a Stipulated Surrender of License and Order, which became effective on February 10, 2022.

**AGENDA ITEM F: DISCUSS AND POSSIBLE ACTION ON 2022-2024
STRATEGIC PLAN OBJECTIVES**

- F.1 Provide more detail on decisions made in enforcement cases in the Executive Officer report during board meetings and inform consumers.
- F.2 Develop narrative discussions and case studies of common violations to educate and inform consumers and architects on what violations to avoid.
- F.3 Better educate practitioners on standards of practice during the renewal process to protect the public.
- F.4 Educate the public and practitioners regarding their rights and roles when contracts are signed.
- F.5 Review the current threshold for fines to determine if they are appropriate to deter violations.
- F.6 Monitor social media to proactively enforce against unlicensed advertising.

**AGENDA ITEM F.1: DISCUSSION OF STRATEGIC PLAN OBJECTIVE 2.1 –
PROVIDE MORE DETAIL ON ENFORCEMENT CASES IN
THE EXECUTIVE OFFICER REPORT DURING BOARD
MEETINGS REGARDING DECISIONS ON CASES, TO
MAKE INFORMATION MORE ACCESSIBLE AND INFORM
CONSUMERS.**

Summary

Analyst Michael Sganga will describe the Enforcement Unit's complaint process, from intake through outcome, focusing on the major decision points, common Architect Practice Act violations, and other factors considered in recommending Enforcement Actions.

Action Requested

Discuss points related to the Strategic Plan Objective and recommend methods for presenting the information to Board members, architects, and consumers.

Attachments

1. Consumer Complaint Form
2. Board website information on the Complaint Process
3. Elements of Practice Act Violations



CONSUMER COMPLAINT FORM

The filing of this complaint does not prohibit you from filing a civil action.

Subject (Person Complaint is Against)

Last Name:	Suffix:	Architect License Number (If Known): C-
First Name:	Middle Name:	
Business Name:		
Business Address:		

City:	State/Province:	ZIP/Postal Code:
Country:	Email (If Known):	
Business Phone:	Home Phone (If Known):	

Complainant (Person Making the Complaint)

Last Name:	Suffix:	First Name:	Middle Initial:
Address:			
City:	State/Province:	ZIP/Postal Code:	
Country:	Email:		
Daytime Phone:	Evening Phone:	Best Time of Day to Contact:	

PRIOR TO SIGNING THIS FORM, REVIEW ALL INFORMATION.

I certify and declare under penalty of perjury under the laws of the State of California that all of my representations on this Consumer Complaint Form (including reverse and attachments) are true, correct, and contain no material omissions of fact to the best of my knowledge and belief. If called upon, I will assist in the investigation or in the prosecution of the subject of this complaint or other involved parties, and will, if necessary, swear to a complaint, attend hearings, and testify to facts.

Signature

Date

CONSUMER COMPLAINT FORM

General Information

1. What is the property address of the project?

2. Did you and the Subject sign a written agreement before any services were rendered? YES NO

If **YES**, please attach a copy.

If you do not have a written contract or agreement, please provide a detailed description of the scope of services the Subject was to provide for this project.

3. Do you have copies of canceled checks or other evidence of payment to the Subject? YES NO

If **YES**, please provide copies.

4. Do you have design plans prepared by the Subject? YES NO

If **YES**, please provide copies.

5. What is the current status of the project?

6. Did the building department require an architect or other licensed professional for this project? YES NO

7. Did the Subject explain the construction process and terms of the contract for services prior to starting work on the project? YES NO

8. Indicate thy type of structure involved in this project:

Single-family residential

Multi-unit residential

Nonresidential less than 100,000 square feet

Nonresidential over 100,000 square feet

Specialized structure, such as essential services buildings, hospitals, schools.

9. What is/was the estimated cost of construction for the project?

10. Have you discussed your complaint with the Subject? YES NO

11. Have you contacted an attorney regarding this matter? YES NO

If **YES**, please completed the information below:

Name:

Phone Number:

Address:

12. Have you filed a claim in any court regarding this complaint? YES NO

If **YES**, please complete the information below:

Name of Court:

Hearing Date (if scheduled):

13. Please describe (on a separate sheet of paper and attach) the events which led to your complaint and specify pertinent dates, monies paid, balances owed, amounts claimed by third parties, etc. Please attach any documentation that will help support your complaint.

CONSUMER COMPLAINT FORM

Additional Information

The following questions are optional; however, the California Architects Board (Board) would appreciate your cooperation in completing the questions. The information is confidential and will be used for statistical purposes to guide the Board in future decisions.

14. How did you choose the architect you hired for your project (e.g., personal recommendation, research, phone book listing, etc.)?

15. Have you ever used the services of an architect prior to this project?

- No, I have not used the services of an architect prior to this project.
- Yes, I have worked with the same architect on _____ (indicate number) of past projects.
- Yes, I have worked with a different architect(s) on _____ (indicate number) of past projects.

16. How many architects did you interview before you made a selection? _____

17. What is your occupation?

18. Did you read the Board's *Consumer's Guide to Hiring an Architect* prior to beginning the project? YES NO
If **YES**, did you find the publication helpful?

19. Did you contact the Board to verify the architect's license status and check on any history of complaints prior to beginning the project? YES NO

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Complaint

- ▶ [Against an Architect or Unlicensed Individual](#)
- ▶ [Against the Board](#)
- ▶ [Process](#)

Process

Through its enforcement staff, contracted architect consultants, the Division of Investigation (DOI), and the California Office of the Attorney General (AG), the California Architects Board (Board) identifies and takes appropriate action against licensees who, through their conduct, expose themselves to disciplinary action. The purpose of the disciplinary process is to ensure the health, safety, and welfare of consumers of the State of California and to preserve high standards of practice in this jurisdiction.

All complaints are reviewed by the Board's enforcement staff and if the complaint is technical in nature, a Board contracted architect consultant. Complaints containing allegations that, if proven, constitute grounds for disciplinary action, may be sent to the DOI (DIVISION OF INVESTIGATION). If the investigation (whether referred to the DOI (DIVISION OF INVESTIGATION) or not) confirms the alleged misconduct, the matter may be submitted to the AG (ATTORNEY GENERAL)'s office to determine whether sufficient evidence exists to pursue disciplinary action against the subject. If it is determined that sufficient evidence exists, an accusation is prepared and served upon the subject, and he or she is given the opportunity to request a hearing to contest the charges against him or her.

Acts which are subject to disciplinary action (revocation, suspension, or probationary status of a license) include, but are not limited to: unprofessional conduct, negligence, willful misconduct, conviction of a substantially related crime, fraud, aid and abetting unlicensed practice, incompetency, recklessness, etc.

After an Accusation is filed, the case may be resolved by a stipulated settlement. Stipulations are written agreements between the parties in which the person charged admits to certain violations and agrees that a particular disciplinary order may be imposed. Stipulations are subject to adoption by the Board.

If a stipulated settlement cannot be negotiated, a hearing is held before an Administrative Law Judge of the Office of Administrative Hearings. After the hearing is concluded, the judge issues a proposed decision which is submitted to the Board for adoption as its decision in the matter. If the Board chooses not to adopt the proposed decision, a transcript of the hearing is obtained and reviewed by the Board members who then decide the matter based upon the administrative record. The respondent may petition for reconsideration if dissatisfied with the decision or proceed to file a writ of mandate in the appropriate Superior Court to contest the decision.

Accusations and Final Decisions are a matter of public record and are available upon request by [contacting the Board](#). The complainant will be notified of the outcome of the case. The disciplinary process, from the receipt of the complaint until a final decision is rendered generally takes one to two years if a case goes to hearing.

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Enforcement Actions

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- ▶ [Enforcement Pages](#)
- ▶ [Most Recent Enforcement Actions](#)

Enforcement Pages

Using the first letter of the individual’s last name, select the letter group below that corresponds. This will display enforcement actions for the corresponding letter group.

Enforcement Actions Form

Last Name Starts with a(n):

Overview

The rules and regulations relating to architects, including the authority of the California Architects Board (Board), are set forth in the [Architects Practice Act \(Act\)](#) and the Board’s implementing regulations. All citations refer to the version in effect at the time of the violation.

The Board has an active enforcement program designed to ensure that the laws governing the practice of architecture are enforced in a fair and judicious manner. The program entails consumer education publications, a local building official support program, and professional information outreach designed to prevent and assist in the early detection of violations.

The Board’s enforcement program attempts to address three main goal areas articulated in its mission statement and set as specific goals:

- ▶ Establishing regulatory standards of practice for those licensed as architects
- ▶ Increasing public awareness of the Board’s mission, activities, and services
- ▶ Protecting consumers by preventing violations, and effectively enforcing laws, codes, and standards when violations occur

The Board is responsible for receiving and screening complaints against licensees and performing some of the investigation into these complaints. The Board also retains the authority to make final decisions on all enforcement actions taken against its licensees.

Every effort is made to ensure that enforcement information is correct. You should [contact the Board](#) to inquire if a licensee has had disciplinary action prior to July 1997, to obtain further information on specific violations for a person listed, or before making any decision based upon this information.

In addition to Board’s database, the National Council of Architectural Registration Boards (NCARB) also has a [disciplinary actions database](#).

Most Recent Enforcement Actions

Citations:



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Elements of Architects Practice Act Violations

Advertising [BPC 5536(a), (5536.5 if under state of emergency)]

1. Person not licensed;
2. Uses any term confusingly similar to the word architect; or
3. Advertises or puts out any device that might indicate to the public that he or she
 - a. is an architect,
 - b. is qualified to engage in the practice of architecture*, or
 - c. is an architectural designer.

Business Name [BPC 5536(a), CCR 134]

1. Any person;
2. Uses a business name that includes as part of its title or description of services the term "architect" or a confusingly similar variation; and
3. An architect is not an owner, part-owner, officer or employee of the business and in management control of all the architectural services offered

Unlicensed Practice [BPC 5536(a), 5536.1(c), (5536.5 if under state of emergency)]

1. Person not licensed;
2. Practices architecture* (non-exempt per BPC 5537, CCR 153); or
3. Prepares plans, specifications, or instruments of service for any non-exempt building;
4. Uses the stamp of a licensed architect; or
5. Affixes a stamp or seal that
 - a. Bears the legend "State of California"; or
 - b. Words or symbols that represent or imply that the person is licensed

Signature and Stamp on Plans [BPC 5536.1(a)]

1. Any person;
2. Prepares plans or is in responsible control over preparing plans for others; and
3. Fails to sign those plans, specifications, and instruments of service and all contracts therefor.
 - a. If licensed, must also affix their stamp as described in CCR 136; and
 - b. Does not apply to employees of a licensed person within the course of their work

Written Contract [BPC 5536.22]

1. An architect;
2. Fails to use a written contract to provide professional services;
 - a. Executed by the architect and the client;
 - b. Prior to commencing work unless waived in writing; and
 - c. Including items 1-8.

Use of Architect's Instruments of Service [BPC 5536.4(a)]

1. Any person;
2. Uses an architect's instruments of service;
3. Without written consent.

Withholding Consent [BPC 5536.4(b)]

1. An architect;
2. Unreasonably withholds consent to use instruments of service;
 - (Reasonable: client failure to pay or breach of contract)

Mailing Address / Business Entity [BPC 5558]

1. Holder of a license;
2. Fails to file current mailing address; or
3. Business Entity through which they provide architectural services.

Conviction of Certain Crimes [BPC 5577]

1. An architect;
2. Convicted of a crime substantially related to the qualifications, functions, and duties of an architect per CCR 110.

Fraud in Obtaining License [BPC 5579]

1. Holder of a license;
2. Obtains license by fraud or misrepresentation.
 - (Fraud = deception intended to result in financial or personal gain)
 - (Misrepresentation = giving a false or misleading account of the nature of something)

Impersonation [BPC 5580]

1. Holder of a license;
2. Impersonates an architect, or former architect, of the same or similar name; or
3. Practices under an assumed name.

Aiding Unlawful Practice [BPC 5582]

1. Holder of a license;
2. Aids or Abets in the practice of architecture (by signing any instrument of service** prepared by an unauthorized person per CCR 151); or
3. Any person not authorized to practice.

Signing Other's Plans [BPC 5582.1(a)]

1. Holder of a license; or
2. Signs plans not prepared by them or under their responsible control per CCR 151.

Permitting Misuse of Name [BPC 5582.1(b)]

1. Holder of a license;
2. Permits his or her name to be used;
3. For the purpose of evading provisions of the Act.

Fraud in Practice [BPC 5583]

1. Holder of a license;
2. Guilty of fraud or deceit;
 - (Fraud = deception intended to result in financial or personal gain)
 - (Deceit = concealing or misrepresenting the truth)
3. In the practice of architecture.

Negligence [BPC 5584, CCR 160(b)(1)]

1. Holder of a license; and
2. Guilty of negligence in the practice of architecture: (Failure to apply the technical knowledge and skill which is ordinarily applied by architects of good standing, practicing in this state under similar circumstances and conditions, CCR 160(b)(1)).

Willful Misconduct [BPC 5584, CCR 150]

1. Holder of a license; and
2. Guilty of willful misconduct in the practice of architecture
 - a. Breach of contract together with failure to inform the client of the breach (CCR 150).

Incompetency [BPC 5585, CCR 160(a)]

1. Holder of a license or those engaged as consultants; and
2. Not qualified by education, training, and experience in the specific technical areas involved. (CCR 160(a)(1)); or
3. Knowingly designs a project in violation of applicable building laws, codes, and regulations (CCR 160(b)(1)).

Recklessness [BPC 5585]

1. Holder of a license; and
2. Guilty of recklessness in the practice of architecture: (Recklessness = Conduct that is short of actual intent to cause harm, but greater than simple negligence).

Disciplinary Action by another Public Agency [BPC 5586]

1. Holder of a license; and
2. Fails to report disciplinary action taken by any public agency; and
3. For an act substantially related to practice of architecture per CCR 110

Failure to Report Settlement [BPC 5588]

1. A licensee;
2. Knows of a judgment, settlement, or arbitration award against them;
3. In a civil or administrative action (with a docket number);
4. Alleging fraud, deceit, negligence, incompetence, or recklessness in the practice of architecture;
5. In an amount of \$5,000 or greater; and
6. Fails to report it or respond to the Board within 30 days.

Continuing Education (CE) Audit – Failure to complete [BPC 5600.05(a)]

1. A licensee;
2. Fails to complete required CE coursework prior to renewal
 - (Five hours Accessibility Disability Access (ADA) + five hours Zero Net Carbon Design (ZNCD) within previous two years); or
3. Fails to maintain records of the required coursework for two years;
4. Provides false or misleading information related to CE requirements.

Architectural Corporation Requirements [BPC 5610.2]

1. A licensee;
2. Assists in violation of the Moscone-Knox Professional Corporation Act.

Rules of Professional Conduct [CCR 160] – for licensees

2. Incompetence (see BPC 5585).
3. Standard of Care / Negligence (see BPC 5584).
4. Failure to respond to Board investigation within 30 days.
5. Conflict of Interest:
 - a. Failure to disclose substantial interests;
 - b. Accepting payment from suppliers;
 - c. Business under their inspection; or
 - d. Impartial interpretation of construction contracts.
6. Full Disclosure:
 - a. Accurate representation of qualifications and scope of responsibility.
 - b. Accurate response and report regarding candidate recommendations.
7. Copyright infringement
 - a. Found by court.
8. Informed Consent
 - a. Failure to inform client before materially altering the scope or objective of a project.

