

**BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND
GEOLOGISTS**

INITIAL STATEMENT OF REASONS

Hearing Date: None Scheduled

Subject Matter of Proposed Regulations: Examination Subversion

Sections Affected:

- Amend Section 442 of Article 3 in Division 5 of Title 16 of the California Code of Regulations.
- Amend Section 3035 of Article 3 in Division 29 of Title 16 of the California Code of Regulations.

Specific Purpose of each adoption, amendment, or repeal:

1. Problem being addressed:

Since October 2011, the Board for Professional Engineers, Land Surveyors, and Geologists (Board) has utilized computer-based testing (CBT) centers and the National Council of Examiners for Engineering and Surveying (NCEES) for administration of the licensure examinations. As such, Board staff is not in attendance for many of the examinations and must rely on the CBT centers and NCEES to advise Board staff of any incidents that may occur during an examination. Those who are not taking their examinations properly or fairly may be committing examination subversion. Sections 442 and 3035 need to be amended to provide the Board with final discretion over whether the subversionary act is significant enough to justify removal from the examination administration and voidance of the examination.

Sections 442 and 3035 would be amended to provide for discretionary voidance of examinations, rather than mandatory voidance. Section 3035 would be amended to match section 442 in an effort to provide consistent language among the Professional Engineers Act, Professional Land Surveyors' Act, Geologist and Geophysicist Act, and the regulations that fall under the purview of the Board. This proposed regulatory action would define and formalize the examination subversion procedures and recourses for enforcement.

2. Anticipated benefits from this regulatory action:

These amendments would make it easier for the consumers of California and the Board's applicant's, licensees, and certificate holders to comprehend and follow the laws and regulations. These amendments would also provide consistency within the Board's current procedures and maintain the Board's mission to safeguard the life, health, property, and welfare of the public. It is the intent of the Board to ensure that its laws are clear, concise, efficient, and necessary. To that extent, staff is proposing regulation amendments to the enforcement components of the Professional Engineers Act, Professional Land Surveyors' Act, and Geologist and Geophysicist Act, so that they are all similar in content and form.

Factual Basis/Rationale

The Board is mandated to protect the public health, safety, and welfare by ensuring only those individuals who meet the qualifications for licensure are granted an engineer, land surveyor, geologist, or geophysicist license in California. To achieve this goal, the Board administers written examinations to qualified applicants who are required to use their knowledge and experience to successfully pass the examination. This ensures that an individual licensed by the Board has proven they have the knowledge and experience to perform their work within the industry standard of practice and within the laws of the Professional Engineers Act, Professional Land Surveyors' Act, or Geologist and Geophysicist Act.

Sections 442 and 3035 prohibit the examinee from using any unauthorized materials or devices in completing their examination. Examination subversion, as detailed in Section 442, can vary from severe to minor violations. Since the Board is not always present to witness the subversion as it happens, we must analyze the matter according to the evidence provided to us by the administrator of the examination. In some subversion incidents, voidance of the examination is not an appropriate action in response to the violation. The Board needs to assess the incident that has taken place and determine the appropriate action. As such, Sections 442 and 3035 need to be amended to allow the Board to have the discretion to determine the appropriate course of action for the subversion action.

Similarly, Section 3035 is being amended to match Section 442 to provide consistency among all of the regulations under the purview of the Board. Section 3035 is also being amended to provide the detail and specifics noted in Section 442. This amendment would put into writing in Section 3035 the detail and specifics the Board currently utilizes for its geology and geophysics examinations.

This amendment would not task licensees or applicants with any additional work and will not require the licensees to expend any additional money in an effort to comply.

Underlying Data

Technical, theoretical or empirical studies or reports relied upon (if any):

1. Board Meeting, March 8-9, 2012, Agenda Item X, Consideration of Rulemaking Proposals, Proposed amendments to Division 5 and 9 of Title 16, California Code of Regulations
2. Goal 2, Board for Professional Engineers, Land Surveyors, and Geologists 2011-2014 Strategic Plan

Business Impact

This proposed regulatory action will not have a significant adverse economic impact on businesses. This initial determination is being made since the amendment affects only applicants and only during the examination process. Also, this proposed regulatory action does not add or change the examination process, it only details and documents current procedures.

Economic Impact Assessment

This proposed regulatory action will have the following effects:

- It will not create or eliminate jobs within the State of California because it is simply detailing and formalizing the examination subversion procedures and practices into Section 3035. It would also provide the Board with discretionary avoidance of examinations, rather than mandatory avoidance.
- It will not create new businesses or eliminate existing businesses within the State of California because the proposal only affects individuals taking examinations.
- It will not affect the expansion of businesses currently doing business within the State of California because the proposal only affects individuals taking examinations.
- This proposed regulatory action benefits the health and welfare of California residents because it ensures fair and established examinations that safeguard the public health, safety, and welfare of consumers.
- This proposed regulatory action benefits worker safety because it ensures that licensees have been properly licensed and are compliant with all laws and regulations according to Board statutes and regulations.
- This proposed regulatory action does not affect the state's environment because the proposal is not making any amendments that would affect the state's

environment.

Specific Technologies or Equipment

This proposed regulatory action does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No reasonable alternative to proposed regulatory action would be either more effective than or as effective as and less burdensome on affected private persons than this proposal.

The alternative to this proposed amendment would result in the Board continuing to administer the geological and geophysical examinations in accordance with Section 3035, which neither details what constitutes examination subversion violations nor details what actions the Board can take against the examinee found in violation of examination subversion.

Not providing this detail in Section 3035 is confusing to the examinee and to Board staff. It can also limit the enforcement action available to the Board when an examinee is found to have committed examination subversion.

If Section 442 is not amended, the Board will be forced to continue to void all examinations taken by the examinee found to have committed examination subversion, which may not be the appropriate action in all cases.