



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

November 18, 2022
Teleconference Meeting

Committee Members Present

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

Board Staff Present

Laura Zuniga, Executive Officer
Alicia Kroeger, Program Manager, Enforcement
Michael Sganga, Lead Enforcement Analyst
Idris Ahmed, Enforcement Analyst
Jasmine Steinwert, Enforcement Analyst
Katie Wiley, Enforcement Analyst
Coleen Galvan, Administration Analyst
Stacy Townsend, Enforcement Analyst
Natalia Diaz, Office Technician

Guests

Glenn S.A. Gall
Kimberly Anderson
Laura Knauss
Keven Kroeger
Matthew Wainwright
Scott Terrell
Ida Clair

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 10:03 a.m.

Chair Jones called the roll. There being five members present at the time of roll, a quorum was established.

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

Chair 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.

Chair Jones thanked everyone for their attendance and welcomed everyone for being here. He commented how impressive and comprehensive the information in the packet was and thanked staff for their work on it.

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 January 25, 2022 REC Meeting Minutes

Chair Jones asked if there were any questions, comments, or changes to the January 25, 2022 REC Meeting Minutes. There were none.

Robert Pearman moved to approve the January 25, 2022 REC Meeting Minutes.

Robert Chase seconded the motion.

Members Kwan, Pearman, Chase and Committee Chair Jones voted in favor of the motion. Member Winkel abstained. The motion passed 4-0-1.

E. Enforcement Program Update

Alicia Kroeger provided an Enforcement Program Update that included information on the updates to the Building Official Guide for 2019 and again in 2020 to include data for the landscape architects. She mentioned that the Enforcement staff has welcomed Natalia Diaz who is working to collect contact information from each Building Official to remind them of the Guide and offer a copy for their department.

Disciplinary Guidelines are in the review process with the legal division of Consumer Affairs and staff have been working closely to align the Guidelines for the Board and the Landscape Technical Assistance Committee.

Ms. Kroeger mentioned that there are a few regulations in the review process, including California Code of Regulation (CCR) 135 (Architectural Advertising) which is still pending and the Board will be voting on this regulation in the December 9,

2022 meeting. CCR 152 (Citations) will update citations for advertising violations and unlicensed practice under Business and Professions Code (BPC) section 5536.

Ms. Kroeger discussed the process of the Subject Matter Expert (SME) Program and its effectiveness. The three year program started in 2019 with 15 SMEs and about 12 of the SMEs will be renewed in 2022. She mentioned that the SMEs are used for the complaints that are more egregious or technical in nature.

In the data provided for the Architects Complaints and Enforcement Actions Ms. Kroeger compared the data from the current quarter to last years fiscal year data. She pointed out the spike in the Days to Close data and stated that it was due to cases that had recently been closed and with the investigation unit for an extended period of time and/or cases that went before an Administrative Law Judge to hear the case before a decision was made. Most of the data for each category was aligned in comparison to the past year. Ms. Kroeger referred to the Governor's Executive Order N-39-20, during the State of Emergency, where the Director of the California Department of Consumer Affairs may waive any statutory or regulatory renewal requirements pertaining to individuals licensed pursuant to Division 2 of the Business and Professions Code while highlighting data within the Continuing Education section. Ms. Kroeger stated that members should see those numbers appearing over the next few reports. Ms. Kroeger continued to provide clarification to the members regarding the data that was provided.

Ms. Kroeger turned the remainder of the discussion over to Michael Sganga who discussed the Enforcement Action Summaries and noted a document in the packet which provided Elements of the Architect Practice Act Violation for the members to reference in relation to the violations in the summaries. Mr. Sganga further went into detail about each Enforcement Action Summary and provided details about how and why there were the violations for each case.

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

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

Mike Sganga discussed this objective in the context of information available to the Board and to the public about the consumer complaint process. He gave an overview of the process from intake through outcome.

During intake, complaints from various sources are reviewed to ensure completeness and that they allege a potential violation of the Architects Practice Act (Act) over which the Board has jurisdiction. The case is then assigned to an

analyst who verifies the potential violation and conducts an investigation, including gathering of relevant documents and interviewing the Subject of the complaint and other witnesses. If a violation is found, the analyst then recommends an appropriate penalty or other outcome.

The actions that might be taken against a Subject include an informal letter of advisement, citation with an administrative fine, or referral to the Attorney General which might result in suspension or revocation of the Subject's license.

The outcomes of cases are reported to the Board in the form of statistics, case summaries, proposed decisions, and disciplinary settlements. The public has access to information on the Board's website and through public records requests, Board publications, and professional outreach.

