

Rancho Guejito Public Comment, Jan. 23 Board Meeting, Item 12.b.III, CRM Regulations

To: 'PublicComments@bof.ca.gov'
Cc: Board of Forestry and Fire Protection and Staff

January 14, 2019

Dear Honorable Members of the Board:

I am writing on behalf of Rancho Guejito regarding Item 12b.III on the agenda for the January 23, 2019 meeting, to request the proposed changes to the CRM regulations as set forth in Attachment 1.

At the December 5 meeting of the full Board, the Board remarked in the discussion regarding Rancho Guejito's petition for rulemaking that the forthcoming CRM regulations should address the spirit of Rancho Guejito's petition. The spirit of Rancho Guejito's petition was that the CRM regulations need to provide for better protection of the public through better regulation of good moral character requirements and professional standards for CRMs. These requirements are clearly set forth by the Professional Foresters Law and existing regulation (see, e.g., California Code of Regulations, title 14, section 1650(c)(2)).

Over the past year, Rancho Guejito has submitted well over 100 pages of comments and proposed changes to the CRM program and therefore hopes that the Board will approve these proposed changes, which are limited to one page. Unfortunately, the draft regulations forwarded to you from the PFEC do not provide any enforcement of good moral character and actually decrease protections for the public by eliminating the requirement in existing regulation that CRMs adhere to professional standards.

By way of background, Rancho Guejito seeks this Board's help in strengthening the CRM regulations. Rancho Guejito's unfortunate experience with the CRM program resulted in the issuance of a Three-Year Workplace Violence Restraining Order against a Board-licensed CRM. The Court found that the **CRM had "demonstrated a history of alarming conduct, including making threats, gaining access to Rancho Guejito's property by deception, attempting to force his way into Rancho Guejito's office, disregarding directives to have no contact with Rancho Guejito personnel, changing e-mail addresses to avoid . . . electronic blocking of [his] unwanted emails, and confrontations with Rancho Guejito's security officers."** (See Attachment 2.) Yet when Rancho Guejito sought help from through the current regulatory processes, no action was taken. Even though the CRM Certification Panel conceded that the CRM "could have handled this business better" and had "concerns over specific actions," it declined to recommend that any action be taken, stating that any disciplinary action "reflects badly on CalPac" and "because we can't keep it confidential."

There must be a better way to protect the public and enforce good moral character requirements. No member of the public should have to be subjected to what Rancho Guejito experienced. Accordingly, Rancho Guejito would like to see some meaningful, positive change to how this program is managed.

The proposed changes set forth in Attachment 1 allow the public to have access to information regarding potential issues with a CRM so they can be informed in their hiring and contractual decisions, rather than relying on an unaccountable, private organization of a CRM's friends and colleagues that appears to be primarily concerned about regulating the public perception of its organization rather than protecting the public.

There should be no dispute that the Professional Foresters Law requires (in particular Section 769), among other things, that licensees and certificants demonstrate good moral character in order to obtain licensing or certification. The

requirement for good moral character appears in other certification and licensing programs in state law, as set forth in Attachment 3.

There should also be no dispute that the Professional Foresters Law provides the Board with the discretion to enforce this requirement. (See Attachment 4.) The self-certification approach that makes information available to the public, which Rancho Guejito proposes in Attachment 1, is not uncommon and is a feature of other licensing/certification programs that require a demonstration of good moral character.

If the Board decides not to proceed with these particular changes, Rancho Guejito hopes that the Board will take some other action to strengthen, not weaken, the regulations governing CRMs. As noted, the current draft forwarded to you from the PFEC does not address the spirit of Rancho Guejito's petition for rulemaking. There is still no enforcement or meaningful monitoring of good moral character requirements; and the regulations for CRMs have actually been weakened by eliminating the existing requirement to adhere to professional standards.

Finally, we leave the Board with the following questions for discussion:

- 1) What feature of the draft regulations forwarded to you by the PFEC ensure enforcement of the good moral character requirements in Public Resources Code section 769?
- 2) Why were existing requirements to adhere to professional standards in title 14, California Code of Regulations, section 1650(c)(2), deleted?
- 3) Why are specialty certificants held to lower standards than registered professional foresters?

Thank you for your consideration of this matter.

Respectfully submitted,

Taiga Takahashi
of LATHAM & WATKINS LLP

ATTORNEYS FOR RANCHO GUEJITO

ATTACHMENT 1 -

Additions/deletions in underline/~~strikeout~~.

Section 1607(c): Licenses and specialty certificates are not valid unless fees are paid prior to the expiration date. Written notification of delinquency shall be mailed no later than September 1 to those persons whose license or specialty certificate(s) expired. Individuals have sixty (60) days from the date of mailing the delinquency notice to reinstate the license or certificate by paying renewal fees and penalties, after which the Board shall revoke the license or certificate. By paying all renewal fees and penalties, within one year of the renewal date, the individual may reinstate a license or certificate(s) revoked because of delinquency. Licenses and specialty certificates are also not valid unless, prior to the expiration date for each renewal period, the licensee or certified specialist provides an updated signed, self-certified statement notifying the Board of the existence of any past or present criminal or civil restraining orders or criminal or civil court judgments against the certified specialist involving deceit, misrepresentation, fraud, material misstatement of fact, incompetence, or gross negligence in his or her practice, along with a brief description and status of each listed item, or provide an updated signed, self-certified statement regarding the absence thereof. This updated certified statement shall be made available to the public upon request.

Section 1620.1: Reasonable evidence of good moral character and good reputation for honesty and integrity. Reasonable evidence of good moral character and good reputation for honesty and integrity shall include, at a minimum, the evidence described in subdivisions (a) and (b) of this section. The Board may prescribe additional requirements for the demonstration of good moral character and good reputation for honesty and integrity by regulation, as it deems necessary to carry out the purposes of the Professional Foresters Law.

(a) An applicant shall include in the application for registration the names and addresses of two qualified foresters or two qualified certified specialists, as applicable, as references, who are familiar with the professional work and three responsible members of the community who are not foresters or certified specialists, as applicable, who can attest to the character and business integrity of the applicant. Such references may be consulted by the examining committee regarding the qualifications of the applicant.

(b) An applicant must also provide a signed, self-certified statement notifying the Board of the existence of any past or present criminal or civil restraining orders or criminal or civil court judgments against the certified specialist involving deceit, misrepresentation, fraud, material misstatement of fact, incompetence, or gross negligence in his or her practice, along with a brief description and status of each listed item, or provide a signed self-certified statement regarding the absence thereof. This certified statement shall be made available to the public upon request.

Add to Section 1650(a): “As a condition to the Board’s recognition an independent certification program pursuant to this section, and notwithstanding subsection (e), all certified specialists must submit a completed application, on a form prescribed by the Board, that will provide for submittal of reasonable evidence of good moral character and good reputation for honesty and integrity, upon initial issuance of the certificate of specialization and upon periodic renewals of the same.”

ATTACHMENT 2

Background – CRM Dispute

- Superior Court, 2012
 - CRM
 - “engaged in unlawful violence,”
 - “made a credible threat of violence,” and
 - “demonstrated a history of alarming conduct, including the making of threats, gaining access to Rancho Guejito’s property by deception, attempting to force his way into Rancho Guejito’s offices, disregarding directives to have no contact with Rancho Guejito personnel, changing e-mail addresses to avoid Rancho Guejito’s electronic blocking of unwanted e-mails, and confrontations with Rancho Guejito’s security officers.”
 - “The Court is satisfied that on each occasion, [the CRM] was needlessly aggressive and confrontational.”
 - **Three-Year Workplace Violence Restraining Order Issued**

(Petition, Attachment 1.)

Background – CRM Dispute

■ Court of Appeal, 2013

- “[The CRM] made actual threats, including telling employees that it would be better ‘to have [him] as a friend than an enemy,’ and made an implied threat when he said that management had enough problems ‘without pissing [him] off.’ These statements, particularly when combined with [his] repeated contacting of employees and his penchant for appearing on the Rancho Guejito property or just outside of its boundaries despite knowing that he was not welcome, are sufficient to constitute a credible threat of violence.”
- **Three-Year Workplace Violence Restraining Order Upheld**

(Petition, Attachment 2.)

Background – Problems with CRM disciplinary process

- No witnesses contacted or interviewed as part of investigation
- Known and potentially unknown ex parte communications; no consideration of bias
- All discussions behind closed doors
- No meaningful explanation for decision
- No process to appeal or to get additional information
- No reasonable standards for decision/ arbitrary standards used

could have handled this business better. - reflects on
backlog on
Call Pac

Concerns over specific actions - but don't provide a
letter because we can't keep it confidential

* Notes from April 16, 2014 CRM Panel meeting

ATTACHMENT 3

California Commission on Teacher Credentialing

Education Code Section 44339(a): “The commission shall adopt, in addition to any other regulations authorized by law, regulations requiring every applicant for a credential, or for the renewal of a credential, to submit reasonable evidence of identification and good moral character.”

Section 44345(e), (h): “The commission may deny any application for the issuance of a credential or for the renewal of a credential made by any applicant who falls under any of the following categories: ... Has committed any act involving moral turpitude. ... Fails or refuses to furnish reasonable evidence of identification or good moral character.”

Section 80301: “(a) An applicant for issuance or renewal of a credential shall not be required to disclose, and the Committee of Credentials shall not inquire into or consider, any acts or omissions not related to his or her fitness or competence to perform the duties authorized by his or her credential. (b) Each applicant for initial issuance of a credential shall submit a completed Application for Credential Authorizing Public School Service form as specified in §80001 on which he or she will set forth evidence of identification and good moral character which shall be used for the sole purpose of determining the applicant's eligibility for a credential, Certificate of Clearance, or Activity Supervisor Clearance Certificate.”

Department of Justice Concealed Carry Licensing

Penal Code Section 26155: “(a) When a person applies for a license to carry a pistol, revolver, or other firearm capable of being concealed upon the person, the chief or other head of a municipal police department of any city or city and county may issue a license to that person upon proof of all of the following: (1) The applicant is of good moral character.”

http://www.sjpd.org/pdf_forms/bof_4012_ccwapplication_112012.pdf: “Notwithstanding any other provision of law and pursuant to the Public Records Act (Government Code section 6250 et seq.), I understand that information contained in this application may be a matter of public record and shall be made available upon request or court order.”

State Bar of California Licensing

<http://www.calbar.ca.gov/Admissions/Moral-Character>: “State Bar staff review each applicant’s history. Those with serious issues are referred to the Committee of Bar Examiners for consideration. The application is a compilation of many details of your life, including: Recommendations and references from present and former employers; Fingerprints; Criminal convictions; Drug and alcohol abuse; Debt; Violations of schools’ honor codes.”

Real Estate Appraiser Licensing

Business and Professions Code Section 11343(a): “Each real estate appraiser license applicant and each controlling person of each applicant for registration as an appraisal management company shall submit to the Department of Justice fingerprint images and related information required by the Department of Justice via LiveScan for the purposes of allowing the office to obtain information as to the existence and content of a record of state or federal convictions and state or federal arrests and also information as to the existence and content of a record of state or federal arrests for which the Department of Justice establishes that the person is free on bail or on his or her own recognizance pending trial or appeal. If the applicant is located out of state, then the applicant shall include his or her fingerprint card with the application package and the office shall submit the fingerprint cards to the Department of Justice for the purposes of this subdivision.

ATTACHMENT 4

PRC 759: “The board may by regulation adopt such rules and regulations pursuant to Chapter 4.5 (commencing with Section 11371) of Part 1 of Division 3 of Title 2 of the Government Code, as it determines are **reasonably necessary to enable it to carry into effect the provisions of this article.**”

PRC 762: “The board **may by regulation provide for the issuance of certificates of specialization in such fields of specialization as the board may by regulation establish.**”

PRC 769(a): “An applicant **shall meet all of the following qualifications: (a) Be of good moral character and have a good reputation for honesty and integrity.**”

NOTE: There is no distinction in the statute between applicants for initial licensure and applicants for renewal.

PRC 773: “Licenses and specialty certificates issued pursuant to this article shall be valid for two years and **shall expire** on July 1 of each alternating year.”

NOTE: Because licenses and certificates must expire every two years, the licensee or certificant must become an “applicant” if they wish to have the license/certificate issued again.

PRC 774(a): “**Issuance of a license may be denied** if sufficient evidence is received by the board of the commission or doing by the applicant of any act which, if committed or done by a licensee, would be grounds for the suspension or revocation of his license.”

NOTE: Similarly, there is no distinction in the statute between “initial” issuance of a license or “renewed” issuance of a license in terms of the Board’s ability to deny issuance.

NOTE: The only statutorily required distinction between initial issuance and renewal issuance are the fees (PRC 782).

14 CCR 1612.1: “**The primary importance is the adverse effect** the Registered Professional Forester’s actions had, or will continue to have, on the **protection of the public interest.**”