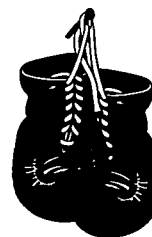


California State Athletic Commission

Executive Officer: Rob Lynch ♦ (916) 263-2195 ♦ Internet: www.dca.ca.gov/csac



Created through voter initiative in 1924, the California State Athletic Commission (CSAC), an agency within the state Department of Consumer Affairs (DCA), is empowered to regulate professional and amateur boxing and full-contact martial arts and kickboxing under the Boxing Act, Business and Professions Code section 18600 *et seq.* CSAC's regulations are codified in Title 4 of the California Code of Regulations (CCR).

CSAC has sweeping powers to approve, manage, and direct all professional and amateur boxing and full-contact martial arts shows or exhibitions held in California, and to license professional and amateur boxers and martial arts competitors, promoters and clubs, referees, judges, matchmakers, booking agents, timekeepers, managers, trainers, seconds, and training facilities. The Commission is authorized to develop and administer appropriate examinations to determine the qualifications of individual athletes, including pre-bout physical examinations, HIV and Hepatitis B (HBV) testing, neurological testing, and eye examinations. CSAC is also responsible for establishing and administering the Professional Boxers' Pension Plan, a financial protection program for competitors.

The Commission's goals are to ensure the health, safety, and welfare of the competitors and the integrity of the sports of boxing and martial arts in the interest of the general public and the participating athletes. The Commission places primary emphasis on boxing, where its regulation extends beyond licensing and includes the establishment of equipment, weight, and medical standards. Further, CSAC's authority to regulate boxing extends to the separate approval of each contest in order to preclude mismatches. Commission representatives attend all professional boxing contests.

The Commission consists of seven members, each serving a four-year term. All seven commissioners are "public members," as opposed to industry representatives. In fact, no CSAC-licensed manager, promoter, or judge may serve as a commissioner. One commissioner is appointed by the Senate Rules Committee; another is appointed by the Speaker of the Assembly; and the remaining five are appointed by the Governor, subject to Senate confirmation. In addition to its executive officer, CSAC maintains a staff of six in Sacramento and two additional staff members in its Los Angeles branch office. All other employees are intermittent inspectors.

CSAC currently maintains seven standing committees. The Arbitration Committee conducts formal arbitration hearings for contract disputes between boxers and managers. The Commission's final decision is legally binding and is appealable only to superior court. The Pension Plan Committee regulates and tracks the pension process and advises CSAC of

issues concerning the plan's administration.

The Medical and Safety Standards Advisory Committee consists entirely of physicians; it studies and recommends medical and safety standards for boxing and martial arts bouts. The Legislative Committee develops and interprets legislative concepts pertaining to CSAC. The Officials' Committee evaluates appointments, qualifications, and job performance of officials. The Amateur Boxing Committee oversees United States Amateur Boxing, Inc., the organization to which CSAC has delegated authority to enforce its requirements for amateur boxing. The Martial Arts Advisory Committee advises the Commission on the provisions of the Business and Professions Code regarding full-contact martial arts.

CSAC is a voting member of the national Association of Boxing Commissions. The Commission has reciprocity with other states with regard to medical and disciplinary suspensions, boxers' ring records, and certain medical examinations.

The Commission is a "general fund agency," meaning that any revenues (primarily the 5% gate tax collected at live boxing, kickboxing, and martial arts events and at professional wrestling exhibitions), license fees, assessments, or fines it collects are deposited into the state general fund and its operating expenses are paid through the general fund. CSAC is the only DCA licensing program that is not completely self-supporting, drawing 3-4% of its approximate \$1 million annual budget from state funds.

On November 19, 1999, Governor Davis appointed Don L. Novey to the Commission. Novey, who has been president of the California Correctional Peace Officers Association since 1980, is also president of the California Coalition of Law Enforcement Associations, which represents approximately 90,000 California peace officers. Novey was an amateur boxer for 13 years before he began his career in law enforcement. Novey resigned from the Commission in December 2000.

On January 26, 2000, Governor Davis appointed Alvin J. Ducheny to CSAC. Ducheny has served as a consultant and office manager for the Law Offices of Denise Moreno Ducheny since 1980.

On February 21, 2001, Governor Davis appointed Sanford L. Michelman of Encino and Van Gordon Sauter of Los Angeles to the Commission. Michelman is a managing partner of Michelman & Robinson, LLP, a law firm in Sherman Oaks. Sauter served as executive vice president of the CBS Broadcast Group and President of CBS Sports.

At this writing, two seats on the Commission are vacant; both must be filled by the Governor.

MAJOR PROJECTS

CSAC Hurdles Sunset Review

On November 30, 1999, CSAC Vice-Chair Cal Soto, Commissioner Don Novey, Executive Officer Rob Lynch, and Deputy Attorney General Earl Plowman represented CSAC at its sunset review hearing before the Joint Legislative Sunset Review Committee (JLSRC). Sunset review is conducted periodically as a means of determining whether the Commission's programs are effective in promoting the health and safety of its athlete licensees and protecting the interests of the public and, if not, whether such programs should be revised or terminated. The Commission was first reviewed by the JLSRC in 1995–96 [15:4 CRLR 57], and the first order of business for the CSAC representatives at the 1999 hearing was to update Joint Committee members on various issues that have arisen since the first review. [17:1 CRLR 127–28]

Executive Officer Lynch discussed recent changes made by CSAC to better protect fighter health since the Commission's last sunset review. He stated that CSAC requires boxers to undergo HIV and HBV testing within 30 days of licensure; is investigating whether to permit boxers to wear soft contact lenses; and now requires weigh-ins to take place the day before, rather than the day of, a bout in order to allow fighters time to rehydrate before the match. According to Lynch, fighters are notorious for dehydrating themselves in order to meet their weight classifications. Lynch also stated that CSAC has not adopted standards for stopping a fight, because "knowing when to stop a fight is subjective—we trust that our referees and ringside physicians know the danger signs." He noted that, by statute, boxing officials are trained by neurologists and other physicians in twice-a-year full-day clinics.

The JLSRC questioned the CSAC representatives on the issue of pregnancy testing for female boxers. Executive Officer Lynch stated that 100–120 female fights take place each year in California—more than in any other state—and that California is one of only five states that does not require pregnancy testing. He stated that the Commission attempted to require pregnancy testing under its existing authority in Business and Professions Code section 18710, but that the Office of Administrative Law (OAL) rejected that effort as unauthorized. He opined that female fighters should be tested, and noted that CSAC has sought legislation to require such testing in the past [16:1 CRLR 130] but "even our own Department of Consumer Affairs does not support us on this." He also stated that pregnancy would not disqualify female boxers from being licensed, but they could not fight if they test positive. In response to privacy concerns, he noted that pregnancy information (like HIV/HBV information) would be treated absolutely confidentially; it would not even be shared with other state athletic commissions, who would simply be told that a pregnant boxer is not permitted to box "for medical reasons" (see below for additional information on this issue).

Regarding the Commission's enforcement program, Lynch stated that "the majority of complaints we receive concern contractual disputes between boxers and their managers, and they are settled through Commission arbitration." According to Lynch, most consumer complaints are about bout decisions—"they want the Commission to change a decision." He further noted that CSAC receives approximately 100 complaints per year against martial arts schools (regarding quality of instruction, sanitation/safety issues, mismatches, and their failure to monitor the conduct of participants), but that the Commission has no jurisdiction over them and there is no monitoring of those schools at all. He noted that CSAC attempted legislation to add martial arts schools to its regulatory jurisdiction, but was "blown out of the water by schools who opposed our attempt as a revenue grab."

As to whether the Commission anticipates the need for any new licensing categories, Executive Officer Lynch noted that proponents of "submission fighting," an emerging form of martial arts, have long sought regulation in California. [17:1 CRLR 128; 16:2 CRLR 111] Lynch characterized submission fighting as "full-contact and just as deadly as boxing and kickboxing." He stated that "submission fighting" events are currently held underground or on tribal lands. According to Lynch, "this form of fighting should be regulated by the Athletic Commission because it is full-contact. As it stands now, the Commission has no knowledge of the ability of these submission fighters, which I am sure results in gross mismatches. We also have questions regarding fighters who have been recently knocked out, whether they have access to adequate medical personnel, the quality and ability of ring officials, and the overall welfare of the combatants." Lynch acknowledged that regulatory jurisdiction over submission fighting would provide the Commission with additional revenue, but stated that the Commission's primary goal is to protect the health and safety of the fighters. He also stated that the Commission's Martial Arts Advisory Committee had drafted regulations with submission fighting proponents which would subject submission fighting to the Commission's jurisdiction (see below for details).

Related to CSAC's funding status, the JLSRC raised one of the most controversial issues confronting the Commission—the growing tendency of boxing promoters to hold fights on Indian reservations in order to avoid the standard 5% gate tax (paid to the Commission to support its regulatory programs) and the special fees assessed against promoters to support CSAC's neurological testing program and the Boxers' Pension Plan required by Business and Professions Code section 18880 *et seq.* [17:1 CRLR 127–29; 16:2 CRLR 109–10] When questioned about the health and safety of boxers who fight in these events, Executive Officer Lynch noted that "the Commission regulates every single bout that takes place on sovereign land. Under the Federal Boxing Act, if a tribe has its own athletic commission, then the state athletic commission [in the state in which the reservation is located] has no jurisdiction over the fight. If the tribe does not have its

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own athletic commission, then the state athletic commission has 'supervisional jurisdiction' over the bout." According to Lynch, only one tribe in California—the Pala Band of Mission Indians—has become licensed as a promoter by CSAC, "and even then we still go onto the Pala land to supervise their bouts at a flat fee of \$1,500 per fight (which covers CSAC inspectors' wages and total time spent by the Commission to supervise the fight) which was negotiated by the Commission under a previous administration. Where it hurts the state and the fighters is that since this is sovereign land, we do not have the authority to collect taxes or assessments that the Commission charges promoters for the pension plan or neurological testing program. Because we can't collect assessments for the pension plan, the boxers get cheated because they don't get credit for those rounds fought on reservations."

According to Lynch, "our bone of contention is that except in the case of the Pala tribe, the tribal people are not the promoters of the bout. Outside promoters like Don King or Top Rank of Las Vegas get paid a healthy site fee, go onto the tribal land and promote the fight, and rake in all the money without paying the state its fair share. The state does not get the 5% gate tax and the fighter does not get pension plan credit." When asked what changes are needed, Lynch opined that federal law must be changed to require promoters of bouts fought on sovereign lands, regardless of the state in which the lands are located, to follow all regulations of the boxing commission of the state in which the lands are located.

Center for Public Interest Law Executive Director Robert C. Fellmeth, who served on the Athletic Commission from 1978–82 and chaired it from 1980–82, also testified at the hearing on three CSAC issues. Regarding pregnancy testing, he opined that Business and Professions Code section 18710 authorizes the Commission to require pregnancy testing of female boxers. Even if OAL previously disapproved such an attempt, "we have a new administration and a new OAL director, and the Commission should try again. If the answer is still no, then the Commission should pursue legislation. Testing for pregnancy should be mandatory." Professor Fellmeth cited caselaw recognizing the compelling state interest in protecting the health and safety of unborn children, and stated that "it would be unforgivable if we allowed someone to hit an opponent below the belt and permanently disable that opponent's child."

Second, Professor Fellmeth noted that a major funding source for the Commission was lost when a federal district court invalidated Business and Professions Code section 18832, which required broadcasters of pay-per-view boxing,

and wrestling events to pay a 5% tax on gross receipts to the Commission. [16:1 CRLR 131] He expressed bemusement at the basis for the court's decision, and opined that the state did not adequately demonstrate a compelling interest in treating boxing differently than other forms of entertainment. Professor Fellmeth said the legislature should reenact section 18832 and expressly tie its revenues to Commission regulation in the areas of recordkeeping, licensing, tracking, and monitoring of out-of-state boxers.

Finally, Professor Fellmeth commented on the Boxers' Pension Plan, which he characterized as a "sacrosanct promise" in the nature of a fiduciary duty that the legislature and the Commission have pledged to boxers who fight many rounds and many years in California. Although payouts from the pension plan may amount to no more than \$300–800 per month, "that amount makes a tremendous difference to retired boxers, many of whom do not have Social Security coverage."

He stated that California's unique boxer pension plan is in "real jeopardy" because nearly half of California's boxing matches are now being fought on tribal lands. He called the promoters' move "a deliberate evasion of this benefit for boxers that they absolutely need," disagreed with the Commission's position on its legal right to demand the gate tax

and other assessments, and said the Commission is breaching its fiduciary duty to its boxer licensees. Professor Fellmeth characterized the Commission's position as "timid," told the JLSRC that the Commission "has much more leverage than they just led you to believe," and quoted from a 1980 case in which the U.S. Supreme Court upheld a state's right to collect sales tax from a tribal smokeshop "even though it would eliminate their competitive advantage and substantially reduce revenues used to provide tribal services, because the Tribes had no right 'to market an exemption to state taxation to persons who would normally do their business elsewhere.'" [17:1 CRLR 128–29]

Professor Fellmeth argued that the Commission ought to demand that promoters of fights on Indian lands pay exactly what would be due if they were not held on reservations, and should litigate if necessary. He suggested that all JLSRC members co-author a bill to be named after former professional boxer Jerry Quarry (who testified in support of the Boxers' Pension Plan on prior occasions before the legislature, and who died earlier in 1999) which would compel the Commission to collect its full gate tax and assessments for CSAC's pension plan and neurological testing program on all events held on tribal lands from the promoters of those events. If the Commission fails to collect those assess-

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ments, then their value must be deducted from the flat fee charged by the Commission for supervising bouts on tribal lands. Professor Fellmeth urged the JLSRC to "send a message to the Commission: You should first fund the boxer to whom you've made a promise, and next fund yourselves. This will cause the Commission, which so far has been very passive on this issue, to become very aggressive."

In April 2000, the JLSRC and DCA issued several joint recommendations regarding the Commission. The JLSRC and DCA agreed that the state should continue to regulate boxing and other full-contact sports, and that the Commission should continue as the regulatory entity. Noting that "the sources of funding for the Commission's various programs are eroding due in part to the fluctuation in the number of events held within the state, the increased use of Indian casinos to hold boxing matches, and its inability to receive a 5% tax on pay-per-view boxing broadcasts," the JLSRC and DCA agreed that the Commission should review whether licensing fees should be increased and identify alternative funding mechanisms to ensure that critical functions can be continued. The Joint Committee and DCA also recommended that the Commission take several steps to sustain the Boxers' Pension Plan, including negotiating an increase in the fee for overseeing events on tribal lands, assessing the current level of ticket assessments for potential increase, and conducting an actuarial review of the pension fund to determine its future needs.

The JLSRC also made some additional recommendations. It suggested that CSAC pursue an opinion from the Attorney General clarifying CSAC's current authority to enforce its health and safety standards for matches held on tribal lands and the assessments the Commission is entitled to collect from those matches. The JLSRC also agreed to seek a Legislative Counsel opinion to determine if the Commission is currently authorized to require pregnancy testing of female boxers. If not, the JLSRC suggested that CSAC hold a public hearing to address this issue before pursuing legislation to grant it such authority.

Based on the JLSRC's recommendations, Senator Figueroa carried SB 2028 (Figueroa) in 2000, which was enacted and extends the existence of the Commission to July 1, 2005 (see 2000 LEGISLATION).

Pregnancy Testing

At the Commission's March 22, 2001 meeting, Paul Wallace, MD, chair of CSAC's Medical and Safety Standards Advisory Committee, initiated an in-depth discussion of the various ramifications of pregnancy testing for female boxers. As noted during CSAC's 1999 sunset hearing (see above), California is one of a handful of states that does not mandate such testing. Deputy Attorney General Earl Plowman noted that the issue of legislation to require pregnancy testing has become somewhat of a political "hot potato"—no legislator is willing to serve as author, nor does DCA support such legislation. No one at the meeting could articulate the reason for DCA's opposition; however, some speculated that a pregnancy

testing requirement for female boxers might be perceived as discriminatory because females would be treated differently from males. Nevertheless, the Association of Boxing Commissions, numerous state boxing authorities, and other sanctioning bodies require pregnancy testing for female boxers.

Dr. Wallace explained that the state's failure to require pregnancy testing places ringside physicians in a very difficult position. According to Medical Board of California Executive Director Ron Joseph, the ringside physician could be held liable—either through a civil malpractice suit or through a Medical Board disciplinary action—if a miscarriage or birth defect is attributable to a ringside physician's failure to prevent a pregnant boxer from competing. However, according to Dr. Wallace, in the absence of legislation authorizing pregnancy testing, ringside physicians are currently prohibited from undertaking any sort of assessment as to whether a female fighter might be pregnant. Dr. Wallace pointed out a further complication: He stated that he had contacted several malpractice insurance carriers and was informed that, in most cases, ringside physicians would not be covered under such circumstances.

The Commission outlined several possible courses of action: (1) continue to enlist support for legislation requiring female boxers to be pregnancy-tested and prohibiting those who are pregnant from boxing; (2) seek legislation or promulgate regulations requiring a female boxer to sign a document waiving claims against the ringside physician for any harm resulting from boxing while pregnant; (3) pursue a system of indemnification for ringside physicians; and/or (4) draft an acknowledgment form to be given to female boxers before each bout explaining the dangers of boxing while pregnant.

The Commission agreed to seek another meeting with DCA officials to convey its concerns regarding the liability of its ringside physicians, who are currently unable to protect themselves from liability if a female boxer fights while pregnant. CSAC took no other action on the issue at its March 2001 meeting, but agreed to schedule a brainstorming session with staff and ringside physicians at a future date.

Testing for Hepatitis C

After deliberating the pregnancy testing dilemma at its March 2001 meeting, the Commission next turned its attention to the issue of Hepatitis testing. Dr. Wallace suggested that CSAC seek legislative amendments to Business and Professions Code section 18712, which currently requires HIV and HBV testing of professional boxers and martial arts fighters. Dr. Wallace's proposed amendments would add Hepatitis C to the list of diseases tested, and would also add amateur martial artists to the list of those required to be tested.

According to Dr. Wallace, amateur martial artists should be tested because they, like the professionals in both boxing and martial arts, are not required to wear protective headgear; thus, they are liable to sustain bleeding cuts. Amateur boxers would remain exempt from the bloodborne illness testing requirements because they must wear headgear and therefore seldom suffer cuts.

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During the discussion, Executive Officer Lynch questioned Dr. Wallace on the likelihood of a fighter with HIV or Hepatitis B or C infecting his/her opponent. Dr. Wallace estimated that the chance of contracting any virus while competing against an infected fighter is 50–80%.

Commissioner Ducheny predicted that it would be difficult at this point in the legislative session to find an author for the legislation. Although Assemblymember Correa had expressed an interest, he had already introduced the maximum number of bills allowed in the 2001 legislative year. Commissioner Sauter moved that CSAC sponsor legislation to enact the amendments proposed by Dr. Wallace. Sauter's motion also charged the Executive Officer with determining the most expeditious time to put the proposal forward. The motion passed unanimously.

CSAC Spars with USAB

Under Business and Professions Code section 18640, CSAC is authorized to exercise "the sole direction, management, control of, and jurisdiction over all professional and amateur boxing...in this state." Nevertheless, under section 18646, the Commission is permitted to "authorize a nonprofit boxing, wrestling, or martial arts club or organization, upon approval of its bylaws, to administer its rules and may, therefore, waive direct commission application of law and rules, including licensure, subject to the commission's affirmative finding that the standards and enforcement of similar rules by that club or organization meet or exceed the safety and fairness standards of the commission." Pursuant to its authority in section 18648, the Commission has approved United States Amateur Boxing, Inc. (USAB) to administer and enforce the Commission's rules regarding amateur boxing. USAB is a national, nonprofit organization. Approximately 40 state boxing commissions delegate their authority over amateur boxing to USAB. In California, USAB is organized into four regions: Northern, Central, Southern, and Border. Section 18646 also requires CSAC to conduct an annual review of the performance of any organization to which it has delegated authority.

During the fall of 1999, CSAC began to receive reports of inappropriate actions—characterized by CSAC officials as "sabotage"—taken by USAB officials in the Southern Region. According to those reports, USAB officials threatened amateur boxers with suspension from all upcoming USAB-sanctioned events and expulsion from any future Olympic competition if they participated in a particular boxing event whose promoter was licensed by the Commission rather than by USAB. At the Commission's December 1999 meeting, Executive Officer Lynch related that USAB Executive Director Paul Montville confirmed that USAB rules do indeed provide that USAB-licensed amateur boxers are only permitted to fight in USAB-sanctioned events. For an event to be sanctioned by USAB, the promoter must be licensed by USAB; under USAB rules, Commission-licensed promoters must be further licensed by USAB. Thus, while CSAC had

been operating under the assumption that jurisdiction over amateur boxing was "concurrent" or shared between the Commission and USAB, USAB assumed that CSAC's delegation to it of authority over amateur boxing was total and absolute.

Also during the fall of 1999, the Commission became aware of other problems related to USAB's regulation of amateur boxing in southern California. CSAC received several complaints about the quality of the officiating by USAB referees and judges. Further, Commission staff heard rumors that USAB rules prohibit amateur boxers from fighting in events that include professional fights ("pro/am events"). According to Executive Officer Lynch, Montville explained that USAB-licensed boxers are permitted to participate in such events so long as they receive approval from their local USAB chapter, known as a Local Boxing Club (LBC). In order for a professional promoter to hold a pro/am event, USAB requires that there be at least three amateur bouts on the card; the promoter must pay \$300 per amateur bout to the LBC. Montville stressed that USAB's official policy is to encourage pro/am events.

At its December 1999 meeting, in order to resolve the various issues concerning USAB, CSAC ordered staff to issue an order to show cause why USAB's authorization to administer amateur boxing in California should not be withdrawn. The January 19, 2000 order was sent to Gary Toney, national president of USAB, with copies to the presidents of each of the four California regions. It requested USAB to appear at the Commission's February 18, 2000 meeting and provide information concerning: (1) the jurisdictional issue; (2) the amount of the pro/am sanctioning fee, which some commissioners view as excessive; and (3) the quality of officiating at USAB events.

Prior to CSAC's February 2000 meeting, Commission staff and legal counsel held a conference call with USAB's Toney and Montville, who agreed to undertake an in-depth internal investigation of amateur boxing in Southern California and report the results to CSAC at its April 2000 meeting. Nevertheless, at CSAC's February meeting, Joe Zanders and Sonny Marson, presidents of USAB's Southern California and Northern California regions, respectively, appeared and spoke to the Commission. Zanders contended that by failing to sanction certain events he had simply been carrying out USAB rules; he opined that CSAC's differences were with USAB as a national organization rather than with his region specifically. Marson added that the jurisdictional issues were actually liability concerns because USAB licensure offers certain insurance benefits that CSAC licensure does not.

At the Commission's June 2, 2000 meeting, Mr. Montville presented a three-page report written by Richard Trindle, chair of USAB's National Board of Review, who conducted USAB's in-depth internal investigation. Montville cited a lack of effective leadership in the Southern California LBC, resulting in poor organization and communication and "political in-fighting." He noted the presence of "headstrong" people who may become antagonistic when their official authority is challenged, but added that he felt these people have their

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"hearts in the right place," and pointed out that USAB has little control over such "loose cannons" on the local level so long as they do not violate USAB's rules. As to the number and quality of officials at USAB-sanctioned events, Montville noted that Trindle discovered that the names of 25 trained and qualified officials had not been entered into the computer at USAB's Colorado Springs office, such that they were not being used; that situation has since been rectified.

Trindle's report addressed only the officiating issue, and recommended several changes: (1) USAB should undertake a concerted effort to recruit, train, certify, and utilize new officials. This effort should include on-the-job reevaluation of experienced officials. The Chief of Officials should keep all score cards as an evaluation tool. (2) The Chief of Officials should be the only person to assign officials, without any outside interference, and such assignments should be made on a rotational basis. (3) The Southern California LBC should assign one person to each sanctioned show to be responsible for ensuring that all USAB regulations are being enforced and followed. (4) The Southern California LBC should meet with a CSAC representative on a regular basis to evaluate the amateur program and address any concerns of the Commission. (5) The president and board of directors of the LBC should take a more active role in resolving the current issues, and the president should make monthly reports to the USAB executive director. Montville requested that USAB be given 90 days to implement these changes in Southern California.

DCA legal counsel Anita Scuri noted that Trindle's letter and Montville's presentation failed to address the other issues in the order to show cause, including the apparent lack of agreement between CSAC and USAB over CSAC's jurisdiction, and the fee that must be paid by amateur promoters who promote pro/am events. Montville stated that USAB rules forbid amateur boxers and members of USA Boxing to compete in unsanctioned events (including events promoted by Commission-licensed promoters). Montville further stated that he hoped the Commission and USAB could come to "some sort of agreement" to make CSAC-licensed promoters "realize they have to get sanctioned by USAB if their fighters are to appear on their cards." Scuri informed the Commission that, if it was satisfied with USAB's response, it could accept the report and schedule USAB for a 90-day review to determine whether the proposed changes have been implemented. The Commission agreed to allow USAB the 90-day period it requested, and to place USAB on its October meeting agenda in order to receive a report on USAB's progress.

In the agenda packet for the Commission's October 12, 2000 meeting, Executive Officer Lynch included the following statement: "Due to the Olympics being held in Australia, I have not yet received written confirmation from Mr.

Montville that these measures have been implemented by the Southern California Region. However, Dean Lohuis, [CSAC] Chief Inspector, has assured me that the measures have been implemented and we have not experienced any problems with the Southern California Region." The memo recommended that, upon receipt of confirmation of implementation, USAB be permitted to "continue its self-regulation and be subject to annual approval by the Commission." At the October meeting, the Commission tabled the matter until its December meeting. At CSAC's December 7, 2000 meeting, Lynch reported that USAB intended to formally address the issues surrounding the Southern California Region at its national meeting scheduled to begin on December 9, 2000. Since that time, USAB has not again appeared on the Commission's agenda.

CSAC Grapples with Mixed Martial Arts

On December 31, 1999, the Commission published notice of its intent to adopt new Chapter 2.5 (sections 518-518.16), Title 4 of the CCR, which would govern professional full-contact mixed martial arts (MMA). The topic of MMA, also known as "submission fighting" and currently illegal in California, has concerned the Commission for some time (see above). In March 1999, CSAC reestablished its Martial Arts Advisory Committee and charged that committee with drafting regulations to govern MMA. [17:1 CRLR 128; 16:2 CRLR 111]

In its initial statement of reasons, the Commission characterized MMA as a "full-contact blood sport," and stated that it is authorized to expand its regulatory jurisdiction to MMA because Business and Professions Code section 18640 authorizes it to exercise "sole direction, management, control of, and jurisdiction over all professional and amateur boxing, professional and amateur kickboxing, full-contact martial arts contests, and matches

New section 518.1 would define "mixed martial arts" as "unarmed martial arts other than kickboxing as defined in Section 18627 of the [Business and Professions] code, which permit the use of a mix of techniques from different disciplines, including but not limited to the use of chokeholds, joint manipulation, and grappling techniques."

or exhibitions which are conducted, held or given within this state." New section 518.1 would define "mixed martial arts" as "unarmed martial arts other than kickboxing as defined in Section 18627 of the [Business and Professions] code, which permit the use of a mix of techniques from different disciplines, including but not limited to the use of chokeholds, joint manipulation, and grappling techniques." New section 518.2 would limit the applicability of the rules to "professional" full-contact MMA. New sections 518.4-518.8 would establish safety standards for professional MMA, including weight classes, the rules governing the length of rounds and the number of rounds in matches, a required seven-day lag time between bouts, and standards for required and optional equipment (including a custom-made individually-fitted mouthpiece, padded footgear and shin guards, an abdominal guard that does not extend above the contestant's hipline, a breast protector and body shirt for female contestants, and glove standards).

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New sections 518.9–518.12 would set forth rules governing the conduct of a bout. Section 518.9 would list 25 acts—including eye gouging, biting or spitting, strikes to the spine, groin attacks, attacking or obstructing the trachea, and hitting below the hipline—that are defined as fouls and forbidden (“use of these tactics shall result in a warning and loss of points as determined by the referee”). Section 518.10 would address the consequences for intentional fouling; section 518.11 would address the consequences for unintentional fouling; and section 518.12 would discuss the method of scoring when there is an injury. New sections 518.13–518.16 would govern standards for the ring (including the “ring fence,” because submission fighters often fight in a cage-type setting) and sanitation requirements for which the promoter is responsible.

At its February 18, 2000 hearing, the Commission held a public hearing on its proposed MMA regulations, and received many comments (including several requests to delete the use of the term “blood sport” because submission fighting is not a “fight to the death”). Because of the large number of written comments received before the hearing and oral comments received at the hearing, CSAC dedicated its entire March 31, 2000 meeting to the MMA regulations. Commission staff organized the voluminous comments according to the individual proposed regulatory sections to which each comment referred. The commissioners took up each section in order, discussing, amending, and adopting each one separately based on the public comment.

Particularly controversial was section 518.9(a)(14), which would classify “attacking or obstructing the trachea” as a foul. Several witnesses asked for clarification as to whether this section prohibits only strikes to the trachea (which cut off the airway), or whether it also prohibits the “carotid artery chokehold” (which cuts off blood supply to the brain). Some witnesses argued the so-called “carotid choke” is generally safe if well-monitored, the participant is healthy, and the participant does not lose consciousness; these witnesses contended that banning the carotid choke would “basically kill the sport.” Other witnesses—including several physicians—commented that “carotid chokes” are very dangerous and should be prohibited. By a 3–2 vote at its March 31, 2000 meeting, the Commission voted to add language specifically classifying the carotid artery chokehold as a foul, but also referred the issue to its Medical and Safety Standards Advisory Committee for further review and recommendations. That committee met on April 1, 2000 and voted 2–1 to recommend that the chokehold be permitted. Based on that recommendation, the Commission reversed itself at its April 28, 2000 meeting and voted to delete the language making occlusion of the carotid artery a foul subject to penalty in MMA fighting. The prohibition in section 518.9(a)(14) on “attacking or obstructing the trachea” was retained. The Commission also agreed to amend its statement of reasons to delete its characterization of MMA as a “blood sport,” made other minor changes, and adopted the proposed regulatory package.

Subsequently, staff prepared the final statement reasons, responded to all the comments made, and submitted the rulemaking package to DCA, the Department of Finance (DOF), and OAL for initial approval. In August 2000, DOF refused to approve the regulatory package, finding that the Commission lacks both funding and the expenditure authority for its staff to regulate MMA events. At a subsequent meeting with DCA and DOF representatives, CSAC reduced the BCP to two additional staffers and \$277,000; however, the Governor’s Office ultimately denied the BCP entirely in December 2000.

On December 20, 2000, OAL rejected the proposed regulations as well, on grounds they failed to meet the “clarity” and “necessity” requirements of Government Code section 11349.1 and for incorrect procedure. On the clarity issue, OAL noted that the regulations are limited to “professional” MMA but stated that “it is not clear what criteria are used to determine the qualifying status of ‘professional.’ Is it based upon an MMA fighter receiving payment of any kind or of a specified amount or is it based upon admission being charged for the event? Do the fighters have to qualify at a certain skill or experience level? What is the dividing line between professional and amateur?” OAL also identified a comment in the rulemaking file inquiring as to whether the rules permit fight opponents to be of the opposite sex. While CSAC responded to that particular comment by stating that it “does not allow fighting between both sexes due to their physiological differences,” OAL noted that no such prohibition is found in the actual text of the proposed rules.

On the necessity issue, OAL listed several provisions for which CSAC included no justification in its rulemaking file. OAL further found that CSAC had not complied with correct rulemaking procedure in promulgating the MMA rules. Several required items were not included in the rulemaking file; some of the public comments had received only cursory or even non-responsive treatment from the Commission.

Finding itself empty-handed—with neither funding nor regulatory framework, the Commission began the search for an author for 2001 legislation to legalize MMA with CSAC as the regulatory authority. At this writing, no legislator has committed to the project, although Assemblymembers Cedillo and Nakano have expressed some interest. In the meantime, the Commission directed its staff to continue to send cease and desist letters to MMA event promoters and venues, informing those involved that MMA remains illegal in California.

End-of-Round Warning

On December 31, 1999, the Commission published notice of its intent to amend section 354, Title 4 of the CCR, which currently requires the timekeeper in a boxing match to warn contestants and referees, by a suitable signal, ten seconds before the beginning and ending of each round. According to the Commission, when referees hear the ten-second warning, they move into position to separate the boxers at the end of the round. However, this repositioning takes only one or two seconds, resulting in the referee coming close to

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interfering with the boxers during the eight or nine seconds remaining in the round. Furthermore, some boxers utilize the last ten seconds before the end of the round to engage in punching flurries, during which most technical fouls occur. The boxer's strategy may also be to get in the last punch, which frequently lands at or after the bell ending the round. Thus, CSAC proposed to shorten the warning time period.

At a February 18, 2000 public hearing, CSAC considered two separate options for the language of the amendment to section 354. Under the first option, the mandatory ten-second warning period would be eliminated and the Commission would decide on an appropriate timeframe. Under the second option, the ten-second warning period would also be eliminated and the Commission would be required to establish a timeframe not to exceed ten seconds. Following the hearing, the Commission selected option two, and included a provision that retains the warning period before the beginning of each round at ten seconds but permits the Commission to decide the timeframe for the end-of-round warning.

At the Commission's August 25, 2000 meeting, Executive Officer Lynch revealed that OAL staff had informally suggested that, as proposed, the amended regulation would not pass OAL scrutiny. CSAC decided to withdraw the rulemaking file and has not pursued the issue further.

HIV/HBV Testing Timetable

Business and Professions Code section 18712 requires any person applying for a license or for license renewal as a professional boxer or a professional martial arts fighter to present documentary evidence that he/she has been tested for the presence of antibodies to HIV and the presence of the antigen to the HBV virus "within 30 days prior to the date of the application." For licensure or relicensure, the results of both tests must be negative.

On June 30, 2000, CSAC published notice of its intent to amend sections 214 (pertaining to boxers) and 546 (pertaining to martial arts fighters), Title 4 of the CCR, both of which specified that the term "date of the application" in section 18712 means the date the licensure or relicensure application is received by CSAC. According to Commission staff, that language has presented confusion to CSAC licensees. Thus, CSAC commenced this regulatory action to delete that definition and substitute the following provision in both sections 214 and 546: "The phrase 'within 30 days prior to the date of application' means that the blood test will be accepted for licensure purposes for 30 days from the date of the test report."

The Commission held a public hearing on the proposal on August 25, 2000, and thereafter adopted the proposed language. OAL approved the rulemaking action on March 20, 2001.

Pension Plan Rules for Boxers with Break in Service

Under Business and Professions Code section 18880 *et seq.*, CSAC administers the Professional Boxers' Pension Plan, a financial protection program for competitors. Section

401(k), Title 4 of the CCR, defines a boxer who is eligible to participate in the plan as "a licensed professional boxer who participates in a contest after July 1, 1981, and who is or may become eligible to receive a benefit under the Plan, or whose beneficiary may be eligible to receive any such benefit, and who has not incurred a break in service." Additionally, section 403(c), Title 4 of the CCR, which governs the allocation of forfeited pension monies to covered plan participants, lessens the allocation of forfeited pension monies to participating boxers who have incurred a break in service. When these provisions were originally drafted, Commission staff did not contemplate the situation where a boxer contributes to the pension plan, vests, has a break in service, and then returns to compete again. Thus, on March 2, 2001, the Commission published notice of its intent to amend sections 401 and 403, Title 4 of the CCR, to remove the pension plan's financial penalty for professional boxers who experience a break in service after vesting and then return to boxing after that break. At this writing, CSAC is scheduled to hold a public hearing on these proposed regulatory changes at its May 24, 2001 meeting.

Referee Evaluation Regulations

On March 2, 2001, the Commission published notice of its intent to amend sections 376 and 377, Title 4 of the CCR, which pertain to CSAC's evaluation and discipline of its referee licensees (see LITIGATION).

Section 376 requires an assigned Commission representative to grade the performance of each boxing referee at each contest presided over by that referee. CSAC proposes to amend section 376 to change the word "grader" to "evaluator" and to add a new subsection (b) to section 376, which would address the procedures to be followed when a referee files a written protest regarding any evaluation. Under proposed section 376(b), if a referee files a written protest of an evaluation, the executive officer or his/her appropriate designee is required to consult with the evaluator and discuss the evaluation with the referee. If the referee's performance in a match is considered by the evaluator to be unsatisfactory or to need improvement, the referee will be given recommendations for improving his/her performance. Commission staff hope this amended procedure will provide it with an opportunity to address "low-level" problems without the need for a protracted hearing.

Section 377 governs the hearing process that must be followed when the Commission finds it necessary to remove the license of a referee. Section 377(a) currently requires Commission representatives assigned to monitor boxing contests to file a written report with the executive officer if the referee "is not discharging his responsibilities in a manner which ensures the safety of the participants." Thereafter, the referee must be notified of the report and may not be assigned to referee another contest until a hearing is held. That hearing may be held by the Commission or by any duly authorized representative to whom the Commission delegates that authority. Under the current regulation, "the hearing shall be held to determine whether the referee's license shall be re-

voked or suspended or other appropriate action taken by the commission. The decision resulting from the hearing shall be final." CSAC proposes to amend section 377(a) to provide that if the Commission delegates the responsibility of holding the hearing to a Commission representative, that individual will make a recommendation to the Commission, which will then make the final decision.

CSAC further proposes to add new subsection (b) to section 377, which would require the executive officer, when he/she becomes aware of two or more bouts where a referee is not discharging his/her responsibilities with the requisite skill to ensure the safety of the participants, to notify the referee of his/her specific deficiencies and each date and bout where the deficiencies were noted. The executive officer may consider all bouts over which the referee presided, regardless of whether the referee received any formal evaluation and regardless of whether that evaluation was satisfactory. Under proposed section 377(b), the referee may request a hearing within 30 days from the date of the notification. If the referee requests a hearing, a hearing must be held within 30 days of the request. The Commission may conduct the hearing or it may delegate this responsibility to any duly authorized representative of the Commission; if the Commission delegates the responsibility to hold the hearing to a CSAC official, that individual must make a recommendation to the Commission. The Commission's decision shall be final.

At this writing, the Commission is scheduled to hold a public hearing on its proposed changes to sections 376 and 377 at its May 24, 2001 meeting.

Update on Other Commission Rulemaking

Following a September 1999 public hearing, CSAC amended sections 202, 306, 370, and 502, Title 4 of the CCR. Section 202 was amended to list the correct address of CSAC's Los Angeles office. Section 306 was amended to provide for CSAC approval of boxers' ring costumes, including protective devices, and now states that "Commission staff shall not approve ring costumes that are so similar as to possibly cause confusion as to the identity of the contenders." The amendment to section 370 clarifies that a licensee who wishes to contest CSAC's assignment of a referee must file a written protest with the Commission at least five days prior to the contest and state the reason for the protest. The section 502 amendment deletes the listing of section 290 in order to clarify that promoters must provide medical insurance for martial arts fighters. [17:1 CRLR 130] OAL approved these changes on February 29, 2000, and they became effective on March 30, 2000.

2000 LEGISLATION

SB 2028 (Figueroa), as amended June 15, 2000, is the Commission's sunset legislation (see MAJOR PROJECTS). The bill extends CSAC's sunset date from July 1, 2001 until July 1, 2005. This bill was signed by Governor Davis on September 8, 2000 (Chapter 393, Statutes of 2000).

AB 2937 (Cedillo) and **AB 52 (Cedillo)** are two 2000 bills that proposed to place a cap on the 5% gate tax (payable to the Commission to support its regulatory programs) on every boxing, kickboxing, martial arts, or wrestling contest or exhibition.

AB 2937 (Cedillo), as introduced on March 23, 2000, was initially proposed as urgency legislation (to take effect immediately) to help promoter Bob Arum avoid an exceptionally high gate tax for the Oscar de la Hoya versus "Sugar" Shane Mosley fight at the Staples Center in Los Angeles in June 2000. The bill did not pass prior to the fight; thus, Arum was required to pay the standard gate tax, estimated to be well over \$300,000 for this event.

In May 2000, CSAC Chair Soto, Commissioners Novey and Ducheny, and Executive Officer Rob Lynch testified against AB 2937 before the Assembly Governmental Organization Committee. The position of the Commission was that the gate tax cap proposed in the bill—then set at \$50,000—would offer relief only to promoters of large events and would thus be unfair to promoters of smaller events. Proponents of the bill claimed that because it imposes a "more reasonable gate tax," it would attract bigger matches to California. Those in favor of the legislation expected the range of economic benefits arising from such matches to far outweigh the loss in revenue for CSAC.

The Center for Public Interest Law (CPIL) also opposed AB 2937. In an April 13, 2000 letter to the bill's author, CPIL Director Robert C. Fellmeth echoed the Commission's concerns and added that the proposed cap "is regressive and means the wealthy promoters will pay a lower percentage of their revenue than will the smaller promoters for the regulatory system both use. The notion of a cross-subsidy from the small promoters or from the general fund [of the state of California] for the big promoters...is neither equitable nor prudent. Most important, the Commission is now in a crisis because of the underfunding of its pension system for boxers. No promise is more sacrosanct than a pension promise. None. And California is now on a course to breach hers....The important issue for the legislature is to protect the pension plan first, the Commission's resources second, and the large promoters' pocketbooks somewhere further down the line. Your measure is not consistent with those priorities." Assemblymember Cedillo subsequently pulled AB 2937 from committee due to a lack of support.

Nevertheless, the concept resurfaced on May 25, 2000 when Assemblymember Cedillo gutted the original text of AB 52 (Cedillo), dealing with the provision of state services to noncitizens, and replaced it with the gate tax cap—this time set at \$75,000 for events with ticket sales over \$1 million. For promoters of events with ticket sales under \$1 million, the legislation offered a reduction in the gate tax rate from the existing 5% level down to 3.5%. This version of the legislation also did away with the existing \$1,000 minimum gate tax fee.

At the Commission's June 2000 meeting, Executive Officer Lynch displayed figures from 1998-99 to predict some

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of the potential outcomes of the May 25, 2000 version of AB 52 (Cedillo). During that fiscal year, there were 90 professional bouts. Of those 90 bouts, 21 were required to pay the \$1,000 minimum fee. According to Lynch, \$1,000 is the actual cost for CSAC to administer and supervise a bout. In the absence of that minimum fee, the average fee paid for those 21 bouts would have been \$422, resulting in a total revenue loss of \$12,138. Applying the proposed 3.5% rate in place of the 5% existing rate would result in a loss of \$25,077 (\$108,608 in actual gate tax collected less \$83,531, the amount that would have been collected utilizing the lower rate) for CSAC in 1998-99. This decline in total revenue would increase CSAC's reliance on the general fund from 3% to 6% of the Commission's budget. Lynch also noted that during 1998-99, there were only four fights with admission ticket receipts of over \$1 million in the entire United States; thus, he said California's ability to successfully lure such major boxing events into the state merely by capping the gate tax is "pure speculation." The Commission voted to take an oppose position on the May 25 version of AB 52 (Cedillo).

As amended August 18, 2000, AB 52 (Cedillo) caps the gate tax at \$100,000; the 5% rate remains for all events, regardless of ticket sales. The \$1,000 minimum is also retained. Furthermore, when the gate tax exceeds \$70,000, one-half of the amount over \$70,000 is to be paid into the Pension Fund benefitting retired boxers. These provisions sunset on January 1, 2006. This bill also requires CSAC to submit a report to the legislature by December 31, 2004 addressing the impact and effect of AB 52 on Commission revenues, the sport of boxing, and the Boxers' Pension Account. At its August 2000 meeting, the Commission took a support position on the amended version of the bill. AB 52 was signed by the Governor on September 13, 2000 (Chapter 436, Statutes of 2000).

H.R. 1832 is federal legislation enacting the Muhammad Ali Boxing Reform Act; the bill was signed by President Clinton on May 26, 2000 (Pub. L. No. 106-210). The goals of the Ali Act are: "(1) to protect the rights and welfare of professional boxers on an interstate basis by preventing certain exploitive, oppressive, and unethical business practices; (2) to assist State boxing commissions in their efforts to provide more effective public oversight of the sport; and (3) to promote honorable competition in professional boxing and enhance the overall integrity of the industry." The Ali Act institutes several major reforms intended to weed out corruption from boxing:

- It prohibits financial relationships between boxing managers and promoters, because managers are supposed to represent the boxer's interest in negotiations for a boxer's services.

- It requires boxing sanctioning bodies to establish objective rating criteria and prohibits improper payments from promoters or managers to sanctioning bodies.

- Sanctioning organizations, promoters, and judges and referees are required to comply with new disclosure requirements established to ensure compliance.

- The Ali Act also requires the Association of Boxing Commissions to develop and approve guidelines for minimum contractual provisions designed to protect boxers from unconscionable contracts.

- Finally, the Act amends the Professional Boxing Act of 1996 to add unsportsmanlike conduct as a new category of suspendable offenses (15 U.S.C. section 6306(a)(2)).

2001 LEGISLATION

AB 286 (Cedillo), as introduced February 16, 2001, would make changes to the financial administration of the Boxers' Pension Plan. This bill would change the name of the Boxers' Pension Account to the Boxers' Pension Fund and would establish that fund in the State Treasury. The bill would prohibit the deposit or transfer of any money within this fund to the general fund and would specify that CSAC has exclusive control over the money in the fund. CSAC would be permitted to invest the money in the fund through the purchase, holding, or sale of any investment, financial instrument, or financial transaction that the Commission, in its informed opinion, determines is prudent, without the necessity of securing the prior approval of, or reporting to the Department of Finance.

CSAC is sponsoring AB 286 because the state continuously borrows money from the Boxers' Pension Plan and is not required to pay interest on the borrowed funds. In June 1997, the general fund borrowed \$400,000 from the Pension Plan, almost the entire balance of the account. The Commission believes that this practice violates existing requirements that call for prudent investment standards and due diligence in the selection, investment, monitoring, and reporting of pension account investments. CSAC also argues that, to ensure sufficient growth and meet the necessary payout projections of the Plan, it needs authority to continuously and directly deposit all ticket assessments into the same account. [A. *Appr*]

SB 694 (Sher), as amended April 26, 2001, would repeal the existing Miller-Ayala Athlete Agents Act, Business and Professions Code section 18895 *et seq.*, and would instead enact the Uniform Athlete Agents Act to regulate the activities of an athlete agent in soliciting or contracting with a student or professional athlete to provide representation in negotiations for professional sports or endorsement contracts. The bill would prohibit, subject to specified exceptions, a person from acting as an athlete agent without a certificate of registration issued by the Department of Consumer Affairs, and would void any contract negotiated in violation of the Act's requirements. The bill would allow for the acceptance of registration as an athlete agent in another state.

The bill would require contracts between agents and athletes to contain specified provisions, including the right of a student athlete to cancel the contract within 14 days of its execution and a warning that the student may lose his/her eligibility to compete as a student athlete. The bill would require both the agent and student to notify the educational institution in which the student is enrolled within 72 hours of

entering into the contract and would provide for a civil action by the educational institution against an agent for damages resulting from a violation of the requirements pertaining to transactions between student athletes and agents. The bill would require an athlete agent to establish a trust fund and deposit into it any payment he/she receives on behalf of a professional athlete, and would incorporate other conflict-of-interest provisions that pertain to the activities of an athlete agent under existing law.

SB 694 would prohibit other types of specified conduct by an athlete agent, making their commission a misdemeanor. The bill would also make the violation of its provisions grounds for DCA to revoke or suspend the agent's registration and to assess a civil penalty not to exceed \$25,000 against the agent. SB 694 would also authorize DCA, by regulation, to delegate its administrative powers and responsibilities under the provisions of the act to CSAC. The bill would establish a fee schedule for the registration activities required by its provisions and would direct that the fees be deposited into the Athlete Agent Registration Fund, which would be created by the bill. [S. B&P]

AB 269 (Correa), as amended April 5, 2001, would create the Division of Enforcement Oversight within DCA. Under the direction of the DCA Director, the Division would monitor and evaluate the consumer complaint and discipline system of each DCA board (including CSAC). Further, the bill would require the executive officer of each DCA board to be appointed by a three-member panel comprised of a representative of the board, the DCA Director, and the Governor's appointments secretary. [A. B&P]

LITIGATION

Adair v. California State Athletic Commission, No. BC-229784 (Los Angeles County Superior Court) is an employment discrimination suit filed against CSAC in May 2000 by Gwen Adair, the first female professional boxing referee in the United States. Adair was licensed by CSAC on June 8, 1980. She worked steadily and gained skill and experience. In April 1994, the International Boxing Federation (IBF) asked the Commission to assign Adair to referee the IBF junior bantamweight world title bout. CSAC initially assigned Adair to the bout, but then—without explanation—switched the assignment to a male referee.

Adair filed a discrimination charge against CSAC with the state Department of Fair Employment and Housing (DFEH). Adair contended that she had reached a "glass ceiling"—although she had accumulated a level of skill such that she should have been assigned to championship bouts, she was denied that opportunity while male referees, many of whom had less experience, were given the assignments. The Commission took no official action against Adair's license, but nevertheless gave her no further assignments. On August 27, 1996, the parties reached a mediated settlement in which Adair agreed to undergo supplemental training and CSAC agreed to assign Adair to referee title bouts when a sanction-

ing body so requested. Adair completed the required training and began receiving refereeing assignments again; all of her evaluations rated her performance satisfactory.

In April 1998, the IBF requested that Adair be assigned to referee a title bout in San Jose. However, the Commission assigned her as a judge rather than as the referee; according to Adair, that breached the 1996 settlement agreement. In April 1999, Adair filed her second DFEH complaint alleging CSAC's breach of the settlement agreement and its continuing failure to regularly assign her to work. On April 28, 1999, Adair met informally with Commission representatives and worked out a deal whereby Adair would undergo even more training and CSAC would assign her to referee regularly, particularly to title bouts when she was requested. As a result, in September 1999, Adair became the first woman to referee a world title bout in the United States. Following that championship fight, however, Adair alleges that the Commission again fell into its old pattern of failing to assign her to fights of the same quality, at the same rate, and in the same manner as similarly situated male referees. Consequently, on May 11, 2000, she filed a civil suit in Los Angeles County Superior Court, alleging discrimination and retaliation in employment.

After the filing of her suit, CSAC assigned Adair to referee a bout on July 11, 2000 for which she received a less than satisfactory evaluation, followed by a notice that she was suspended not only from refereeing but from judging as well. She appealed, and at a hearing on October 17, 2000, five experienced referees watched a videotape of the fight and then testified that they saw nothing substandard about Adair's performance. CSAC continued the hearing on November 8, 2000, this time switching its focus to two bouts held on November 12, 1999, even though no evaluation was done at the time of those fights and Adair was given no prior notice that her performance at these bouts would be considered. On December 7, 2000, CSAC dismissed the charges against Adair and took no action against her license. At this writing, Adair's civil case is in mediation.

RECENT MEETINGS

During its November 1999 meeting, the Commission heard a presentation from John "Juanito" Ibarra, representing the National Trainers and Cutman Association (NTCA). A boxing trainer is an instructor who prepares a boxer for a fight both physically and mentally and participates in the planning of the boxer's fight strategy. A cutman works in the corner of the ring during the match and is responsible for tending to any cuts or abrasions the boxer receives during the fight. According to Ibarra, while state legislation requires boxers to pay their managers and promoters, no such statutory protection exists for trainers and cutmen. The employment agreement between boxers and their trainers and cutmen is by "handshake" and is not secured by written contract. Thus, Ibarra stated, trainers and cutmen are too often released from service without notice, without being compensated, and with little recourse. Therefore, NTCA is advocating legislation to

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ensure payment to boxing trainers and cutmen. The commissioners directed staff to write a letter supporting NTCA.

Also at its November 1999 meeting, the Commission voted to increase the flat fee paid to ringside physicians at amateur martial arts events from \$150 to \$200. Amateur martial arts events require the physician to administer an average of 40 pre-fight physicals, while professional boxing events average only 12 contestants for the ringside physician to examine. Yet current CSAC policy sets the minimum payment for ringside physicians at such professional events at \$175. Thus, the Commission agreed that leaving the maximum payment for amateur events at \$150 would be inequitable and would send the wrong message concerning the value of the health and safety of amateur versus professional fighters.

At its December 1999 meeting, the Commission began to discuss whether to permit boxers to wear soft contact lenses while competing, but tabled the issue until February. At its February 2000 meeting, the Commission again tabled this item and, at this writing, it has not reappeared on the Commission's agenda.

At its February 2000 meeting, Commission Vice-Chair Manuel "Cal" Soto was unanimously elected Chair and Commissioner Elmer Costa was unanimously elected Vice-Chair for 2000.

At its August 2000 meeting, the Commission discussed its policy concerning free event admission for CSAC boxing officials who are not working that event. The issue came before CSAC because an official who had tried to attend an event was denied entry because the match was sold out and the fire marshal had prohibited standing-room-only admittance. Under section 378, Title 4 of the CCR, "any licensed boxing referee, judge, timekeeper or physician shall be admitted to any boxing show in this State on presentation of his or her license card." Several years ago, the Commission adopted a "policy" to interpret section 378: "Commissioners will be seated on the apron and each commissioner may take one guest. The guest is not guaranteed an apron seat and the promoter will do his best to provide an appropriate seat for the guest. Working and non-working officials may not take a guest unless an individual promoter agrees to accommodate them. Commission staff does not get involved with this. All commissioners and non-working officials wishing to attend an event must contact either the Los Angeles or Sacramento Office prior to an event in order for staff to make arrangements with the promoter." The official who raised the issue stated that he was unaware it was necessary to contact CSAC prior to an event to make arrangements for free admission. The Commission directed staff to send a memo to all boxing officials reminding them of the procedure set forth in its "policy."

During the report of the Medical and Safety Standards Advisory Committee delivered at CSAC's December 2000 meeting, Dr. Paul Wallace announced that he is working with Commission staff to create a format to be utilized at each meeting to assist the commissioners in determining the nature and number of boxing injuries. Dr. Wallace expressed

concern over the fact that in 2000, four fighters had died in the United States and physicians remain puzzled as to the causation. Wallace noted that this new format would not result in any additional cost to CSAC, but would have an impact on the way in which information about boxing injuries is reported and stored.

During the same report, Dr. Wallace related a problem concerning the referee's evaluation sheet. The ringside physician is required to sign a statement on that sheet declaring that the referee is in satisfactory condition. However, physicians are provided with no guidelines defining the term "satisfactory condition" as it relates to referees. Wallace remarked that current practice amounts to no more than taking the referee's blood pressure. The Commission referred the matter to staff, either to be handled by staff or to be placed on the agenda at a future meeting.

At its January 25, 2001 meeting, the Commission unanimously re-elected Chair Soto and Vice-Chair Costa as its officers for 2001.

Also in January 2001, sparks flew between Dr. Paul Wallace, Chair of CSAC's Medical and Safety Standards Advisory Committee, and Commissioner Al Ducheny. During his report of recent activities of the Advisory Committee, Dr. Wallace informed the Commission of several examples of potential ringside physician liability due to the refusal of a fighter to accept medical care. Commissioner Ducheny repeatedly interrupted Dr. Wallace, reminding him that if he wants the Commission to take action on an item, he must submit the item to CSAC in writing prior to the meeting. Dr. Wallace noted that the most recent event had occurred only one week prior to the January 2001 meeting, such that there was insufficient time for him to submit a written report. Commissioner Ducheny further interrupted Dr. Wallace during Wallace's delivery of the report of the Amateur Boxing Committee report, and told Dr. Wallace that he was "out of order." Dr. Wallace was instructed to make any additional comments during the public comment period (which he did). Also during the public comment period, former Commissioner Andrew Kim expressed surprise at Commissioner Ducheny's reactions to Dr. Wallace's reports. Kim noted that when he was a commissioner, the Commission always allowed ample time for committees to make reports, especially the Medical Advisory Committee whose opinions are vital to the health and safety of the Commission's athlete licensees.

At CSAC's March 22, 2001 meeting, Executive Officer Lynch reported that the Office of State Audits and Evaluations (OSAE), a part of the state Department of Finance, had completed an audit of the Commission's internal controls. OSAE found four matters of concern: (1) inadequate controls over the use of and access to the security safe, (2) checks not endorsed in a timely manner, (3) inadequate property controls, and (4) inadequate controls over check-holds (uncleared collections). Lynch stated that staff concurred in OSAE's findings and had already taken the corrective steps recommended by OSAE.

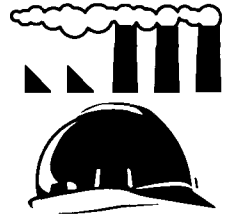
FUTURE MEETINGS

2001: May 24 in Sacramento; July 19 in El Segundo; September 20 in South San Francisco; October 16 in El Segundo; December 6 in El Segundo.

2002: February 9 in El Segundo; April 20 in Glendale; June 12 in El Segundo; July 12 in Burbank; August 29 in Burbank; October 17 in Burbank; December 12 in El Segundo.

Cal-OSHA

OSB Executive Officer: John D. MacLeod ♦ (916)274-5721 ♦ Internet: www.dir.ca.gov/oshsb/oshsb.html
DOSH Chief: John Howard ♦ (415) 703-5100 ♦ Internet: www.dir.ca.gov/DOSH/dosh1.html



California's Occupational Safety and Health Administration (Cal-OSHA) is part of the cabinet-level Department of Industrial Relations (DIR). The agency administers the California Occupational Safety and Health Act, Labor Code section 6300 *et seq.*, California's program to protect the safety and health of its workers.

Cal-OSHA was created by statute in October 1973. It is approved and monitored by, and receives some funding from, the federal Occupational Safety and Health Administration (Fed-OSHA). