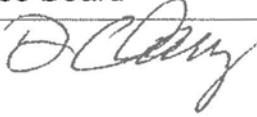




MEMORANDUM

DATE	February 23, 2012
TO	Karen Ollinger, Chief of Licensing Contractors' State License Board
FROM	Don Chang Sup. Sr. Staff Counsel Legal Affairs 
SUBJECT	Asbestos Certification

You have asked whether a licensed contractor who holds a Contractors' State License Board ("CSLB") asbestos certification may remove asbestos which involves work associated with a license classification that is not held by the contractor.

Conclusion

We believe that a licensed contractor who holds an asbestos certification and is registered by Division of Occupational Safety and Health ("DOSH") may perform asbestos-related work only in the license classifications for which he or she is already licensed. The asbestos certification and DOSH registration do not authorize a contractor to perform asbestos-related work in license classifications that are not held by the contractor.

Analysis

I

The California Occupational Safety and Health Act of 1973 (Labor Code section 6300 et seq.) was enacted for the purpose of assuring safe and healthful working conditions for California workers. (Labor Code section 6300) Chapter 6 of the Act (Labor Code section 6500 et seq) specifies types or places of employment that by their nature involve a substantial risk of injury such that they require the issuance of a permit by the DOSH before work can be commenced. To obtain a permit the employer must demonstrate familiarity with potential hazards and the safety standards, as well as manifest a willingness to abide by the safety standards. In 1985 the Legislature passed legislation relating to asbestos. (Stats. 1985, ch. 1587, including Labor Code section 6501.5.) Under this section, any employer or contractor who engages in asbestos-

related work which involves 100 square feet or more of surface area of asbestos containing material must register with the DOSH. The employer or contractor is required to have health insurance, train and certify all employees and have the necessary equipment to perform the asbestos-related work safely. It further provides that “[i]f the employer is a contractor, the contractor shall be certified by Section 7057.5 of the Business and Professions Code.” *Hennings v. Div of Occ. Safe & Health* 268 Cal.Rptr. (1990) 476, 478.

II

The purpose of the Contractors’ State License Law (Business and Professions Code section 7000 et seq. –“CSLL” – all sections references are to that Code) is “to protect the public from incompetence and dishonesty in those who provide building and construction services. [Citation] The licensing requirements provide minimal assurance that all persons offering such services in California have the requisite skill and character, understand applicable local laws and codes, and know the rudiments of administering a contracting business. *Hydrotech Systems, Ltd. V. Oasis Waterpark* (1991) 52 Cal.3d 988, 955

The CSLL governs the licensing and regulation of contractors. There are three license categories of contractors. Section 7055 of the Business and Professions Code (all section references are to that Code) addresses the branches of contracting and provides as follows:

- “For the purpose of classification, the contracting business includes any or all of the following branches:
- (a) General engineering contracting.
 - (b) General building contracting.
 - (c) Specialty contracting.”

Relevant to this discussion is the specialty contractor which is defined by section 7058 to mean a contractor whose operations involve the performance of construction work requiring special skill and whose principal contracting business involves the use of specialized building trades. By regulation, the CSLB has established approximately 60 specialty contractor license classifications. Contractors licensed in one classification are prohibited from contracting in the field of any other classification unless they are also licensed in that classification or are permitted to do so because the work in the other classification is “incidental and supplemental” to the work for which a specialty contractor is licensed and is essential to accomplish the work in which the contractor is classified. Section 7059 and 16 CCR Sections 830 and 831.

III

Section 7068 provides that an applicant for a license must possess knowledge and experience in the license classification applied for and general knowledge of the building, safety, health and laws of the state and the administrative principles of the contracting business. In addition, an applicant must pass a written examination covering the license classification for which the applicant is seeking licensure and questions relating to the laws of this state and the contracting business and trade. Regulation section 825 provides that every applicant must have at least 4 years of experience as a journeyman, foreman, supervising employee or contractor in the particular class within which the applicant intends to engage as a contractor. Depending upon the nature of the entity that applies for the license, the applicant may qualify for the license by an individual appearance, a general partner, responsible managing officer or responsible managing employee. Thus, an applicant for a contractor's license must qualify for that license by submitting an owner or employee who has had experience in the license class in which the applicant seeks to engage as a contractor.

IV

In addition to the three license classes of contractors, the CSLL also provides for certifications for asbestos-related work (Section 7058.5) and hazardous substance removal or remediation (Section 7058.7).

Section 7058.5 provides that a contractor shall not engage in "asbestos-related work" as defined in Labor Code section 6501.8 involving 100 square feet or more of surface area of asbestos containing materials unless "the qualifier for the license passes an asbestos certification examination." Labor Code section 6501.8 defines "asbestos-related work" to mean "any activity which by disturbing asbestos-containing construction materials may release asbestos fibers into the air ..." Section 7058.6 provides that a contractor who is not certified to remove asbestos may bid on and contract to perform a project involving asbestos-related work as long as the asbestos-related work is performed by a contractor who is certified by the CSLB and registered by DOSH. A contractor who fails to obtain a certification when required is subject to civil and criminal penalties and is subject to revocation of his or her license. (Sections 7028.1, 7099.11 and 7115)

A review of the requirements for the asbestos certification evidence an intent that an asbestos certification was to be a prerequisite for a contractor who needed to perform asbestos-related work within his or her current license classification, rather than a general authority to perform asbestos abatement in all situations and in fields of license classifications not held by the licensee.

Initially we note that section 7058.5 requires the “qualifier of the license” to pass the asbestos examination. The use of the term “qualifier of the license” assumes that the applicant for the asbestos certification already holds or is applying for one or more of the three contractor license classifications and that it is not possible to obtain an asbestos certification without already having a contractor’s license. This statutory framework supports a conclusion that an asbestos certification must be associated with and limited to the underlying license or licenses held by the qualifier.

Unlike the other contractor license classifications, the asbestos abatement certificate does not require the qualifier to have 4 years of experience in the field for which licensure is sought. The purpose for the experience requirement for licensure is to ensure that the applicant has sufficient skill, knowledge, and ability in the license classification and is able to perform the trade without supervision. It is apparent that for health and safety reasons, experience in asbestos removal would be vital to an applicant seeking to be certified to remove or abate asbestos. Yet an experience component is not required for the asbestos certification. Instead, section 7058.5 provides that the qualifier for the license must merely pass an examination. The absence of an experience requirement for obtaining an asbestos abatement certificate is appropriate where the asbestos certification is limited to asbestos-related work that is performed only within the license classification that is held by the contractor. Under these circumstances, while the performance of asbestos-related activity requires a certification, the asbestos-related activity is nonetheless confined to the trade and license classification held by the contractor.

It would be illogical to assume, for example, that a painting contractor that holds an asbestos certificate is qualified by that certificate to remove asbestos from areas that fall within other license classification such as a roofing, vinyl flooring, siding or pipe insulation. Would a painting contractor with an asbestos certification have requisite underlying experience in to remove asbestos found in roofing, flooring, siding or plumbing? We think not. In addition, if a painting contractor who has an asbestos certification sought to remove asbestos from roofing materials, such activity would constitute grounds for discipline under section 7117.6 by acting in the capacity of a contractor in a classification other than that currently held by the contractor.

To assert that an asbestos certification allows the holder to perform asbestos-related activity across the different license classifications, would cause the asbestos certification to be treated as a specialty license classification in the area of asbestos abatement. However, as discussed above, all of the license classifications have a requirement that the qualifier obtain four years of experience in the trade. The absence of an experience component as a requirement to obtain the asbestos certification would allow persons with no experience to obtain the certification by merely passing the

examination. Such standards would be lesser than those required of any other contractor license classification. Such a result is clearly contrary to the Legislative intent to protect workers and the public from the dangers of asbestos fibers.

Although a contractor may perform work in a trade or craft other than one in which he or she is licensed if such work is incidental and supplemental to the performance of the work for which the contractor is licensed, this is not the case with an asbestos certification. As discussed above, the asbestos certification is not a specific license category with its own trade or craft. Accordingly, a specialty contractor with an asbestos certification could not use the incidental and supplemental theory to justify asbestos abatement work in a trade or craft for which he or she is not licensed.

Thus, we conclude that a licensed contractor who holds an asbestos certification and is registered by DOSH may perform asbestos-related work only in the license classifications for which he or she is licensed. The asbestos certification and DOSH registration do not authorize a contractor to perform asbestos-related work in license classifications that are not held by the contractor.