The Committee discussed the information currently available to consumers and the need for architects to be familiar with the Act. They recommended that this presentation on the enforcement process be provided to the full Board at a future meeting.

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

Jasmine Steinwert gave a presentation to the REC on information regarding the Board's 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.

Ms. Steinwert explained that this item is still in progress, but the Board would be working on it and gathering data on the most common violations.

Ms. Steinwert presented an update on the Board's efforts to complete this objective, including plans to create a video seminar or PowerPoint presentation on "Do's and Don't's" for architects and consumers, and possibly a "Year in Review" article for the website, newsletter, and social media posting. The article would include regulatory updates, common violations, and case studies.

The REC approved the Board's plans to complete this objective, and gave approval to move forward with it. The REC also suggested outreach on this topic to other organizations, such as the America Institute of Architects, the Coalition for Adequate School Housing (CASH), and colleges and universities.

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

Ms. Steinwert gave a presentation to the REC on information regarding the Board's Strategic Plan Objective 2.3: Better educate practitioners on standards of practice during the renewal process to protect the public.

Ms. Steinwert explained that the terms "standards of practice" and "standard of care" were typically used interchangeably in the industry.

Ms. Steinwert stated that the Board needed to be cautious not to establish a higher standard than the professional standard of care that would otherwise apply, and that the definition cannot be narrowed down to a list of what is included in standard of care. The Board recently updated California Code of Regulations, title 16, section 160(B)(1) to give standard of care its own section under the Rules of Professional Conduct. Ms. Steinwert explained that cases that involve standard of care violations are very complicated, and are usually sent to an expert to determine if the standard of care was met, and, if not, how serious the violations were.

Ms. Steinwert informed the REC that the Board's suggested way of achieving this objective and the best way of educating practitioners would be to add a checkbox to the License Renewal Application which would require licensees certify that they have reviewed the Act during the renewal process.

Robert Chase moved to proceed with the checkbox feature.

Robert Pearman seconded the motion.

Members Kwan, Pearman, Chase, Committee Chair Jones, and Winkel voted in favor of the motion. The motion passed 5-0.

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

Ms. Steinwert gave a presentation to the REC on information regarding the Board's Strategic Plan Objective 2.4: Educate the public and practitioners regarding their roles when contracts are signed with a third party (contractor/developer). The REC wanted to clarify the relationship between the consumer and architect when an architect is hired by a third-party and not the homeowner.

Ms. Steinwert explained that the Board had already made progress towards this objective through a Related 2019-2021 Strategic Plan Objective, which was 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.

In response to the previous Strategic Plan Objective, the Board has continued enforcing BPC 5536.1 requiring architects sign all contracts for architectural services, and ensure contracts comply with BPC 5536.22 requirements. The Board has also published an Informational Bulletin regarding Responsible Control within Design and Design-Build Firms and published a Consumer’s Guide educating consumers on contract requirements.

The REC brought up their concerns about contract situations that did not include homeowners, such as an architect contracting with a developer to design a subdivision, where the homeowner comes along further down the line. The REC brought up situations where the third-party hiring an architect is an insurer or design/build company and asked for clarification on differences in signing requirements.

Ms. Steinwert pointed out that the Act did not define “Client” nor require that the client of an architect’s contract be the homeowner, however the Act stated that if a contract contains architectural services, an architect is required to sign it.

The REC made a motion to request the Board continue to research this item and reach out to other entities such as insurance companies, developers, and the Design-Build Institute of America to have a discussion about how they think the architect/third-party relationship should work, and bring a report to the REC in the future.

Robert Pearman moved for staff to continue to work on ways to educate the public and practitioners and to research other ideas with outside parties and entities.

Sylvia Kwan seconded the motion.

Members Kwan, Pearman, Chase, Committee Chair Jones, and Winkel voted in favor of the motion. The motion passed 5-0.

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

Mike Sganga discussed the current thresholds for administrative fines that can be imposed by the Board as defined in the Act and other DCA regulations.

CCR 152(c) sets forth a range for fines between \$750 and \$2,500 per violation. BPC 5536.5 allows increased fines of \$5,000 for advertising and unlicensed practice violations in a declared disaster zone. CCR 152(e) gives the Executive Officer discretion to increase fines to \$5,000 under specified aggravating circumstances. BPC 125.9, which applies to all DCA licensing Boards, sets a maximum of \$5,000 for each investigation.

The deterrent effects of these amounts were considered based on the low rate of repeat offenses. The Committee agreed that the current thresholds are appropriate. No action was taken.

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

Idris Ahmed presented this agenda item which included a presentation on the Board's process for advertising cases, statistics on advertising cases, and staff work on the strategic plan objective.

Mr. Ahmed provided a description of the process for opening, investigating, and closing an advertisement case. Mr. Ahmed described the statutory authority for Board's power against unlicensed advertising. He then provided examples of advertising cases and some common issues staff encounter with advertising cases. Mr. Ahmed presented data of advertising cases opened from 2017 to 2022.

Robert Chase asked if the spike in 2019 data could be a result of the fires in California and the rebuilding that took place afterward. Mr. Ahmed explained that he was unsure if that was the case in particular and would have to look at the data in more detail, but there was an architect who was actively reporting many violations to the Board at that time.

Mr. Ahmed then presented a pie chart of case closures from 2017-2022, and pointed out that most of the advertising cases had been closed with a cease and desist/letter of advisement, as the Board staff strategy in the past has been a more compliance oriented approach.

Mr. Ahmed presented some of the limitations of resources the Board is faced with when handling the objective including staff time, and discussed the

compliance versus citation approach. Mr. Ahmed described how the compliance approach involves the letters of advisement, but citations could be more resource intensive for the Board.

Mr. Ahmed also stated that Board staff contacted our current Business Modernization Vendor (inLumon) to inquire about an automated approach to dealing with unlicensed advertising and heard back that at this time it would not be a possible solution due to resource limitations. Mr. Ahmed also noted the expansive nature of social media in scope as a limitation.

Mr. Ahmed then presented some possible solutions Board staff came up with including, streamlining the advertising case process, potentially increasing citations, which could increase Board staff workloads. Mr. Ahmed noted that Board staff would continue to work with other DCA entities to discover which approach is generally the best practice. Mr. Ahmed also stated Board staff would proactively work on an approach to identify advertising violations. Mr. Ahmed lastly stated that another idea was to have a social media campaign to encourage architects to report unlicensed advertising online.

Glen Gall, AIA stated he would like to provide a public comment.

During the pause waiting for public comments from Mr. Gall, Chair Jones noted that he believed the term “associate architect” was no longer used by AIA and Ms. Kwan and Mr. Winkel confirmed that is true. Mr. Chase noted that the state also used to have positions that used the term architect for unlicensed people, but that has since been updated.

The public comment from Mr. Gall started and he asked if the Board would actively pursue the misrepresentation in the first example, and if the Board staff were actively pursuing cases or pursued cases that staff discovered. Mr. Ahmed responded when the Board staff encounter a violation incidentally they open the case, but part of the overall strategic goal is to determine how to move in a proactive direction with the consideration of the resource limitations. Mr. Gall concluded that more structured time on the monitored side would be good and go after the first example presented.

Mr. Pearman commented that he was a proponent of taking proactive action on the matter and while the social media landscape is expansive and growing quickly he thinks that means the network of unlicensed practitioner who advertise will also grow. He stated the Board must deal with unlicensed advertising in an aggressive manner. Mr. Pearman mentioned that the Board had the advertising regulation proposal, but that at the last Board meeting he was under the understanding that this regulation was not moving forward.

Mr. Pearman suggested he would like to see how effective a campaign would be for having an advertising banner on a website like Yelp that linked to the Board's website to search for architects. Mr. Pearman stated he was not content with the Board staff report and that it did not deal with the problem.

Mr. Winkel stated that while it sounds like some of the Board's current technology is obsolete there could be some search engine solutions and while there could be expense associated with that it could be something simple and be a more effective use of staff time. Mr. Winkel also mentioned that education to consumers and architects could be effective as well.

Mr. Jones commented on the data provided by the staff report and commented that outside from the outliers it looks like there is an average of 40 advertising cases a year and that the majority of cases are closed cease and desist and no violation. Mr. Jones mentioned resource allocation and a possible study of how resources are allocated in order to efficiently use staff time. Mr. Jones stated that there was a possibility for consumer harm from unlicensed practice and questioned how these are classified.

Ms. Kroeger asked the REC to keep that in mind that the statistics show just advertising cases and that is different from unlicensed practice cases, which are related to an actual project. Mr. Ahmed mentioned the strategic goal is specific to just advertising cases and unlicensed practice cases do get a higher priority due to active consumer harm.

Mr. Pearman concluded that he wanted the Board to further look into a technological solution. Ms. Zuniga stated that Board staff could report back on future findings at the next REC meeting.

G. Adjournment

The meeting adjourned at 2:25 p.m.