[***The practice of architecture** within the meaning and intent of this chapter is defined as offering or performing, or being in responsible control of, professional services which require the skills of an architect in the planning of sites, and the design, in whole or in part, of buildings, or groups of buildings and structures. BPC5500.1(a)]

[** **“Instruments of Service”** are defined as representations of creative work performed by the Architect and the Architect’s consultants. AIA A201-2007 General Conditions]

Potential Actions

Any violation of the Act by a license holder can be grounds for discipline [BPC 5578]

Any violation of the Act or its regulations can result in citation and fine [CCR 152(a)]

- Licensees pursuant to BPC 125.9
- Unlicensed pursuant to BPC 148

Recommended Penalties

Factors to be Considered

In determining whether revocation, suspension, or probation is to be recommended in a given case, factors such as the following should be considered (CCR 154 / Disciplinary Guidelines):

1. Nature and severity of the act(s), offense(s), or crime(s) under consideration.
2. Actual or potential harm to any consumer, client, or the general public.
3. Prior disciplinary record.
4. Number and/or variety of current violations.
5. Aggravating evidence.
6. Mitigating evidence.
7. Evidence, if any, of rehabilitation submitted by the respondent.
8. Time passed since the act(s) or offense(s) occurred.
9. Any financial benefit to the respondent from his or her misconduct.
10. Whether or not the respondent cooperated with the Board's investigation, other law enforcement or regulatory agencies, and/or the injured parties.
11. Recognition by the respondent of his or her wrongdoing and demonstration of corrective action to prevent recurrence.

Citations and Fines

The Board may issue a citation in accordance with CCR 152, as an alternate means to address relatively minor violations not necessarily warranting discipline, or in accordance with BPC 148, against an unlicensed person.

Citations that include an assessment of an administrative fine are classified according to the nature of the violation as follows:

- Class "A" violations are violations that involve an unlicensed person who has violated Business and Professions Code section 5536 (Advertising), 5536.1 (Signature on plans), 5536.4 (Consent to use instruments of service), 5366.5 (Fire zone) or CCR 134 (Business name) \$750 - \$2,500 for each and every violation.
- Class "B" violations are violations that involve a person who, while engaged in the practice of architecture, has caused physical damage or monetary damage, or
- a person who has committed a class "C" violation and has one or more prior, separate class "C" violations. \$1,000 - \$2,500 for each and every violation.
- Class "C" violations are violations that involve a person who, while engaged in the practice of architecture, has not caused injury or damage. \$250 - \$1,000 for each and every violation.

Notwithstanding the administrative fine amounts listed above, a citation may include a fine between \$2,501 and \$5,000 if one or more of the following circumstances apply:

- The citation involves a violation that has an immediate relationship to the health and safety of another person.
- The cited person has a history of two or more prior citations of the same or similar violations.
- The citation involves multiple violations that demonstrate a willful disregard of the law.
- The citation involves a violation or violations perpetrated against a senior citizen or disabled person.

Strategic Plan 2.1 - Complaint Process

	<u>Intake</u>		<u>Analysis</u>		<u>Action</u>		<u>Board</u>
<u>Sources</u>	<u>Preliminary Review</u>	<u>Assignment</u>	<u>APA Violations</u>		<u>Closure Codes</u>		Stats
Mail	<u>Subject:</u>	Advertising	Elements		CC16 - No Violation		
Email	Name	ULP	Investigation		CC17 - Insufficient Evidence Incl. pending litigation		
Fax	Physical Address (US)	Professional Misconduct			Letter of Advisement		
DCA Portal	Company - Owner / BERF	Candidates	Documents:		CC26 - C/D compliant		
Referral		Convictions	Contract		CC33 - No jurisdiction		
Application	<u>Complainant:</u>	Discipline	Plans				
Renewal	Anonymous	SR	Communications				
Settlement Report	Confidential		Invoices		<u>Citation</u>		Summaries
	Clients		Court Docs		Service		
	Building Officials		Written Response		Informal Conference		
	Architects				Administrative Hearing (Settlement?)		
	<u>Jurisdiction:</u>		Interviews		Writ		
	Potential APA Violation		SME Opinion				
	SOL		Consumer Harm		<u>Discipline</u>		Summaries
			Aggravation		Accusation by DAG		Disciplinary Guidelines
			Mitigation		Service		
					Administrative Hearing		Proposed Decision
					Settlement		Approval
					Writ		
					<u>Application Denial</u>		
					Statement of Issues by DAG		
					Administrative Hearing		Proposed Decision
					Collections		
					Retention dates		

Attachments:
 Complaint Form
 CAB Website Info
 Design-Build Memo (F.4)
 APA Elements

**AGENDA ITEM F.2: DISCUSSION OF STRATEGIC PLAN OBJECTIVE 2.2 –
DEVELOP NARRATIVE DISCUSSIONS AND CASE
STUDIES OF COMMON VIOLATIONS TO EDUCATE AND
INFORM CONSUMERS AND ARCHITECTS ON WHAT
VIOLATIONS TO AVOID.**

Summary

The Board's 2022-2024 Strategic Plan contains an objective assigned to the Regulatory and Enforcement Committee (REC) to develop narrative discussions and case studies of common violations to educate and inform consumers and architects on what violations to avoid.

REC members discussed this objective during the January 25, 2022 Committee meeting, and stated that they believe that education should be available to licensees and consumers and wanted to create a targeted campaign to reach specific types of professionals. The REC members preferred that mechanisms of education included both printed and digital, such as printed publications and small video vignettes.

Enforcement Unit staff will be gathering data on the most common violations from complaints received and will create a video seminar or PowerPoint presentation about "Do's and Don'ts," and a newsletter article for distribution to licensees. The presentation will contain best practices and common violations to avoid. The REC also suggested using volunteer architects or contacts at the American Institute of Architects California to provide licensees with practical advice and knowledge on how to run the business side of an architecture practice.

The Board is also considering creating a yearly "Year in Review" article for website publishing containing stats on common violations.

Action Requested

After reviewing the enforcement action summaries in the Enforcement Program update, please discuss which commonly seen violations the Committee would like to be included in a "Do's and Don'ts" video. Discuss other ways to accomplish this objective.

Attachment

1. 2020 CAB Year in Review

CALIFORNIA ARCHITECTS BOARD

2020 Year in Review



Board Members

Tian Feng, President
Nilza Serrano, Vice President
Robert C. Pearman, Jr., Secretary
Malcolm “Brett” Gladstone
Pasqual V. Gutierrez
Ronald A. Jones
Sylvia Kwan
Ebony Lewis
Charles “Sonny” Ward, III

The [California Architects Board](#) (Board) licenses and regulates architects responsible for designing structures throughout the state. The Board protects consumers of architectural services, as well as those who inhabit or use the designed structures. This Brief provides a snapshot for the 2020 calendar year.

LAWS AND REGULATIONS

The Architects Practice Act

<https://www.cab.ca.gov/act/>

Business and Professions Code §§ 5500 – 5610.7

Title 16, Division 2, California Code of Regulations §§ 100 – 160

California Architects Board Mission:

Protect consumers by establishing standards for professional qualifications, ensuring competence through examinations, setting practice standards, and enforcing the Architects Practices Act.

2020 ACCOMPLISHMENTS HIGHLIGHTS

The Board, with the assistance of the Department of Consumer Affairs’ Office of Information Services, implemented an online submission of continuing education (CE) verification. This allows licensees to more easily demonstrate compliance with the CE requirement.

There have been major outreach efforts made by the Board. Early in 2020, the Board released a revised version of the [Building Official Information Guide](#). Board staff also participated in several outreach efforts at California schools with the National Council of Architectural Registration Boards (NCARB) and attended two Architectural Education Summits hosted by the American Institute of Architects, California. Additionally, three [California Architects newsletters](#) were produced.

NEW LEGISLATION

AB 2113 (Low, Chapter 186, Statutes of 2020) requires boards within the Department of Consumer Affairs (Department), including the California Architects Board, to expedite license applications for applicants who are refugees, have been granted asylum, or are holders of a special immigrant visa.

SB 878 (Jones, Chapter 131, Statutes of 2020) requires each board within the Department, including the California Architects Board, that issues licenses to prominently display on its website, on at least a quarterly basis, either the current average timeframes for processing initial and renewal license applications or the combined current average timeframe for processing both initial and renewal license applications.

LICENSEE DATA & EXAM RESULTS

There are approximately 22,360 licensed architects in California. In 2020 of the 1,825 licensees issued by the Board, the majority, 68%, were for license renewals.

2020 Architects Registration Examination Results for California		
Topic	Pass	Fail
Construction & Evaluation	369 (56%)	293 (44%)
Practice Management	483 (45%)	588 (55%)
Programming & Analysis	352 (43%)	466 (57%)
Project Development & Documentation	379 (50%)	384 (50%)
Project Management	460 (56%)	364 (44%)
Project Planning & Design	395 (41%)	573 (59%)

Results for six topic areas, known as divisions, of the Architects Registration Examination (ARE), developed and administered by NCARB, are provide in the table.

ARCHITECTS REGISTRATION EXAMINATION UPDATE

In December 2020, NCARB began providing candidates the option to take the ARE through remote proctoring, in addition to the option of taking the exam in person at a testing center.

ENFORCEMENT DATA– COMPLAINTS, FINES, VIOLATIONS & FINES

The Board received 286 complaints in 2020.

Most complaints received were filed by consumers for allegations such as unlicensed practice, professional misconduct, negligence, and contract violations., or were initiated by the Board upon the failure of a coursework audit. Most disciplinary actions involved practicing without a license. The Board issued 60 citations with 84 violations. Of the 84 violations, 71 fell into four most common categories.

2020 Most Common Violations	Frequency
BPC section 5536(a) - Practice Without License or Holding Self Out as Architect	40
BPC section 5536.22(a) - Written Contract	5
BPC section 5584 - Negligence or Willful Misconduct	6
BPC section 5600.05(a)(1) or (b) - License Renewal Process; Audit; False or Misleading Information on Coursework on Disability Access Requirements	20

In 2020, \$9,000 in fines were assessed. The Board was successful in collecting \$61,120 for prior years' fines.

2020 Total Amount of Fines		
ACTION	YEAR	
	2019	2020
Assessed	\$36,000	\$9,000
Reduced	\$1,000	\$3,250
Collected	\$37,112	\$61,120

PREVIEW – UPCOMING CHANGES

The Board is working on adopting regulations for the following:

- Further define the existing CE requirement,
- Establish a retired license fee,
- Update disciplinary guidelines, advertising requirements, and rules of professional conduct.

The Board is in the midst of a multi-stage process to replace its existing business processing systems, with the goal of implementing a system that will allow for initial and renewal license applications to be submitted online.

The new [fingerprinting requirement](#) went into effect January 1, 2021, requiring candidates to submit fingerprints prior to licensure.

**AGENDA ITEM F.3: DISCUSSION OF STRATEGIC PLAN OBJECTIVE 2.3 –
BETTER EDUCATE PRACTITIONERS ON STANDARDS
OF PRACTICE DURING THE RENEWAL PROCESS TO
PROTECT THE PUBLIC.**

Summary

The Board's 2022-2024 Strategic Plan contains an objective assigned to the Regulatory and Enforcement Committee (REC) to better educate practitioners on standards of practice during the renewal process to protect the public. Committee members discussed this strategic goal during the January 25, 2022 REC meeting, stating they want licensees to be aware of their roles and responsibilities, and wondered if licensees violated the Act due to ignorance. The intent of this goal is to educate licensees on requirements and recent changes to the law, and the Board's Executive Officer stated that Board staff can identify and develop required information to be included as part of the renewal process. It was suggested that the Board create a bulletin detailing the standards of practice.

In the industry the terms "standards of practice" and "standard of care" are used interchangeably.

California Code of Regulations, title 16, section 160(b)(1) defines standard of care as:

When practicing architecture, an architect shall act with reasonable care and competence, and shall apply the technical knowledge and skill which is ordinarily applied by architects of good standing, practicing in this state under similar circumstances and conditions.

AIA sets forth the standard of care as:

"The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project." (AIA B101-2007 § 2.2)

The definition of the standard of care is deliberately non-specific, and the Board cannot create a bulletin dictating what the standard of care includes without further direction. The Board needs to be cautious not to establish a higher standard than the professional standard of care that would otherwise apply.

Possible ways to achieve this strategic plan objective include:

- Create a checkbox requirement that architects certify they've reviewed the Act (or other documentation) during the renewal process;

- Create Bulletin/Fast Facts sheet on what is NOT included in standard of care; and/or
- Create Bulletin/Fast Facts sheet recommending Best Practices for Architects.

Action Requested

Identify intended outcomes and/or understanding of this objective and determine if there is a need to make statutory/regulatory changes. Discuss what information the REC would like included in renewal process.

Attachment

1. Judicial Council of California Definition of Standard of Care
2. California Code of Regulation, title 16, section 160: Rules of Professional Conduct
3. AIA's 2020 Code of Ethics and Professional Conduct
4. AIA Article – The standard of care; How is it applied?
5. AIA Article – The standard of care; Should I care?

600. Standard of Care

[A/An] [insert type of professional] is negligent if [he/she/nonbinary pronoun] fails to use the skill and care that a reasonably careful [insert type of professional] would have used in similar circumstances. This level of skill, knowledge, and care is sometimes referred to as “the standard of care.”

[You must determine the level of skill and care that a reasonably careful [insert type of professional] would use in similar circumstances based only on the testimony of the expert witnesses[, including [name of defendant],] who have testified in this case.]

New September 2003; Revised October 2004, December 2007, May 2020

Directions for Use

Use this instruction for all professional negligence cases other than professional medical negligence, for which CACI No. 501, *Standard of Care for Health Care Professionals*, should be used. See CACI No. 400, *Negligence—Essential Factual Elements*, for an instruction on the plaintiff’s burden of proof. The word “legal” or “professional” should be added before the word “negligence” in the first paragraph of CACI No. 400. (See *Sources and Authority* following CACI No. 500, *Medical Negligence—Essential Factual Elements*.)

Read the second paragraph if the standard of care must be established by expert testimony.

See CACI Nos. 219–221 on evaluating the credibility of expert witnesses.

If the defendant is a specialist in a field, this instruction should be modified to reflect that the defendant is held to the standard of care of a specialist. (*Wright v. Williams* (1975) 47 Cal.App.3d 802, 810 [121 Cal.Rptr. 194].) The standard of care for claims related to a specialist’s expertise is determined by expert testimony. (*Id.* at pp. 810–811.)

Whether an attorney-client relationship exists is a question of law. (*Responsible Citizens v. Superior Court* (1993) 16 Cal.App.4th 1717, 1733 [20 Cal.Rptr.2d 756].) If the evidence bearing upon this decision is in conflict, preliminary factual determinations are necessary. (*Ibid.*) Special instructions may need to be crafted for that purpose.

Sources and Authority

- “The elements of a cause of action in tort for professional negligence are (1) the duty of the professional to use such skill, prudence, and diligence as other members of his profession commonly possess and exercise; (2) a breach of that duty; (3) a proximate causal connection between the negligent conduct and the resulting injury; and (4) actual loss or damage resulting from the professional’s

negligence.” (*Budd v. Nixen* (1971) 6 Cal.3d 195, 200 [98 Cal.Rptr. 849, 491 P.2d 433].)

- “Plaintiffs’ argument that CACI No. 600 altered their burden of proof is misguided in that it assumes that a ‘professional’ standard of care is inherently different than the standard in ordinary negligence cases. It is not. ‘With respect to professionals, their specialized education and training do not serve to impose an increased duty of care but rather are considered additional “circumstances” relevant to an overall assessment of what constitutes “ordinary prudence” in a particular situation.’ ‘Since the standard of care remains constant in terms of “ordinary prudence,” it is clear that denominating a cause of action as one for “professional negligence” does not transmute its underlying character. For substantive purposes, it merely serves to establish the basis by which “ordinary prudence” will be calculated and the defendant’s conduct evaluated.’ ” (*LAOSD Asbestos Cases* (2016) 5 Cal.App.5th 1022, 1050 [211 Cal.Rptr.3d 261], internal citation omitted.)
- “ ‘In addressing breach of duty, “the crucial inquiry is whether [the attorney’s] advice was so legally deficient when it was given that he [or she] may be found to have failed to use ‘such skill, prudence, and diligence as lawyers of ordinary skill and capacity commonly possess and exercise in the performance of the tasks which they undertake.’ . . . ” . . . ’ ” (*Blanks v. Seyfarth Shaw LLP* (2009) 171 Cal.App.4th 336, 357 [89 Cal.Rptr.3d 710].)
- “[I]f the allegedly negligent conduct does not cause damage, it generates no cause of action in tort.” (*Moua v. Pittullo, Howington, Barker, Abernathy, LLP* (2014) 228 Cal.App.4th 107, 112–113 [174 Cal.Rptr.3d 662].)
- “[T]he issue of negligence in a legal malpractice case is ordinarily an issue of fact.” (*Blanks, supra*, 171 Cal.App.4th at p. 376.)
- “ ‘[T]he requirement that the plaintiff prove causation should not be confused with the method or means of doing so. Phrases such as “trial within a trial,” “case within a case,” . . . and “better deal” scenario describe methods of proving causation, not the causation requirement itself or the test for determining whether causation has been established.’ ” (*Knutson v. Foster* (2018) 25 Cal.App.5th 1075, 1091 [236 Cal.Rptr.3d 473].)
- “Plaintiffs argue that ‘laying pipe is not a “profession.” ’ However, case law, statutes, and secondary sources suggest that the scope of those held to a ‘professional’ standard of care—a standard of care similar to others in their profession, as opposed to that of a ‘reasonable person’—is broad enough to encompass a wide range of specialized skills. As a general matter, ‘[t]hose undertaking to render expert services in the practice of a profession or trade are required to have and apply the skill, knowledge and competence ordinarily possessed by their fellow practitioners under similar circumstances, and failure to do so subjects them to liability for negligence.’ ” (*LAOSD Asbestos Cases, supra*, 5 Cal.App.5th at p. 1050.)
- “It is well settled that an attorney is liable for malpractice when his negligent

investigation, advice, or conduct of the client’s affairs results in loss of the client’s meritorious claim.” (*Gutierrez v. Mofid* (1985) 39 Cal.3d 892, 900 [218 Cal.Rptr. 313, 705 P.2d 886].)

- “[A] lawyer holding himself out to the public and the profession as specializing in an area of the law must exercise the skill, prudence, and diligence exercised by other specialists of ordinary skill and capacity specializing in the same field.” (*Wright, supra*, 47 Cal.App.3d at p. 810.)
- “To establish a [professional] malpractice claim, a plaintiff is required to present expert testimony establishing the appropriate standard of care in the relevant community. ‘Standard of care “ ‘is a matter peculiarly within the knowledge of experts; it presents the basic issue in a malpractice action and can only be proved by their testimony [citations]’ ” [Citation.]’ ” (*Quigley v. McClellan* (2013) 214 Cal.App.4th 1276, 1283 [154 Cal.Rptr.3d 719], internal citations omitted.)
- “California law does not require an expert witness to prove professional malpractice in all circumstances. ‘In professional malpractice cases, expert opinion testimony is required to prove or disprove that the defendant performed in accordance with the prevailing standard of care [citation], except in cases where the negligence is obvious to laymen.’ ” (*Ryan v. Real Estate of the Pacific, Inc.* (2019) 32 Cal.App.5th 637, 644–645 [244 Cal.Rptr.3d 129].)
- “Where . . . the malpractice action is brought against an attorney holding himself out as a legal specialist and the claim against him is related to his expertise as such, then only a person knowledgeable in the specialty can define the applicable duty of care and opine whether it was met.” (*Wright, supra*, 47 Cal.App.3d at pp. 810–811, footnote and internal citations omitted.)
- “The standard is that of members of the profession ‘in the same or a similar locality under similar circumstances’ The duty encompasses both a knowledge of law and an obligation of diligent research and informed judgment.” (*Wright, supra*, 47 Cal.App.3d at p. 809, internal citations omitted; but see *Avivi v. Centro Medico Urgente Medical Center* (2008) 159 Cal.App.4th 463, 470–471 [71 Cal.Rptr.3d 707] [geographical location may be a factor to be considered, but by itself, does not provide a practical basis for measuring similar circumstances].)
- Failing to Act Competently. Rules of Professional Conduct, rule 3-110.

Secondary Sources

1 Witkin, California Procedure (5th ed. 2008) Attorneys, § 288

4 Witkin, California Procedure (5th ed. 2008) Pleadings, § 593

6 Witkin, Summary of California Law (11th ed. 2017) Torts, §§ 1124, 1125, 1128–1131

Vapnek, et al., California Practice Guide: Professional Responsibility, Ch. 1-A, *Sources Of Regulation Of Practice Of Law In California-Overview*, ¶ 1:39 (The Rutter Group)

Vapnek, et al., California Practice Guide: Professional Responsibility, Ch. 6-E, *Professional Liability*, ¶¶ 6:230–6:234 (The Rutter Group)

1 Levy et al., California Torts, Ch. 1, *Negligence: Duty and Breach*, § 1.31 (Matthew Bender)

3 Levy et al., California Torts, Ch. 30, *General Principles of Liability of Professionals*, §§ 30.12, 30.13, Ch. 32, *Liability of Attorneys*, § 32.13 (Matthew Bender)

7 California Forms of Pleading and Practice, Ch. 76, *Attorney Professional Liability*, §§ 76.50, 76.51 (Matthew Bender)

33 California Forms of Pleading and Practice, Ch. 380, *Negligence*, § 380.50 (Matthew Bender)

2A California Points and Authorities, Ch. 24A, *Attorneys at Law: Malpractice*, § 24A.20 et seq. (Matthew Bender)

[Home Table of Contents](#)**§ 160. Rules of Professional Conduct.**

16 CA ADC § 160

Barclays Official California Code of Regulations

Barclays California Code of Regulations
Title 16. Professional and Vocational Regulations
Division 2. California Architects Board (Refs & Annos)
Article 9. Professional Conduct

16 CCR § 160

§ 160. Rules of Professional Conduct.[Currentness](#)

A violation of any rule of professional conduct in the practice of architecture constitutes a ground for disciplinary action. Every person who holds a license issued by the Board shall comply with the following:

(a) Competence:

(1) An architect shall undertake to perform professional services only when the architect, together with those whom the architect may engage as consultants, are qualified by education, training, and experience in the specific technical areas involved.

(2) In designing a project, an architect shall have knowledge of all applicable building laws, codes, and regulations. An architect may obtain the advice of other professionals (e.g., attorneys, engineers, and other qualified persons) as to the intent and meaning of such laws, codes, and regulations and shall not knowingly design a project in violation of such laws, codes and regulations.

(b) Standard of Care:

(1) When practicing architecture, an architect shall act with reasonable care and competence, and shall apply the technical knowledge and skill which is ordinarily applied by architects of good standing, practicing in this state under similar circumstances and conditions.

(c) Timely Response to Board:

(1) Whenever the Board is conducting an investigation, an architect or a candidate for licensure shall respond to the Board's requests for information and/or evidence within 30 days of the date mailed to or personally delivered on the architect or a candidate for licensure.

(d) Conflict of Interest:

(1) An architect shall not accept compensation for services from more than one party on a project unless the circumstances are fully disclosed to and agreed to (such disclosure and agreement to be in writing) by all such parties.

(2) If an architect has any business association or financial interest which is substantial enough to influence the architect's judgment in connection with the performance of professional services, the architect shall fully disclose in writing to their client(s) or employer(s) the nature of the business association or financial interest. If the client(s) or employer(s) object(s) to such association or financial interest, the architect shall either terminate such association or interest or offer to give up the project or employment.

(3) An architect shall not solicit or accept payments, rebates, refunds, or commissions whether in the form of money or otherwise from material or equipment suppliers in return for specifying their products to a client of the architect.

(4) An architect shall not engage in a business or activity outside the architect's capacity as an officer, employee, appointee, or agent of a governmental agency knowing that the business or activity may later be subject, directly or indirectly to the control, inspection, review, audit, or enforcement by the architect.

(5) When acting as the interpreter of construction contract documents and the judge of construction contract performance, an architect shall endeavor to secure faithful performance of all parties to the construction contract and shall not show partiality to any party.

(e) Full Disclosure:

(1) An architect shall accurately represent to a prospective or existing client or employer the architect's qualifications and the scope of the architect's responsibility in connection with projects or services for which the architect is claiming credit.

(2) An architect shall respond in writing within 30 days to any request from the Board for information solicited in connection with a candidate's application for a license to practice architecture. When providing information in connection with a candidate's application for a license to practice architecture, an architect shall accurately report the candidate's training or experience for the period of time that the architect had direct supervision of the candidate.

(f) Copyright Infringement:

(1) An architect shall not have been found by a court to have infringed upon the copyrighted works of other architects or design professionals.

(g) Informed Consent:

(1) An architect shall not materially alter the scope or objective of a project without first fully informing the client and obtaining the consent of the client in writing.

Credits

NOTE: Authority cited: Section 5526, Business and Professions Code. Reference: Sections 5526 and 5578, Business and Professions Code.

HISTORY

1. New article 9 (section 160) and section filed 1-13-98; operative 2-12-98 (Register 98, No. 3).
2. New subsections (c)(4) and (e) filed 6-2-99; operative 7-2-99 (Register 99, No. 23).
3. New subsections (b)(2) and (c)(5), amendment of subsection (d)(2) and new subsections (f)-(f)(1) filed 7-12-2007; operative 8-11-2007 (Register 2007, No. 28).
4. Change without regulatory effect amending section filed 11-4-2021 pursuant to section 100, title 1, California Code of Regulations (Register 2021, No. 45).

This database is current through 9/23/22 Register 2022, No. 38.

Cal. Admin. Code tit. 16, § 160, 16 CA ADC § 160

END OF DOCUMENT



2020 Code of Ethics and Professional Conduct

FROM THE OFFICE OF GENERAL COUNSEL

Preamble

Members of The American Institute of Architects are dedicated to the highest standards of professionalism, integrity, and competence. This Code of Ethics and Professional Conduct states guidelines for the conduct of Members in fulfilling those obligations. The Code is arranged in three tiers of statements: Canons, Ethical Standards, and Rules of Conduct:

- Canons are broad principles of conduct.
- Ethical Standards (E.S.) are more specific goals toward which Members should aspire in professional performance and behavior.
- **Rules of Conduct (Rule) are mandatory; violation of a Rule is grounds for disciplinary action by the Institute.** Rules of Conduct, in some instances, implement more than one Canon or Ethical Standard.

The **Code** applies to the professional activities of all classes of Members, wherever they occur. It addresses responsibilities to the public, which the profession serves and enriches; to the clients and users of architecture and in the building industries, who help to shape the built environment; and to the art and science of architecture, that continuum of knowledge and creation which is the heritage and legacy of the profession.

Commentary is provided for some of the Rules of Conduct. That commentary is meant to clarify or elaborate the intent of the rule.

The commentary is not part of the **Code**. Enforcement will be determined by application of the Rules of Conduct alone; the commentary will assist those seeking to conform their conduct to the **Code** and those charged with its enforcement.

Statement in Compliance With Antitrust Law

The following practices are not, in themselves, unethical, unprofessional, or contrary to any policy of The American Institute of Architects or any of its components:

- (1) submitting, at any time, competitive bids or price quotations, including in circumstances where price is the sole or principal consideration in the selection of an architect;
- (2) providing discounts; or
- (3) providing free services.

Individual architects or architecture firms, acting alone and not on behalf of the Institute or any of its components, are free to decide for themselves whether or not to engage in any of these practices. Antitrust law permits the Institute, its components, or Members to advocate legislative or other government policies or actions relating to these practices. Finally, architects should continue to consult with state laws or regulations governing the practice of architecture.

Statement on the Professional Standard of Care

The Code is not intended to suggest or define the standard of care an architect is required to meet in providing its professional services, and should not be used in a civil action against an architect as evidence that the standard of care has been breached. Finally, architects should continue to consult with state laws or regulations governing the practice of architecture.

CANON I

General Obligations

Members should maintain and advance their knowledge of the art and science of architecture, respect the body of architectural accomplishment, contribute to its growth, thoughtfully consider the social and environmental impact of their professional activities, and exercise learned and uncompromised professional judgment.

E.S. 1.1 Knowledge and Skill:

Members should strive to improve their professional knowledge and skill.

Rule 1.101 In practicing architecture, Members shall demonstrate a consistent pattern of reasonable care and competence, and shall apply the technical knowledge and skill which is ordinarily applied by architects of good standing practicing in the same locality.

Commentary: By requiring a consistent pattern of adherence to the common law standard of competence, this rule allows for discipline of a Member who more than infrequently does not achieve that standard. Isolated instances of minor lapses would not provide the basis for discipline.

E.S. 1.2 Standards of Excellence: Members should continually seek to raise the standards of aesthetic excellence, architectural education, research, training, and practice.

E.S. 1.3 Natural and Cultural Heritage: Members should respect and help conserve their natural and cultural heritage while striving to improve the environment and the quality of life within it.

E.S. 1.4 Human Rights: Members should uphold human rights in all their professional endeavors.

Rule 1.401 Members shall not engage in harassment or discrimination in their professional activities on the basis of race, religion, national origin, age, disability, caregiver status, gender, gender identity, or sexual orientation.

Commentary: Harassment may include, but is not limited to, offensive jokes, slurs, epithets or name calling, unwelcome physical contact, or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, and interference with work performance. Petty slights, annoyances, and isolated incidents (unless extremely serious) will not rise to the level of violation of this Rule.

Rule 1.402 Members shall not engage in conduct involving wanton disregard of the rights of others.

Commentary: Wanton disregard under this rule includes conduct taken in disregard of (1) a high degree of risk that the Complainant would be adversely affected, and (2) that risk would be apparent to a reasonable person. A "Reasonable Person" is an objective standard and considers someone who uses such qualities as attention, knowledge, intelligence, and judgement which a society requires of its members to protect their own interests and the interests of others. Wanton disregard under this rule also includes engaging in conduct that is severe or pervasive enough that a reasonable person would consider it harassing, hostile, or abusive. This includes, but is not limited to, sexual misconduct, bullying, intimidation, or retaliation.

E.S. 1.5 Design for Human Dignity and the Health, Safety, and Welfare of the Public:
Members should employ their professional knowledge and skill to design buildings and spaces that will enhance and facilitate human dignity and the health, safety, and welfare of the individual and the public.

Rule 1.403 Members shall not knowingly design spaces intended for execution.

Commentary: The purpose of Rule 1.403 is not to address individual positions or opinions. Rather, it is to codify how Members choose to embrace the highest standards of professionalism, integrity, and competence. They are part of a community of regulated professionals who, through their required education, training, and practice, protect the health, safety, and welfare of those who come into contact with their work. The design of spaces for execution is inconsistent with that ideal. Designing spaces intended to end human life is inconsistent with the ideal of upholding human rights. What is lawful and what is ethical are two separate inquiries; acting lawfully may not equate to acting ethically. With respect to Rule 1.403, Members should not be involved in the

design of spaces intended for execution, regardless of whether execution is legally authorized.

Rule 1.404 Members shall not knowingly design spaces intended for torture, including indefinite or prolonged solitary confinement.

Commentary: For the purpose of Rule 1.404, solitary confinement shall be defined as the confinement of prisoners for twenty-two (22) hours or more per day without meaningful human contact. Prolonged solitary confinement shall be defined as solitary confinement, as defined above, for a time period in excess of fifteen (15) consecutive days.¹

E.S. 1.6 Allied Arts and Industries:
Members should promote allied arts and contribute to the knowledge and capability of the building industries as a whole.

**CANON II
Obligations to the Public**

Members should embrace the spirit and letter of the law governing their professional affairs and should promote and serve the public interest in their personal and professional activities.

E.S. 2.1 Conduct:
Members should uphold the law in the conduct of their professional activities.

Rule 2.101 Members shall not, in the conduct of their professional practice, knowingly violate the law.

Commentary: The violation of any law, local, state or federal, occurring in the conduct of a Member's professional practice, shall be a basis for discipline by this rule. This includes the federal Copyright Act, which prohibits copying architectural works without the permission of the copyright owner. Allegations of violations of this rule must be based on an independent finding of a violation of the law by a court of competent jurisdiction or an administrative or regulatory body.

Rule 2.102 Members shall neither offer nor make any payment or gift to a public official with the intent of influencing the official's judgment in connection with an existing or prospective project in which the Members are interested.

Commentary: This rule does not prohibit campaign contributions made in conformity with applicable campaign financing laws.

Rule 2.103 Members serving in a public capacity shall not accept payments or gifts which are intended to influence their judgment.

Rule 2.104 Members shall not engage in conduct involving fraud.

Commentary: This rule addresses serious misconduct whether or not related to a Member's professional practice. A proof of fraud must be based on an independent finding of a violation of the law or a finding of fraud by a court of competent jurisdiction or an administrative or regulatory body.

Rule 2.105 If, in the course of their work on a project, the Members become aware of a decision taken by their employer or client which violates any law or regulation and which will, in the Members' judgment, materially affect adversely the safety to the public of the finished project, the Members shall:
(a) advise their employer or client against the decision,
(b) refuse to consent to the decision, and
(c) report the decision to the local building inspector or other public official charged with the enforcement of the applicable laws and regulations, unless the Members are able to cause the matter to be satisfactorily resolved by other means.

Commentary: This rule extends only to violations of the building laws that threaten the public safety. The obligation under this rule applies only to the safety of the finished project, an obligation coextensive with the usual undertaking of an architect.

¹ Reference: UN Resolution 70/175, United Nations Standard Minimum Rules for Treatment of Prisoners.

Rule 2.106 Members shall not counsel or assist a client in conduct that the architect knows, or reasonably should know, is fraudulent or illegal.

E.S. 2.2 Public Interest Services: Members should render public interest professional services, including pro bono services, and encourage their employees to render such services. Pro bono services are those rendered without expecting compensation, including those rendered for indigent persons, after disasters, or in other emergencies.

E.S. 2.3 Civic Responsibility: Members should be involved in civic activities as citizens and professionals, and should strive to improve public appreciation and understanding of architecture and the functions and responsibilities of architects.

Rule 2.301 Members making public statements on architectural issues shall disclose when they are being compensated for making such statements or when they have an economic interest in the issue.

E.S. 2.4 Environmental Equity and Justice: Members should promote fairness and safety in providing professional services and make reasonable efforts to advise their clients and employers of their obligations to the environment, including: access to clean air, water, sunlight and energy for all; sustainable production, extraction, transportation and consumption practices; a built environment that equitably supports human health and well-being and is resistant to climate change; and restoring degraded or depleted natural resources.

Rule 2.401 When performing professional services, Members shall make reasonable efforts to inform their clients of the potential environmental impacts or consequences the Member reasonably believes may occur as

a result of work performed on behalf of the clients.

CANON III Obligations to the Client

Members should serve their clients competently and in a professional manner, and should exercise unprejudiced and unbiased judgment when performing all professional services.

E.S. 3.1 Competence: Members should serve their clients in a timely and competent manner.

Rule 3.101 In performing professional services, Members shall take into account applicable laws and regulations. Members may rely on the advice of other qualified persons as to the intent and meaning of such regulations.

Rule 3.102 Members shall undertake to perform professional services only when they, together with those whom they may engage as consultants, are qualified by education, training, or experience in the specific technical areas involved.

Commentary: This rule is meant to ensure that Members not undertake projects that are beyond their professional capacity. Members venturing into areas that require expertise they do not possess may obtain that expertise by additional education, training, or through the retention of consultants with the necessary expertise.

Rule 3.103 Members shall not materially alter the scope or objectives of a project without the client's consent.

E.S. 3.2 Conflict of Interest: Members should avoid conflicts of interest in their professional practices and fully disclose all unavoidable conflicts as they arise.

Rule 3.201 A Member shall not render professional services if the Member's professional judgment could be affected by responsibilities to another project or person, or by the Member's own interests, unless all those who rely on the Member's judgment consent after full disclosure.

Commentary: This rule is intended to embrace the full range of situations that may present a Member with a conflict between his interests or responsibilities and the interest of others. Those who are entitled to disclosure may include a client, owner, employer, contractor, or others who rely on or are affected by the Member's professional decisions. A Member who cannot appropriately communicate about a conflict directly with an affected person must take steps to ensure that disclosure is made by other means.

Rule 3.202 When acting by agreement of the parties as the independent interpreter of building contract documents and the judge of contract performance, Members shall render decisions impartially.

Commentary: This rule applies when the Member, though paid by the owner and owing the owner loyalty, is nonetheless required to act with impartiality in fulfilling the architect's professional responsibilities.

E.S. 3.3 Candor and Truthfulness: Members should be candid and truthful in their professional communications and keep their clients reasonably informed about the clients' projects.

Rule 3.301 Members shall not intentionally or recklessly mislead existing or prospective clients about the results that can be achieved through the use of the Member's services, nor shall the Members state that they can achieve results by means that violate applicable law or this Code.

Commentary: This rule is meant to preclude dishonest, reckless, or illegal representations by a Member either in the course of soliciting a client or during performance.

E.S. 3.4 Confidentiality: Members should safeguard the trust placed in them by their clients.

Rule 3.401 Members shall not knowingly disclose information that would adversely affect their client or that they have been asked to maintain in confidence, except as otherwise allowed or required by this Code or applicable law.

Commentary: To encourage the full and open exchange of information necessary for a successful professional relationship, Members must recognize and respect the sensitive nature of confidential client communications. Because the law does not recognize an architect-client privilege, however, the rule permits a Member to reveal a confidence when a failure to do so would be unlawful or contrary to another ethical duty imposed by this Code.

CANON IV

Obligations to the Profession

Members should uphold the integrity and dignity of the profession.

E.S. 4.1 Honesty and Fairness:

Members should pursue their professional activities with honesty and fairness.

Rule 4.101 Members having substantial information which leads to a reasonable belief that another Member has committed a violation of this Code which raises a serious question as to that Member's honesty, trustworthiness, or fitness as a Member, shall file a complaint with the National Ethics Council.

Commentary: Often, only an architect can recognize that the behavior of another architect poses a serious question as to that other's professional integrity. In those circumstances, the duty to the profession's calling requires that a complaint be filed. In most jurisdictions, a complaint that invokes professional standards is protected from a libel or slander action if the complaint was made in good faith. If in doubt, a Member should seek counsel before reporting on another under this rule.

Enforcement of Rule 4.101 refers to and supports enforcement of other Rules. A violation of Rule 4.101 cannot be established without proof of a pertinent violation of at least one other Rule.

Rule 4.102 Members shall not sign or seal drawings, specifications, reports, or other professional work for which they do not have responsible control.

Commentary: Responsible control means the degree of knowledge and supervision ordinarily required by the professional standard of care. With respect to the work of licensed consultants, Members may sign or seal such work if they have reviewed it, coordinated its preparation, or intend to be responsible for its adequacy.

Rule 4.103 Members speaking in their professional capacity shall not knowingly make false statements of material fact.

Commentary: This rule applies to statements in all professional contexts, including applications for licensure and AIA membership.

E.S. 4.2 Dignity and Integrity: Members should strive, through their actions, to promote the dignity and integrity of the profession, and to ensure that their representatives and employees conform their conduct to this Code.

Rule 4.201 Members shall not make misleading, deceptive, or false statements or claims about their professional qualifications, experience, or performance and shall accurately state the scope and nature of their responsibilities in connection with work for which they are claiming credit.

Commentary: This rule is meant to prevent Members from claiming or implying credit for work which they did not do, misleading others, and denying other participants in a project their proper share of credit.

Rule 4.202 Members shall make reasonable efforts to ensure that those over whom they have supervisory authority conform their conduct to this Code.

Commentary: What constitutes reasonable efforts under this rule is a common sense matter. As it makes sense to ensure that those over whom the architect exercises supervision be made generally aware of the Code, it can also make sense to bring a particular provision to the attention of a particular employee when a situation is present which might give rise to violation.

Enforcement of Rule 4.202 refers to and supports enforcement of other Rules. A violation of Rule 4.202 cannot be established without proof of a pertinent violation of at least one other Rule.

CANON V

Obligations to Colleagues

Members should respect the rights and acknowledge the professional aspirations and contributions of their colleagues.

E.S. 5.1 Professional Environment:

Members should provide their colleagues and employees with a fair and equitable working environment, compensate them fairly, and facilitate their professional development.

Rule 5.101 Members shall treat their colleagues and employees with mutual respect, and provide an equitable working environment.

E.S. 5.2 Intern and Professional Development: Members should recognize and fulfill their obligation to nurture fellow professionals as they progress through all stages of their career, beginning with professional education in the academy, progressing through internship and continuing throughout their career.

Rule 5.201 Members who have agreed to work with individuals engaged in an architectural internship program or an experience requirement for licensure shall reasonably assist in proper and timely documentation in accordance with that program.

E.S. 5.3 Professional Recognition: Members should build their professional reputation on the merits of their own service and performance and should recognize and give credit to others for the professional work they have performed.

Rule 5.301 Members shall recognize and respect the professional contributions of their employees, employers, professional colleagues, and business associates.

Rule 5.302 Members leaving a firm shall not, without the permission of their employer or partner, take designs, drawings, data, reports, notes, or other materials relating to the firm’s work, whether or not performed by the Member.

Rule 5.303 A Member shall not unreasonably withhold permission from a departing employee or partner to take copies of designs, drawings, data, reports, notes, or other materials relating to work performed by the employee or partner that are not confidential.

Commentary: A Member may impose reasonable conditions, such as the payment of copying costs, on the right of departing persons to take copies of their work.

**CANON VI
Obligations to the Environment**

Members should recognize and acknowledge the professional responsibilities they have to promote sustainable design and development in the natural and built environments and to implement energy and resource conscious design.

E.S. 6.1 Energy conservation:
Members should set ambitious performance goals for greenhouse gas emission reduction with their clients for each project.

E.S. 6.2 Water Use:
Members should optimize water conservation in each project to reduce water use and protect water supply, water quality, and watershed resources.

E.S. 6.3 Building Materials:
Members should select and use building materials to minimize exposure to toxins and pollutants in the environment to promote environmental and human health and to reduce waste and pollution.

E.S. 6.4 Ecosystems
Members should consider with their clients the impact of each project on the natural habitat and ecosystem to promote environmental and human health.

E.S. 6.5 Climate Change
Members should incorporate adaptation strategies with their clients to anticipate extreme weather events and minimize adverse effects on the environment, economy and public health.

Rule 6.501 Members shall consider with their clients the environmental effects of their project decisions.

RULES OF APPLICATION, ENFORCEMENT, AND AMENDMENT

Application

The **Code of Ethics and Professional Conduct** applies to the professional activities of all members of the AIA.

Enforcement

The Bylaws of the Institute state procedures for the enforcement of the **Code of Ethics and Professional Conduct**.

Such procedures provide that:

- (1) Enforcement of the **Code** is administered through a National Ethics Council, appointed by the AIA Board of Directors.
- (2) Formal charges are filed directly with the National Ethics Council by Members, components, or anyone directly aggrieved by the conduct of the Members.
- (3) Penalties that may be imposed by the National Ethics Council are:
 - (a) Admonition
 - (b) Censure
 - (c) Suspension of membership for a period of time
 - (d) Termination of membership.
- (4) Appeal procedures are available.
- (5) All proceedings are confidential, as is the imposition of an admonishment; however, all other penalties shall be made public.

Enforcement of Rules 4.101 and 4.202 refer to and support enforcement of other Rules. A violation of Rules 4.101 or 4.202 cannot be established without proof of a pertinent violation of at least one other Rule.

Amendment

The **Code of Ethics and Professional Conduct** may be amended by the convention of the Institute under the same procedures as are necessary to amend the Institute’s Bylaws. The **Code** may also be amended by the AIA Board of Directors upon a two-thirds vote of the entire Board.

2020 Edition. This copy of the **Code of Ethics is current as of December 10, 2020. Contact the General Counsel’s Office for further information at (202) 626-7311.*

The standard of care: How is it applied?

By the AIA Risk Management Program

PUBLISHED: AUGUST 7, 2017 | UPDATED: AUGUST 7, 2017

An architect's failing to practice in accordance with the standard of care does not automatically result in liability. There are four elements that must be proven before liability and damages will be assessed on the basis of professional negligence.

The four elements of a professional negligence claim

First, there must be a duty owed by the architect to the party bringing a claim against the architect.

Second, there must be a breach of the duty owed. Meaning, there must be a failure on the part of the architect to act or perform its services within the applicable standard of care.

Third, there must be actual damages. These damages may be purely, economic, or they may involve personal injury or property damage. Without damages, even though there is a violation of the standard of care, there is no harm, no foul, and no liability.

Fourth, there must be a causal connection between the architect's failure to perform in accordance with the standard of care and the actual damages incurred. The damage must be a direct and proximate result of the architect's breach of the standard of care. If the damages did not occur as a result of the architect's breach of the standard of care, there can be no liability.

Who determines whether or not these four elements have been proven?

In the dispute resolution process, there is a "trier of fact." That trier of fact is the entity that hears the evidence and determines what the facts are. The trier of fact may be an arbitrator, a judge, or a jury. The trier of fact is charged with the obligation of evaluating the testimony of the fact witnesses, documentary evidence, and expert testimony; determining the facts; and rendering an award or judgment. It is this trier of fact that determines what happened, including whether the architect violated the standard of care.

Ultimately, the best way to avoid liability is to practice professionally and competently.

Fact witnesses—those that participated in the matter and have actual knowledge of the relevant events—testify to their recollection of what transpired. Documents and evidence will be presented for review and consideration by the trier of fact. But how does this trier of fact determine what the standard of care is and whether the architect violated the standard of care?

Each party to the dispute resolution process retains expert witnesses to aid the trier of fact in its determination regarding the standard of care. The expert does not determine the ultimate issue of liability. Instead, the expert aids the trier of fact by providing the expert's opinion. The expert must be able to testify that they have knowledge of the practices of the profession at the time of the relevant services, under the same or similar circumstances and in the same geographic area. The expert will be asked to ultimately opine as to whether or not the architect's actions were consistent with the practices of the profession. The trier of fact will be asked to evaluate the testimony and opinion of the experts, in light of the facts of the case, and to ultimately rely on the credible expert testimony to determine whether or not the architect breached the standard of care. The trier of fact will also be asked to determine whether any such breach actually caused the damages alleged.

Unfortunately, when performing professional services, an architect is unable to look into a crystal ball and determine what a trier of fact will ultimately decide. Ultimately, the best way to avoid liability is to practice professionally and competently.

Subsequent articles in this series from [AIA's Risk Management Program](#) will further examine the standard of care and its application. Segments of this article will be reviewed in more detail, the standard of care's application to risk prone areas of the architect's practice will be analyzed, and actual lawsuits that interpret the standard of care will be reviewed.

AIA has provided this article for general informational purposes only. The information provided is not legal opinion or legal advice.

The standard of care: Should I care?

By the AIA Risk Management Program

PUBLISHED: SEPTEMBER 6, 2017 | UPDATED: SEPTEMBER 6, 2017

Often the actions of the architect are measured against the applicable “standard of care.” What does that mean?

When an architect is alleged to have committed professional negligence, the actions of the architect are measured against the applicable standard of care. Much has been written and published about the **standard of care for architects**. One can enter the library of curiosity, also known as the internet, and spend hours weaving in and out of intellectual discussions and court cases about this topic; let’s attempt to simplify the issue with a few questions, then answers.

How did we come by having a standard of care?

It’s best to begin with the expectation of exercising common sense and ordinary care in human behavior. For example, as we drive our vehicles we use caution when changing lanes or proceeding through an intersection, so as to look for other vehicles and avoid collisions. We consciously exercise care because we do not want to cause an injury. The expectation for the driver is that she will use the same care that other drivers in the same or similar situation or circumstances would use.

Through the collective application of this level of care, members of society endeavor to keep the streets safe from accidents. We can think of this simple example as the standard of care for a driver of a motor vehicle. Society has developed an expectation that, over time, became a standard that we often hear referred to as the “common law.” Common law concepts from early court cases, repeated over time, have become adopted as standards of behavior, and for the practice of architecture, as well as other professions, a standard of care.

Must my behavior be perfect?

One of the earliest cases in the United States that defined the architect’s standard of care is the case of *Beede vs. Coombs*, decided in Maine in 1896. In that case, an architect, Coombs, designed a house

and barn for his clients, the Beedes. The Beedes had a budget of \$2,500 for the house, which was built for a cost of \$2,700. Mrs. Beede wanted more in her new home than the budget could afford, and Coombs was trying to accommodate her with the design.

Litigation followed, and the judge determined that even if Coombs had promised to design a house that could be built for \$2,500, all that could reasonably be expected of an architect was to use his skill and ability to endeavor to bring about that result. The court held that the undertaking of an architect implies that he possesses skill and ability sufficient to enable him to perform the required services; and that he will exercise and apply that skill and ability, reasonably and without neglect, but he does not imply or warrant a satisfactory result.

The court added that “an error in judgment is not necessarily evidence of a want of skill or care, for mistakes and miscalculations are incident to all of the business of life.” In other words, perfection is not the standard of care for the practice of architecture. This is the common law standard of care for architects, which is usually described as, that level of skill and care employed by architects, practicing in the same or similar circumstances and geographical area.

Will I always be judged by the common law standard?

While the common law standard of care for architects is well established, architects should also be aware that they can agree, by contract, to perform to a higher standard of care. In 1978, the Texas Supreme Court held that in contracting for his services, an architect “implies that he possesses skill and ability, will exercise and apply his skill and ability reasonably and without neglect”, quoting the *Beede* case, and “his duty depends on the particular agreement entered into with his employer.”

It is possible to commit to a higher level of service than the common law standard of care. For example, one may see language in a contract by which an architect will agree to exercise the “highest” level of care, or deliver drawings and specifications “with no material errors.” Extreme care should be taken when confronted with elevations of the standard of care. Professional liability insurance policies are underwritten with the presumption that the insured architect’s services will be judged based upon the common law standard. Agreeing by contract to a higher standard may result in the architect’s insurance carrier denying coverage.

To address this concern, the American Institute of Architects states in its form contracts the common law standard, as follows:

The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect

shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

But what does it mean to say an architect will exercise the common law standard of care? If an architect makes a mistake, and a client incurs additional costs due to the mistake, how does the standard of care apply to an analysis of the facts to determine whether or not the architect should have legal liability for, and pay, the additional costs? In other words, if perfection is not the standard of care, what amount of imperfection falls within the standard? Or, if one can make a mistake and not be negligent, at what point does a mistake rise to the level of negligence?

In the next article in this series from [AIA's Risk Management Program](#), we will discuss how the concept of the standard of care is applied in a claim against an architect.

AIA has provided this article for general informational purposes only. The information provided is not legal opinion or legal advice.

**AGENDA ITEM F.4: DISCUSSION OF STRATEGIC PLAN OBJECTIVE 2.4 –
EDUCATE THE PUBLIC AND PRACTITIONERS
REGARDING THEIR ROLES WHEN CONTRACTS ARE
SIGNED WITH A THIRD PARTY
(CONTRACTOR/DEVELOPER).**

Summary

The Board's 2022-2024 Strategic Plan contains an objective assigned to the Regulatory and Enforcement Committee (REC) to make the public and practitioners aware of their roles and responsibilities when signing third-party contracts.

The Committee was asked to clarify the relationship between the consumer and the architect in those structures and to ensure both parties understand their roles in the relationship. The Architects Practice Act (Act) states the architect must have a contract with the client. In some cases industry practice recognizes the client as the developer or an insurance company, not the consumer.

Board members discussed this strategic goal at the December 10, 2021 Board meeting, and mentioned that the term "third party" is unclear. Board members were reminded that the objective is to ensure that both the consumer and practitioners understand their roles when an architect works with a developer to design a home. It is essential to educate the public and architects about the importance of understanding the written contract before signing.

The 2019-2021 Strategic Plan contained a related objective to educate architects regarding their responsibilities under Business and Professional Code (BPC) section 5535.1 "responsible control defined" and California Code of Regulations (CCR), title 16, section 151 "aiding and abetting" to protect consumers from unlicensed practice. On August 1, 2019, the Board approved the publishing of an informational bulletin describing case analysis and the laws covering issues of responsible control and aiding and abetting. The bulletin was published on the Board's website and is frequently disseminated to architects in potential violation of aiding and abetting.

The bulletin was updated to include the new provisions of the written contract requirement under BPC section 5536.22 effective January 1, 2020, and to remind architects of their need to sign all contracts under which they provide services.

A chart was also published on the Board's website delineating the types of design projects that may legally be controlled by unlicensed persons, architects, or engineers.

The Board's Enforcement Unit has already made progress toward this Strategic Goal, including:

- Enforcing BPC 5536.1 which requires architects sign all contracts for architectural services and ensure that design/build contracts comply with requirements of BPC 5536.22. Design/build contracts are the responsibility of the architect of record, even if the architect is not mentioned on the contract or has not signed it. (Attachment 1);
- Published an Informational Bulletin reminding architects that they are still in responsible control of projects when they are contracted through a design/build firm. (Attachment 2); and
- Published a Consumer's Guide educating consumers on contract requirements. (Attachment 3)

Board is considering ways to complete this strategic goal, including:

- Create simple chart for website publishing similar to Attachment 5 showing contract requirements in a design/build model and educating clients that they have recourse to file complaints against architects contracted through design/build firm; and
- Inform Design-Build industry groups of advertising and contract requirements in the Act.

Action Requested

Identify intended outcome and/or understanding of this objective and determine if there is a need to make statutory/regulatory changes. The Committee is asked to discuss this objective, and clarify the purpose and/or suggest further ideas to complete this objective.

Attachment

1. BPC 5536.1
2. Informational Bulletin: Responsible Control Within Design and Design - Build Firms
3. Consumer's Guide to Hiring an Architect
4. Consumer Tips for Design Projects
5. Design Limitations For Professionals



State of California

BUSINESS AND PROFESSIONS CODE

Section 5536.1

5536.1. (a) All persons preparing or being in responsible control of plans, specifications, and instruments of service for others shall sign those plans, specifications, and instruments of service and all contracts therefor, and if licensed under this chapter shall affix a stamp, which complies with subdivision (b), to those plans, specifications, and instruments of service, as evidence of the person's responsibility for those documents. Failure of any person to comply with this subdivision is a misdemeanor punishable as provided in Section 5536. This section shall not apply to employees of persons licensed under this chapter while acting within the course of their employment.

(b) For the purposes of this chapter, any stamp used by any architect licensed under this chapter shall be of a design authorized by the board which shall at a minimum bear the licensee's name, his or her license number, the legend "licensed architect" and the legend "State of California," and which shall provide a means of indicating the renewal date of the license.

(c) The preparation of plans, specifications, or instruments of service for any building, except the buildings described in Section 5537, by any person who is not licensed to practice architecture in this state, is a misdemeanor punishable as provided in Section 5536.

(d) The board may adopt regulations necessary for the implementation of this section.

(Amended by Stats. 1999, Ch. 982, Sec. 1.5. Effective January 1, 2000.)

Informational Bulletin: Responsible Control Within Design and Design-Build Firms

Recent expansion of the design-build business model and increased collaboration between architects and unlicensed designers in California has raised questions among architects, contractors, and business owners regarding the role of licensed architects in a design firm's corporate structure and the level of control they are required to maintain over architectural designs. This article addresses the legal and professional responsibilities of stakeholders in design and design-build firms.

The Architects Practice Act (Act) does not prevent a corporation from contracting out architectural services, as long as those services are under the responsible control of a licensed architect (Business and Professions Code section (BPC) 5535.3). "Responsible control" means that level of control over the content of architectural instruments of service during their preparation that is ordinarily exercised by an architect applying the required professional standard of care (BPC 5535.1). An architect in responsible control of plans, specifications, and instruments of service for others shall sign and stamp those plans, specifications, and instruments of service and all contracts therefor (BPC 5536.1). **BPC 5536.22(a) requires that any written contract for architectural services be executed by the architect, and include their name, address, and license number.**

If a business includes in its name or description of its services the term "architect," "architecture," or "architectural," or any abbreviation or confusingly similar variation thereof, that business must have a licensed architect who provides management control of the professional services that are offered and provided by the business and who is also an owner, part-owner, officer, or an employee of the business (California Code of Regulations, title 16 section (CCR) 134(a)). Furthermore, all of the professional services offered by that business must be offered and provided by or under the responsible control of a licensed architect (CCR 134(b)). **This includes structures, such as single-family residences, that would otherwise be exempt from licensing requirements under BPC 5537.** Any architect who provides professional services through any business entity is required to report the name and address of that entity to the Board (BPC 5558).

If an architect signs instruments of service which have not been prepared by them, or under their responsible control, or has permitted their name to be used for the purpose of evading the Act, the architect is subject to disciplinary action (BPC 5582.1; CCR 151).

The Board's Enforcement Unit has seen these factors come into play, for example, when a business named "Acme Architecture," run by unlicensed individuals, contracts out on a project-by-project basis with one or more licensed architects. Under BPC 5535.3 and CCR 134, such a business can contract out the work, but it is not allowed to use the term "architecture" in its name, its advertising or its contracts.

Many architects believe that they can maintain such an arrangement and have no responsibility for the company's exempt projects. However, if the business includes the term "architecture" in their name or advertises architectural services or contracts for architectural services, one architect must at least be an "employee" (as defined by the Internal Revenue Service) and an architect must be in responsible control over all of that company's professional services.

If an architect allows their name to be used by such a business without being in management control of all their professional services, the owner of the business is subject to citation under BPC 5536 and CCR 134, while the architect is subject to disciplinary action under BPC 5582.1 and CCR 151.

Architects Practice Act Provisions Involving Responsible Control

Business and Professions Code

Section 5535.1 Responsible Control Defined

The phrase "responsible control" means that amount of control over the content of all architectural instruments of service during their preparation that is ordinarily exercised by architects applying the required professional standard of care.

Section 5535.3 Corporation Responsible Control

This chapter does not prevent a corporation from furnishing or supplying by contract architectural services, as long as any architects' professional services are offered and provided under the responsible control of a licensed architect or architects.

Section 5536(a) Practice Without License or Holding Self Out as Architect

(a) It 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, for any person who is not licensed to practice architecture under this chapter to practice architecture in this state, to use any term confusingly similar to the word architect, to use the stamp of a licensed architect, as provided in Section 5536.1, or to advertise or put out any sign, card, or other device that might indicate to the public that he or she is an architect, that he or she is qualified to engage in the practice of architecture, or that he or she is an architectural designer.

Section 5536.1(a) Signature and Stamp on Plans and Documents

(a) All persons preparing or being in responsible control of plans, specifications, and instruments of service for others shall sign those plans, specifications, and instruments of service and all contracts therefor, and if licensed under this chapter shall affix a stamp, which complies with subdivision (b), to those plans, specifications, and instruments of service, as evidence of the person's responsibility for those documents. Failure of any person to comply with this subdivision is a misdemeanor punishable as provided in Section 5536. This section shall not apply to employees of persons licensed under this chapter while acting within the course of their employment.

Section 5536.22(a) Written Contract Requirements

(a) An architect shall use a written contract when contracting to provide professional services to a client pursuant to this chapter. That written contract shall be executed by the architect and the client, or the client's representative, prior to the architect commencing work, unless the client knowingly states in writing that work may be commenced before the contract is executed. The written contract shall include, but not be limited to, all of the following items:

- (1) A description of the project for which the client is seeking services.
- (2) A description of the services to be provided by the architect to the client.
- (3) A description of any basis of compensation applicable to the contract and the method of payment agreed upon by both parties.
- (4) The name, address, and license number of the architect, the name and address of the client, and the project address.
- (5) A description of the procedure that the architect and the client will use to accommodate additional services and contract changes, including, but not limited to, changes in the description of the project, in the description of the services, or in the description of the compensation and method of payment.
- (6) A description of the procedure to be used by either party to terminate the contract.
- (7) A statement identifying the ownership and use of instruments of service prepared by the architect.
- (8) A statement in at least 12-point type that reads: "Architects are licensed and regulated by the California Architects Board located at 2420 Del Paso Road, Suite 105, Sacramento, CA 95834."

Section 5537(a) Exemptions

(a) This chapter does not prohibit any person from preparing plans, drawings, or specifications for any of the following:

- (1) Single-family dwellings of woodframe construction not more than two stories and basement in height.
- (2) Multiple dwellings containing no more than four dwelling units of woodframe construction not more than two stories and basement in height. However, this paragraph shall not be construed as allowing an unlicensed person to design multiple clusters of up to four dwelling units each to form apartment or condominium complexes where the total exceeds four units on any lawfully divided lot.
- (3) Garages or other structures appurtenant to buildings described under subdivision (a), of woodframe construction not more than two stories and basement in height.
- (4) Agricultural and ranch buildings of woodframe construction, unless the building official having jurisdiction deems that an undue risk to the public health, safety, or welfare is involved.

Section 5558 Mailing Address and Name and Address of Entity Through Which License Holder Provides Architectural Services; Filing Requirements

Each person holding a license to practice architecture under this chapter shall file with the board his or her current mailing address and the proper and current name and address of the entity through which he or she provides architectural services. For purposes of this section, "entity" means any individual, firm, corporation, or limited liability partnership.

Section 5582 Aiding Unlawful Practice

The fact that the holder of a license has aided or abetted in the practice of architecture any person not authorized to practice architecture under the provisions of this chapter, constitutes a ground for disciplinary action.

Section 5582.1 Signing Other's Plans or Instruments; Permitting Misuse of Name

(a) The fact that the holder of a license has affixed his or her signature to plans, drawings, specifications, or other instruments of service which have not been prepared by him or her, or under his or her responsible control, constitutes a ground for disciplinary action.

(b) The fact that the holder of a license has permitted his or her name to be used for the purpose of assisting any person to evade the provisions of this chapter constitutes a ground for disciplinary action.

California Code of Regulations

Section 134(a) and (b) Use of the Term Architect; Responsible Control within Business Entity

(a) Use of the Term Architect: It shall be unlawful for any person to use a business name that includes as part of its title or description of services the term "architect," "architecture," or "architectural," or any abbreviations or confusingly similar variations thereof, unless that person is a business entity wherein an architect is: (1) in management control of the professional services that are offered and provided by the business entity; and, (2) either the owner, a part-owner, an officer or an employee of the business entity.

(b) Responsible Control within Business Entity: Where a person uses a business name that includes as part of its title or description of services the term "architect," "architecture," or "architectural," or any abbreviations or confusingly similar variations thereof, all of the professional services offered and provided by that person are to be offered and provided by or under the responsible control of an architect.

Section 151 Aiding and Abetting

(a) For purposes of Sections 5582 and 5582.1 of the code, aiding and abetting takes place when a California licensed architect signs any instrument of service which has been prepared by any person who is not: (1) a California licensed architect or civil engineer or structural engineer, or (2) a subordinate employee under his/her immediate and responsible direction, or (3) an individual, who is associated by written agreement with the architect and who is under the architect's immediate and responsible direction as described in subsection (b) of this section.

(b) The requirements of "immediate and responsible direction" as used in this section shall be deemed to be satisfied when the architect: (1) instructs the person described in subsection (a) of this section, in the preparation of instruments of service, and (2) the architect has exercised the same judgment and responsibility in reviewing all stages of the design documents and other phases of the work as required by law, and which would normally be exercised if he/she personally performed the required tasks.



Consumer's Guide to Hiring an **Architect**



DEPARTMENT OF CONSUMER AFFAIRS

**PUBLIC PROTECTION THROUGH
EXAMINATION, LICENSURE, AND REGULATION**

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CALIFORNIA ARCHITECTS BOARD
CONSUMER'S GUIDE TO HIRING AN ARCHITECT

Introduction

The California Architects Board (CAB) created this booklet so that you will make informed choices during every phase of your project.

This booklet will provide information about how to hire licensed architects, manage your project, and take action if there is a concern or disagreement.

Please use the information and services available on CAB's website (www.cab.ca.gov) and check to ensure the architect is licensed or has any disciplinary action taken against the license.

The Practice of Architecture

California law defines the practice of architecture as the planning of sites, and the design, in whole or in part, of buildings or groups of buildings and structures. Any person who uses the title of architect, or advertises to provide architectural services in California, must be licensed by CAB.

License requirements include passing a national and supplemental examination required by the state of California, as well as at least eight years of education and/or experience (which includes completion of a structured intern development program requiring 5,600 hours of experience). Testing includes knowledge of applicable codes and regulations; investigation, evaluation, consultation, and advice; planning, schematic and preliminary studies, designs, working drawings, and specifications; coordination of services and/or documents by technical and special consultants; technical assistance in the preparation of bid documents and agreements between clients and contractors; contract administration; and construction observation.

Should I Hire an Architect?

It is generally recommended that you hire an architect; however, not every building project requires an architect's services. Current California law states that people who are not licensed as architects or registered as civil or structural engineers can design certain types of buildings or portions of buildings. See this chart:

Design Limitations for Professionals

Architects

May design any building of any type except the structural portion of a hospital.

Applicable Statutes

Health & Safety Code § 129805
Business & Prof. Code §§ 5500.1, 6737

Civil Engineers

May design any building except hospitals and public schools.

Applicable Statutes

Health & Safety Code § 129805
Ed. Code § 17302
Business & Prof. Code §§ 5537.5, 6731, 6735

Structural Engineers

No limitations; may design any type of building.

Applicable Statutes

Business & Prof. Code §§ 5537.1, 6731, 6736

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Unlicensed Persons

- Single-family dwellings of wood frame construction not more than two stories and a basement in height.
- Multiple dwellings containing no more than four dwelling units of wood frame construction not more than two stories and a basement in height. Not more than four dwelling units per lot.
- Garages or other structures appurtenant to other exempt buildings of wood frame construction not more than two stories and a basement in height.
- Agricultural and ranch buildings of wood frame construction.*
- Nonstructural or nonseismic store fronts, interior alterations or additions, fixtures, cabinetwork, furniture, or other appliances or equipment including nonstructural or nonseismic work necessary to provide for their installation.
- May not design any component that changes or affects the safety of any building, including but not limited to structural or seismic components.

**Unless the building official having jurisdiction deems that an undue risk to the public health, safety, or welfare is involved.*

Applicable Statutes

Business & Professions Code §§ 5537, 5538, 6737.1



Before you hire someone who is not a licensed architect or registered engineer to design a new building or alter an existing structure, it is suggested that you consult with your local building department regarding whether your project requires a licensed architect or engineer to prepare and submit plans and specifications. The building official considers existing state laws, public health, safety, and welfare, and local environmental and geographical conditions, e.g., snow loads, winds, earthquake activity, tidal action, flood hazard zones, and soil conditions.

Finding and Selecting an Architect

Obtain recommendations of architects from friends, relatives, the internet, etc. You can also receive information about the practice of architecture and referrals from professional associations such as the American Institute of Architects (AIA) and its local chapters (www.aia.org).

Some architects specialize in designing certain types of structures such as single-family dwellings, multiple residential, commercial, institutional, or industrial structures, while others design a variety of building types.

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Make sure that you select an architect who shares your vision. Contemporary practice may incorporate the following environmentally resilient elements in the design/build:

- Energy efficiency.
- Water efficiency and conservation.
- Material conservation and resource efficiency.
- Environmental quality and comfort.
- Accessibility and safety.
- Pollutant control.
- Climate change.

After receiving referrals and recommendations from various sources, you will determine which architect can provide the services you need and at your cost. The following information will assist you with this process:

Basic Project Criteria

1. The first step is to define the basic criteria for your project, which should include:

- Desired size, appearance, and functional requirements of your project.
- Services you expect the architect to perform.
- Proposed total budget including fees, permits, construction costs and contingencies.
- Who is financing the project.
- Beginning and completion dates.

2. Interview the Architects

Request to meet with the architect and ask about their qualifications and experience. You may choose to interview a number of architects to determine their

understanding of your project and your compatibility. Questions to ask are as follows:

- How long have you been in business? How have you kept current in your practice?
- How many persons are employed by your firm?
- Do you have a valid California architect's license? If so, what is your license number?
- Will you use consultants for this project? If so, who do you propose to use, and what are their qualifications? What has been your experience with them? Are they insured?
- What percentage of your practice involves the type of structure I intend to build, and have you recently designed this type of structure?
- Do you carry insurance? If so, what type(s)? How long have you carried each type and what are the policy limits?
- May I see examples of your previous projects that are similar to my project (sketches, photos, plans)?
- May I have the names, addresses, and telephone numbers of the clients for these previous similar projects?
- What was the actual construction cost versus budgeted cost for these projects?
- What services will you provide for my project? Which are "basic" and which are "extra?"
- Will you or your employees provide the services?
- What services will you not provide or are provided by others?
- What does construction observation services entail? How often will you be on site? What is your role during site visits during construction?
- How will your fees for my project be determined and what services do the fees cover?

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- Will you provide probable construction cost estimates for my project?
- If consultants (civil, structural, mechanical, electrical, geotechnical, testing and inspection, interior design, landscape architecture, etc.) are necessary, are their fees included in your "basic" services fee or are they separate services?
- What additional costs (e.g., permit and other governmental fees) or services (e.g., time spent obtaining necessary permits and other approvals) do you anticipate for my project?
- How do you establish your fees for additional services and reimbursable expenses?
- Will there be a charge for redesign if it is necessary to meet the construction budget?
- Will there be additional charges for changes required by the building department or other government agency?
- How are additional charges computed for design changes requested by me or requested by a contractor?
- Can you meet my proposed schedule?
- How will we handle any dispute that may arise between us?
- Did the architect listen to your concerns and attempt to resolve them?
- Would you hire the architect again?
- What problems surfaced during the project? How were they handled? Were they resolved to your satisfaction?
- Did the architect have a productive relationship with the contractor and others involved in the construction of your project?

If possible, visit the projects the architects have used as examples of their services.

Although CAB does not maintain a referral service and cannot recommend architects, it can advise if an architect is currently licensed and whether any enforcement and/or disciplinary action against that architect. You can contact CAB by telephone or visit its website at www.cab.ca.gov.

Choosing the Architect

It is wise to check the references that each architect gives you and ask the following questions:

- Did the architect adhere to required schedules and budgets?
- Were you pleased with the architect's services and your working relationship with the architect?



The Written Contract

Since January 1, 1996, California law has required that any architect who agrees to provide architectural services must have a written contract. The contract must be signed by the architect and client prior to commencing services, unless the client knowingly states in writing that the services can be started before the contract is signed, or the client states in writing, after being informed about the statutory provision, that he or she does not want a written contract.

Although there are these few exceptions to the requirement for a written contract, CAB recommends that you always insist upon a written contract with the architect to document the terms and conditions that will govern your relationship. Many architects prepare their own contracts or have them prepared by an attorney; others use standard form agreements published by AIA.

The contract is a legal document that binds you and the architect to certain obligations for the life of the project and, in some cases, beyond project completion. It should include the specific services that you and your architect have agreed upon and the conditions under which these services are to be rendered.

Review the contract carefully. It is your responsibility, along with the architect's, to understand and follow the contract. You have the right to question and negotiate changes in the terms of the contract before signing it, even if it is a printed standard form. Because it is a binding legal document, you may want to have legal counsel review the contract before you sign it. You should retain an original copy of the signed contract. Also, you should not make agreements with other parties regarding your project without first notifying the architect.

Mandatory Contract Items

California law (Business and Professions Code § 5536.22) requires that a written contract for architectural services contain, at a minimum, the following items:

- A description of the project.
- A description of services to be provided by the architect.
- A description of any basis of compensation applicable to the contract and method of payment agreed upon by both parties.
- The name, address, and license number of the architect, the name and address of the client, and the project address.
- A description of the procedure that the architect and the client will use to accommodate additional services or in the compensation or method of payment.
- A description of the procedure to be used by either party to terminate the contract.
- A statement identifying the ownership and use of instruments of service prepared by the architect.
- A statement in at least 12-point type that reads: "Architects are licensed and regulated by the California Architects Board located at 2420 Del Paso Road, Suite 105, Sacramento, CA 95834."

Recommended Contract Items

Beyond those items required for architects by law, CAB recommends that a contract for architectural services be as clear and complete as possible in defining goals and expectations. Since this venture is a collaboration of client and architect, the contract should clearly define both the client's and architect's responsibilities.

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Basic client responsibilities generally include providing the following:

- Project information and decisions communicated to the architect in a timely manner.
- Property-related information such as legal descriptions, boundary and topographic surveys showing existing conditions, soils testing and reports, unless otherwise defined or authorized in the agreement.
- A description of desired project requirements, especially related to size, uses, and appearance.
- The definition of critical project milestones such as funding cycles, third-party approvals, and anticipated or required completion/occupancy dates.
- The project schedule with critical time frames such as funding cycles, third-party approvals, completion of design services, start and completion of construction, occupancy date, etc.
- An estimated construction budget and a description of what it includes.
- A provision for fee and construction budget cost escalation or contingencies for changes in the project scope during design and construction phases or for delays to schedules.
- An understanding of when the client's approval must be given in order for the architect to proceed to the next phase.
- An itemized listing and description of the architect's basic services and the proposed fee.
- A definition of reimbursable expenses and the procedure for authorization and compensation.
- A listing of the project consultants, if known, that may be needed (i.e., engineering, geotechnical, landscape, etc.), and the procedure for hiring and compensating them.

The basic contract could be expanded to include some or all of the following:

- The address of the project and, if applicable, the project's title.
- A narrative description of the project including any unique or special requirements.

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- A schedule of fee payment due dates and amounts.
- A definition of the amount of any required retainer fee and how and when it will be applied to the total fee for services.
- The way in which the final payment is computed if the contract is terminated.
- Clarification of who is responsible for keeping project account records and when they may be reviewed.
- Whether construction observation services are included and a description of the intent and scope of these services, and if they are part of basic or additional services.
- Whether assistance with bidding and/or establishing a contract between a contractor and owner will be provided and if it is part of basic or additional services.
- A clarification of who owns, can use, or reuse the project documents, including electronic files, at completion of the project or if the architect is terminated.
- A procedure for handling disputes between the parties should the need arise (for example, arbitration, mediation, or civil action). Be aware an architect has a right to file a design professional's lien and/or a mechanics lien in the event the agreed-upon fees are not paid. See page 10.

Keeping Records

It is important to keep the written contract and a written record of all verbal communication with your architect. When you meet to discuss your project with the architect, write the architect a memo or email confirming your understanding of that meeting or discussion. These

memos can help to prevent misunderstandings and may prove invaluable if a dispute occurs. Include the date and time of your conversation in the memo or email, as well as the date you write it.

You may also want to write memos or notes to yourself about the progress of the project. Photographs or videotapes taken at regular intervals (with notes as to the dates that the photos are taken) can be very useful in establishing a historical record of the project.

Keep detailed financial records by ensuring the architect provides detailed invoices. Also keep records of the date and amount of each payment you make. Require the architect to obtain your written approval at designated phases and before additional costs are incurred.

Make sure that you receive a copy of all documents you sign and keep a copy of all documents you give to your architect.

Financial Issues

Before you sign the written contract, clearly establish the total amount of money (including contingency funds) you are willing to pay for the design and construction of your project, the frequency of progress payments, and the amounts and schedule for these payments. Make sure this fee schedule is recorded accurately in the written contract, and that you make each payment to the architect as called for in the contract. If you have obtained a loan for your project, ensure that it covers both the cost of your architect's services and the construction cost.

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Payment schedules should reflect the services to be provided on your project. Be wary of excessive advances or retainer fees to begin services. Make the final payment when the services are complete in accordance with your contract and you are satisfied with the services.

Careful planning and discussion with your architect regarding services and payments, as well as accurate record keeping, will develop open communication and lead to a successful working relationship.

Release of Plans

The official copy of the plans maintained by the building department of the city or county is open for inspection as a public record. However, a copy may only be duplicated with the permission of the architect and the original or current owner. Criteria for retention and release of official copies of permitted projects by building departments are defined in Health and Safety Code sections 19850–19853.

Construction Hints

Unless you are experienced in construction, you probably should not attempt to build your project yourself. A properly licensed and experienced building contractor should perform the construction. Contact the Contractors State License Board at (800) 321-2752 or visit www.cslb.ca.gov to verify a contractor's license and access consumer information.

Ensure your architect and contractor work together and agree that the plans are suitable for obtaining permits from the local building department, and for bidding and construction.



What to Do if a Problem Occurs With Your Project

You have a right to receive competent and professional service from the architect you have hired. However, even if you have read and followed this guide and have done everything possible to prevent problems, you may still encounter difficulties.

If a problem arises, you should first discuss it thoroughly and calmly with your architect. If you believe the architect is violating your written contract, review the contract and other relevant documentation with the architect. If your contract has a dispute resolution procedure, you should comply with it or take civil action as appropriate. You may also file a complaint with the Board.

Design Professionals' Liens

Design professionals have a right to record a lien before construction begins. A design professional's lien is a separate remedy available only to architects, professional engineers, and land surveyors who provide

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services during the planning phase of a private work project under a written agreement with the owner. The lien is placed on the project's property and may not be recorded until a building permit or other governmental approval associated with the project has been obtained in connection with the services rendered by the design professional.

A design professional's lien is not available for a single-family, owner-occupied residence with construction costs of less than \$100,000 in value.

Mechanics Liens

Once construction commences, an architect may have the right to record a mechanics lien against your property for any unpaid fees. Like design professionals' liens, a mechanics lien is a separate remedy available to certain persons that bestow labor, services, materials, etc. to a private project. The law governing mechanics liens is very complex. In the event of a dispute with your architect that results in the recording of a mechanics lien, you may wish to consult legal counsel.

What Constitutes a Complaint?

CAB has the power, duty, and authority to investigate alleged violations of the provisions of the Architects Practice Act (Business and Professions Code, Division 3, Chapter 3, § 5500 et seq.). CAB is also given specific authority to receive and investigate complaints against its licensees and to discipline violators. Do not hesitate to call or write CAB with any questions or concerns. CAB may take action against architects for:

- Fraud in obtaining a license.
- Impersonation or use of an assumed or corporate name.

- Aiding unlawful practice.
- Signing someone else's plans or permitting the misuse of their name.
- Fraud in the practice of architecture.
- Negligence or misconduct.
- Failure to accurately represent qualifications.
- Conflict of interest.
- Incompetence or recklessness.

Disciplinary and enforcement actions may include license revocation, license suspension, license probation, citations, civil injunctions, and/or referral to local district attorneys for criminal prosecution.

CAB may also investigate complaints about unlicensed individuals attempting to provide architectural services.

How to File a Complaint

A complaint form can be sent to you by mail by calling CAB. Complaint information and forms are also available online at www.cab.ca.gov. Please complete the form and return it to CAB along with supporting evidence. If you submit a letter, fully describe your complaint, and submit copies of all documentation that you believe will substantiate your complaint. Keep the originals of these documents, as well as a copy of your complaint letter. Include your name, address, and telephone number so CAB can contact you if more information is required.

You can remain anonymous by requesting it at the time you file your complaint. However, anonymity may add some difficulty or may prevent CAB from fully investigating your complaint and/or prosecuting the case.

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How Will CAB Respond?

Once CAB receives your complaint, you will be formally notified of its receipt and that the review process is beginning. If necessary, you will be asked to provide additional information. If CAB believes the complaint has merit, it will begin the investigation by evaluating the professional and/or technical aspects of your complaint. A letter will be sent to the architect approximately 10 days after receipt of your complaint requesting a response to the allegations.

CAB may only take action when there is a violation of the Architects Practice Act. If your complaint concerns something outside CAB's jurisdiction, you will be notified if another state or local agency might be able to assist you. If you are seeking recovery of money for alleged damages, you should consider other avenues of redress (i.e., arbitration, small claims court, civil, or criminal action) as CAB does not have the authority to recover monetary damages. The Department of Consumer Affairs has several publications available at www.dca.ca.gov concerning small claims court.

Priority is given to complaints involving a person's life, health, safety, or welfare.



Special Provisions in the Event of a Natural Disaster

If a declared disaster such as an earthquake, fire, or flood occurs, additional provisions of state law become effective.

Penalties for Unlicensed Practice

When responding to advertisements or solicitations offering architectural services, disaster victims should verify whether the person offering services has a valid license. Only persons licensed by CAB can call themselves architects and provide architectural services.

During a declared state of emergency, the penalty against an unlicensed person representing him/herself as an architect in connection with offering architectural services for damages is increased and punishable by a fine up to \$10,000 and/or imprisonment.

Requirements for Reconstruction

Individuals are advised to contact their local building officials for clarification of the requirements for repair or reconstruction of their project. It may not always be possible to recreate the home or business as it existed prior to the disaster due to building code changes. In some instances, substantial design or redesign services may be necessary to meet current code requirements.

Release of Plans

If damage to residential real property is caused by a natural disaster declared by the governor, and if the damage is covered by insurance, the architect or other person who prepared the plans originally used for the

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construction or remodeling of the property must release a copy of the plans to the homeowner, the homeowner's insurer, or a duly authorized agent of either upon request. The plans may only be used for verifying the amount of damage for insurance purposes.

The architect may charge a reasonable fee to cover the reproduction costs of providing a copy of the plans. The plans cannot be used to rebuild any part of the property without prior written consent of the architect or other person who prepared the plans. If prior written consent is not provided, the architect will not be liable if the plans are subsequently used by the homeowner or anyone else to rebuild any part of the property.

Immunity Following an Earthquake

California has a Good Samaritan law for licensed architects, engineers, and land surveyors who, at the request of a public official, provide safety inspection services without compensation at the scene of a

declared national, state, or local emergency caused by an earthquake. This law provides that the Good Samaritan architects who provide these services are immune from liability. This immunity applies only for an inspection that occurs within 30 days of the declared emergency.

Contact Information

California Architects Board

2420 Del Paso Road, Suite 105
Sacramento, CA 95834

(916) 574-7220

www.cab.ca.gov

cab@dca.ca.gov



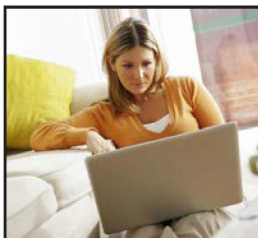
DEPARTMENT OF CONSUMER AFFAIRS



**PUBLIC PROTECTION THROUGH
EXAMINATION, LICENSURE, AND REGULATION**

Consumer Tips for Design Projects

The California Architects Board and the Landscape Architects Technical Committee believe that following these basic tips will help you avoid problems with your project.



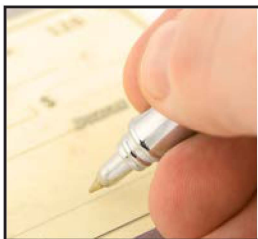
Check

Check references from recent clients with similar projects. Check with the Better Business Bureau. And, of course, check with the California Architects Board (Board) and Landscape Architects Technical Committee (LATC) to see if there are any enforcement actions against the architect, landscape architect, or unlicensed individual.



Contract

Any business transaction should be spelled out in a contract. Basic required elements are: a description of services; the basis of compensation; name, address, and license number of the architect or landscape architect, and address of client; procedure to accommodate additional services; and a description of the procedure to terminate services. While these elements are required by law for architects and landscape architects, the Board and LATC recommend that they be utilized for any project.



Costs

Work with the architect or landscape architect to develop a realistic budget for your project. Make sure to account for the specific materials and features noted in your design.



Communicate

If anything seems confusing or inconsistent with your contract, let your architect or landscape architect know immediately. It is important to document every point you communicate so you have a complete record of the project. Save e-mails, invoices, checks, memos, construction documents, etc. These will all help keep the project on track and avoid any discrepancies.

The Board and LATC have a number of publications (including consumers guides) at www.cab.ca.gov and www.latc.ca.gov that may be helpful. Feel free to call us at (916) 574-7220 (Board) or (916) 575-7230 (LATC) for more information.



DESIGN SUCCESS

A design project can be one of the most significant investments that consumers make. Enhancing your property can have a wide range of benefits. But a project that goes wrong can be costly and frustrating. There are a number of basic steps that consumers can take to help keep their projects on track.



CALIFORNIA ARCHITECTS BOARD

Public Protection Through Examination, Licensure, and Regulation

2420 Del Paso Road, Suite 105

Sacramento, CA 95834

(916) 574-7220

www.cab.ca.gov



DESIGN LIMITATIONS FOR PROFESSIONALS

ARCHITECTS

May design any building of any type except: The structural portion of a hospital.

APPLICABLE STATUTES

Section 129805 of Health & Safety Code
Sections 5500.1, 6737 of Business & Professions Code

CIVIL ENGINEERS

May design any building except: Hospitals and Public Schools.

APPLICABLE STATUTES

Section 129805 of Health & Safety Code
Section 17302 of Education Code
Sections 5537.5, 6731, 6735 of Business & Professions Code

STRUCTURAL ENGINEERS

No limitations; may design any building of any type.

APPLICABLE STATUTES

Sections 6731, 6736, 5537.1 of Business & Professions Code

UNLICENSED PERSONS

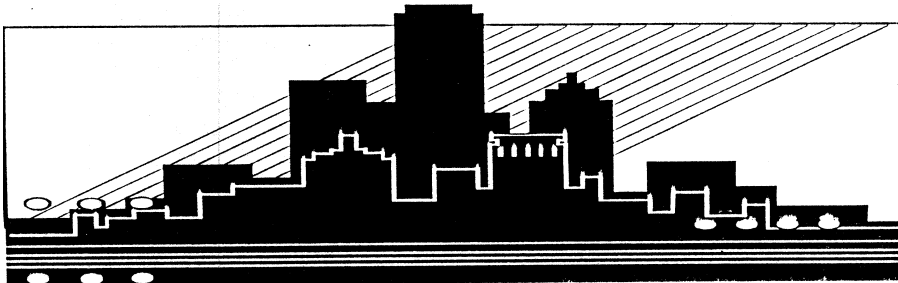
Limited to design of:

- ⇒ Single-family dwellings of woodframe construction not more than two stories and a basement in height.
- ⇒ Multiple dwellings containing no more than four dwelling units of woodframe construction not more than two stories and a basement in height. Not more than four dwelling units per lot.
- ⇒ Garages or other structures appurtenant to other exempt buildings, of woodframe construction not more than two stories and a basement in height.
- ⇒ Agricultural and ranch buildings of woodframe construction.*
- ⇒ Nonstructural or nonseismic store fronts, interior alterations or additions, fixtures, cabinetwork, furniture, or other appliances or equipment including nonstructural or nonseismic work necessary to provide for their installation.
- ⇒ May not design any component that changes or affects the safety of any building, including but not limited to structural or seismic components.

* *Unless the building official having jurisdiction deems that an undue risk to the public health, safety, or welfare is involved.*

APPLICABLE STATUTES

Sections 5537, 5538, 6737.1 of Business & Professions Code



**AGENDA ITEM F.5: DISCUSSION OF STRATEGIC PLAN OBJECTIVE 2.5 –
REVIEW THE CURRENT THRESHOLD FOR FINES TO
DETERMINE IF THEY ARE APPROPRIATE TO DETER
VIOLATIONS.**

Summary

Analyst Michael Sganga will discuss the statutory and regulatory limitations on administrative fines that can be assessed by the Board and the current amounts imposed.

Action Requested

Discuss points related to this Strategic Plan Objective and recommend alternative methods for deterring violations.

Attachments

1. California Code of Regulations section 152 Citations
2. Business and Professions Code section 125.9

[Home Table of Contents](#)**§ 152. Citations.**

16 CA ADC § 152

Barclays Official California Code of Regulations

Barclays California Code of Regulations
Title 16. Professional and Vocational Regulations
Division 2. California Architects Board (Refs & Annos)
Article 8. Disciplinary Proceedings

16 CCR § 152

§ 152. Citations.Currentness

(a) The Board's executive officer is authorized to issue citations containing orders of abatement and/or administrative fines pursuant to sections 125.9 or 148 of the code against an architect or an unlicensed person who has committed any acts or omissions which are in violation of the Architects Practice Act or any regulation adopted pursuant thereto.

(b) A citation shall be issued whenever any order of abatement is issued or any fine is levied. Each citation shall be in writing and shall describe with particularity the nature and facts of the violation, including a reference to the statutes or regulations alleged to have been violated. The citation shall be served upon the individual personally or by certified mail.

(c) Where citations include an assessment of an administrative fine, they shall be classified according to the nature of the violation and shall indicate the classification on the face thereof as follows:

(1) Class "A" violations are violations which the executive officer has determined involve an unlicensed person who has violated sections 5536, 5536.1, 5536.4, or 5536.5 of the code, or title 16, section 134 of these regulations, including but not limited to, acting in the capacity of or engaged in the practice of architecture. A class "A" violation is subject to an administrative fine in an amount not less than seven hundred and fifty dollars (\$750) and not exceeding two thousand five hundred dollars (\$2,500) for each and every violation except a higher fine may be assessed when expressly authorized by statute.

(2) Class "B" violations are violations which the executive officer has determined involve either a person who, while engaged in the practice of architecture, has violated a statute or regulation relating to the practice of architecture and which has caused physical damage to a structure or building or to real property or monetary damage to a client or member of the public or a person who has committed a class "C" violation and has one or more prior, separate class "C" violations. A class "B" violation is subject to an administrative fine in an amount not less than one thousand dollars (\$1,000) and not exceeding two thousand five hundred dollars (\$2,500) for each and every violation.

(3) Class "C" violations are violations which the executive officer has determined involve a person who, while engaged in the practice of architecture, has violated a statute or regulation relating to the practice of architecture and which has not caused either the death or bodily injury to another person or physical damage to a structure or building or to real property or monetary damage to a client or a member of the public. A class "C" violation is subject to an administrative fine in an amount not less than two hundred and fifty dollars (\$250) and not exceeding one thousand dollars (\$1,000) for each and every violation.

(d) In assessing the amount of an administrative fine, the executive officer shall consider the following criteria:

- (1) The good or bad faith exhibited by the cited person.
- (2) The nature and severity of the violation.
- (3) Evidence that the violation was willful.
- (4) History of violations of the same or similar nature.
- (5) The extent to which the cited person has cooperated with the board's investigation.
- (6) The extent to which the cited person has mitigated or attempted to mitigate any damage or injury caused by his or her violation.
- (7) Such other matters as justice may require.

(e) Notwithstanding the administrative fine amounts specified in subsection (c), a citation may include a fine between \$2,501 and \$5,000 if one or more of the following circumstances apply:

- (1) The citation involves a violation that has an immediate relationship to the health and safety of another person.
- (2) The cited person has a history of two or more prior citations of the same or similar violations.
- (3) The citation involves multiple violations that demonstrate a willful disregard of the law.
- (4) The citation involves a violation or violations perpetrated against a senior citizen or disabled person.

(f) The sanction authorized under this section shall be separate from, and in addition to, any other civil or criminal remedies.

Credits

NOTE: Authority cited: Sections 125.9, 148 and 5526, Business and Professions Code. Reference: Sections 125.9, 148, 149, 5510.1 and 5560, Business and Professions Code.

HISTORY

1. New section filed 12-2-86; designated effective 1-1-87 (Register 86, No. 49).
2. Amendment of section heading, section and NOTE filed 7-13-98; operative 8-12-98 (Register 98, No. 29).
3. Amendment of section and NOTE filed 5-22-2006; operative 6-21-2006 (Register 2006, No. 21).
4. Editorial correction of subsection (c)(3) (Register 2014, No. 3).
5. Amendment of subsection (c)(1) and NOTE filed 8-29-2022; operative 10-1-2022 (Register 2022, No. 35).

This database is current through 9/23/22 Register 2022, No. 38.

Cal. Admin. Code tit. 16, § 152, 16 CA ADC § 152

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BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 1. DEPARTMENT OF CONSUMER AFFAIRS [100 - 472.5] (*Heading of Division 1 amended by Stats. 1973, Ch. 77.*)

)

CHAPTER 1. The Department [100 - 144.5]

(*Chapter 1 enacted by Stats. 1937, Ch. 399.*)

125.9. (a) Except with respect to persons regulated under Chapter 11 (commencing with Section 7500), any board, bureau, or commission within the department, the State Board of Chiropractic Examiners, and the Osteopathic Medical Board of California, may establish, by regulation, a system for the issuance to a licensee of a citation which may contain an order of abatement or an order to pay an administrative fine assessed by the board, bureau, or commission where the licensee is in violation of the applicable licensing act or any regulation adopted pursuant thereto.

(b) The system shall contain the following provisions:

(1) Citations shall be in writing and shall describe with particularity the nature of the violation, including specific reference to the provision of law determined to have been violated.

(2) Whenever appropriate, the citation shall contain an order of abatement fixing a reasonable time for abatement of the violation.

(3) In no event shall the administrative fine assessed by the board, bureau, or commission exceed five thousand dollars (\$5,000) for each inspection or each investigation made with respect to the violation, or five thousand dollars (\$5,000) for each violation or count if the violation involves fraudulent billing submitted to an insurance company, the Medi-Cal program, or Medicare. In assessing a fine, the board, bureau, or commission shall give due consideration to the appropriateness of the amount of the fine with respect to factors such as the gravity of the violation, the good faith of the licensee, and the history of previous violations.

(4) A citation or fine assessment issued pursuant to a citation shall inform the licensee that if the licensee desires a hearing to contest the finding of a violation, that hearing shall be requested by written notice to the board, bureau, or commission within 30 days of the date of issuance of the citation or assessment. If a hearing is not requested pursuant to this section, payment of any fine shall not constitute an admission of the violation charged. Hearings shall be held pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(5) Failure of a licensee to pay a fine or comply with an order of abatement, or both, within 30 days of the date of assessment or order, unless the citation is being appealed, may result in disciplinary action being taken by the board, bureau, or commission. Where a citation is not contested and a fine is not paid, the full amount of the assessed fine shall be added to the fee for renewal of the license. A license shall not be renewed without payment of the renewal fee and fine.

(c) The system may contain the following provisions:

(1) A citation may be issued without the assessment of an administrative fine.

(2) Assessment of administrative fines may be limited to only particular violations of the applicable licensing act.

(d) Notwithstanding any other provision of law, if a fine is paid to satisfy an assessment based on the finding of a violation, payment of the fine and compliance with the order of abatement, if applicable, shall be represented as satisfactory resolution of the matter for purposes of public disclosure.

(e) Administrative fines collected pursuant to this section shall be deposited in the special fund of the particular board, bureau, or commission.

(Amended by Stats. 2020, Ch. 312, Sec. 3. (SB 1474) Effective January 1, 2021.)

**AGENDA ITEM F.6: DISCUSSION OF STRATEGIC PLAN OBJECTIVE
2.6 –**

**MONITOR SOCIAL MEDIA TO PROACTIVELY
ENFORCE AGAINST UNLICENSED
ADVERTISING.**

Background Summary

As part of the Board's 2022-2024 Strategic Plan Objectives in Regulation and Enforcement, the Board is to monitor social media to proactively enforce against unlicensed advertising.

Business and Professions Code section 5536(a) prohibits unlicensed individuals from advertising architectural services. The Board's current process for enforcing against unlicensed advertising begins when the Board is notified of a violation by a consumer, architect, or Board staff. After the offending advertising is reported, Board staff open a case which is assigned to the Enforcement Technician.

The Enforcement Technician is responsible for the investigation of advertising cases and conducts searches for any additional advertising violations within common social media platforms. The Subject is then notified of the advertising violation and advised to remove and/or modify the advertisement(s). If the Subject removes and/or modifies the advertisement the Board can issue either a letter of advisement or a citation depending on the overall circumstances of the case (i.e., first time violation, severity of violation, any other violations). If the Subject does not comply, they are issued a citation. The citation can then be appealed by requesting an informal conference with the Board's Executive Officer or an administrative hearing with an administrative law judge, or both. The citation can be upheld, modified, or dismissed after an informal conference or administrative hearing.

Refer to Attachment 1 Enforcement Advertising Statistics, Figure 1: Advertising Cases Opened by Year to compare the number of advertising cases opened each year between 2017-2022 by the Board.

Refer to Attachment 1 Enforcement Advertising Statistics, Figure 2: Action Taken for Closed Advertisement Cases to compare the type of closure for each advertising case opened by the Board between years 2017-2022.

Refer to Attachment 2 for an overview of the advertising enforcement process.

Board staff have begun to implement and experiment with streamlining process to reduce the time spent working with unlicensed individuals to remove architectural advertisements and bring them into compliance. The Board will also develop a process to spend time monitoring social media platforms to identify and proactively enforce against unlicensed advertising. It is important to note that identifying unlawful social media is only the first step in the process and the more time-consuming aspects involve communicating with the unlicensed individual and issuing a citation, if necessary. The Committee should also note that Board staff have prioritized working with unlicensed individuals by bringing them into compliance and closing the case with a letter of advisement. Board staff have periodically reviewed past violations to determine if they are still in compliance and have not found re-offenders to be common.

One concern to take into account would be an increase in the number of citations issued can be costly to the Board, due to the resources required for citations. For example, it costs nothing for the unlicensed individual to request an administrative hearing for a citation and the Board bears the costs associated with a hearing, including, legal counsel, hearing costs, and staff time. The Committee should consider having Board staff research possible methods of reducing time for the appeals processes if more advertising citations are issued. Board staff will also continue to work with other Department of Consumer Affairs' (DCA) entities to research and develop a streamlined citation process. The Committee should also factor in the fact that Board staff gives higher priority to consumer complaints related to unlicensed practice and licensed architects. In total, the Committee should consider the Board's resource limitations and whether a compliance-oriented approach is more practical for the Board than an increase in citations for advertising violations.

In regard to the overall scope of social media, it is difficult to estimate the total amount of unlicensed advertising on social media as the social media landscape is expansive and growing quickly. Board staff researched the feasibility of an automated solution to identifying unlicensed advertising by contacting our vendor for Business Modernization, (inLumon), who determined that at this time due to complexity, time, and costs, such a feature could not currently be added. It is unlikely that such a feature would be feasible or cost-effective for the Board soon; however, the Board does expect efficiencies from moving to the business modernization software that will be used to further analyze and optimize the advertising enforcement process.

Finally, Board staff raised the possibility of an outreach program using the Board's social media and newsletter to encourage licensees to report any unlicensed advertising to the Board. This approach could increase the number of advertising cases. Board staff noted in 2019 there was an increased effort by some architects to report unlicensed advertising which is one of the factors in a high case count in that year.

Recommendation(s)

- Continue to research and implement best practices from other DCA entities to enforce against unlicensed advertising.

- Continue to develop streamlined approaches to optimize the enforcement process.
- Research feasibility of streamlining the appeals process to make it more cost-effective for the Board to issue advertising citations.
- Consider the benefits of a compliance-oriented approach versus a citation-oriented approach.
- Consider a social media outreach program to encourage reporting of unlicensed advertising.

Action Requested

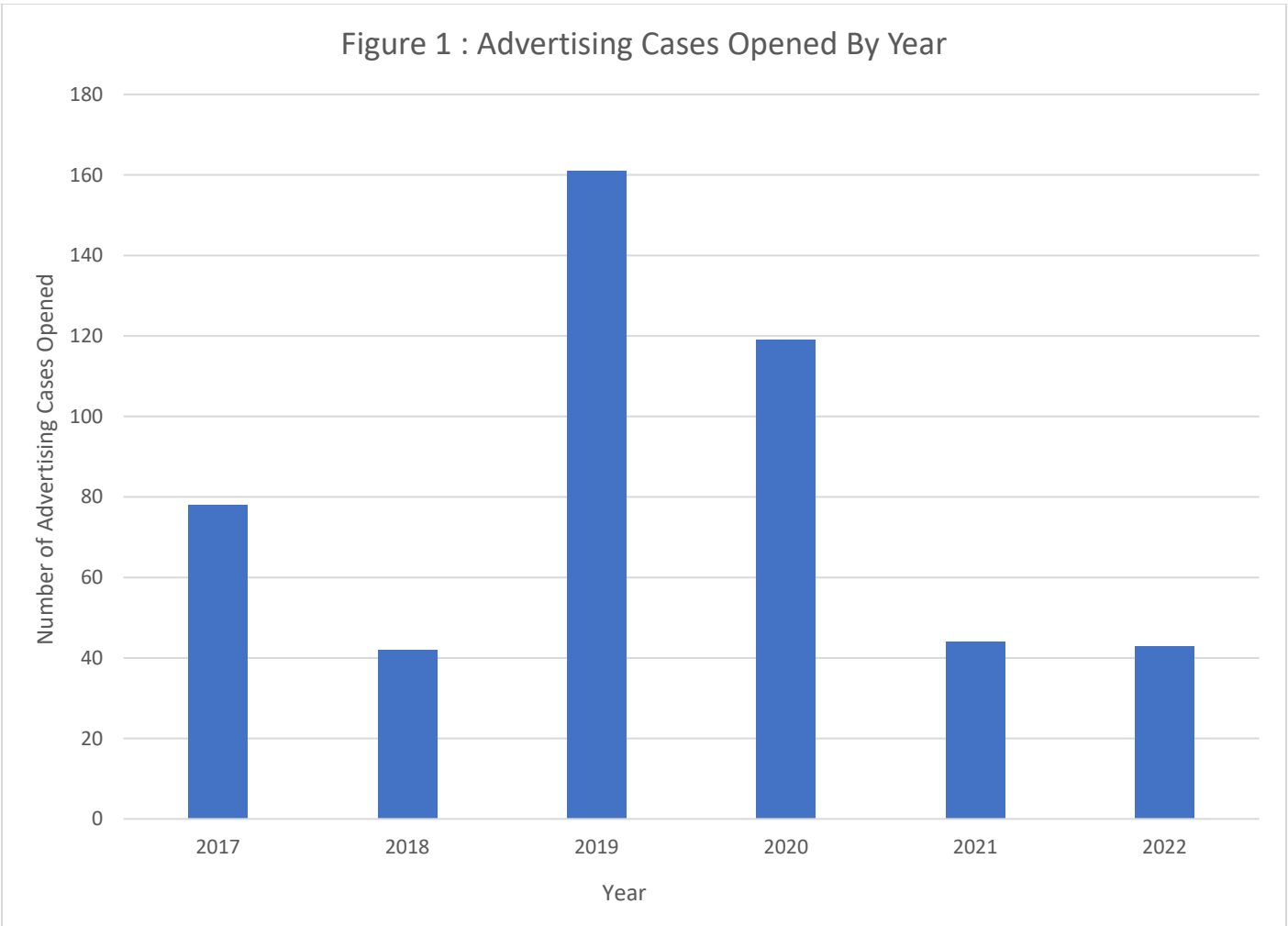
The Committee is asked to discuss the objective, the recommendations, and/or suggest further ideas to complete the objective the above recommendations.

Attachment(s)

1. Enforcement Advertising Statistics
2. Board Process for Enforcing Unlicensed Advertising

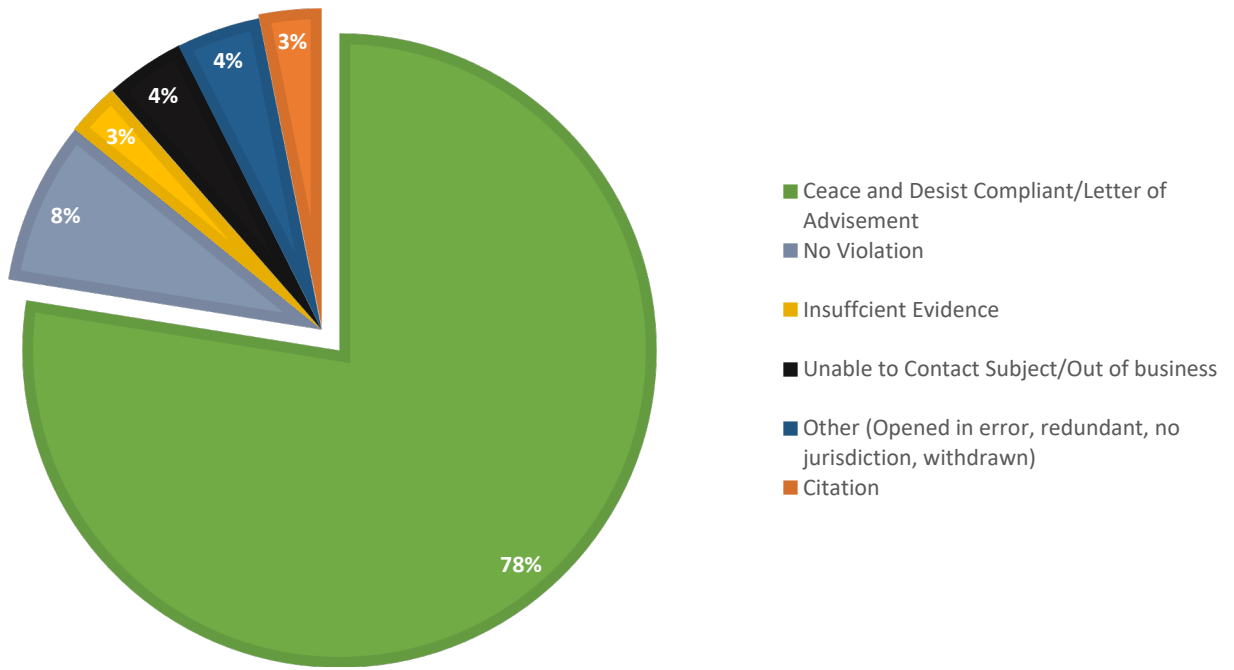
Attachment 1: Enforcement Advertising Statistics

Figure 1 : Advertising Cases Opened By Year



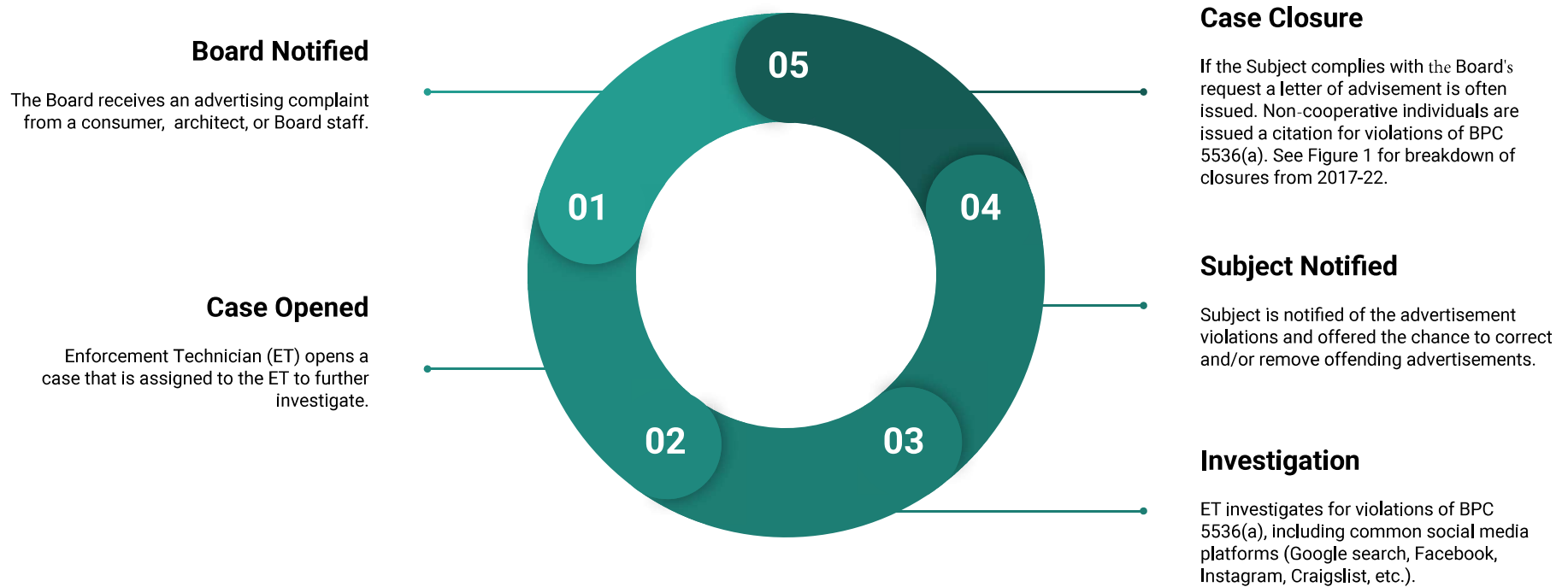
Note: The case count does not include unlicensed practice cases may involve advertisement violations as well.

FIGURE 2: ACTION TAKEN FOR CLOSED ADVERTISEMENT CASES 2017-2022



Attachment 2

Board Process for Enforcing Unlicensed Advertising



AGENDA ITEM G: ADJOURNMENT

Time: _____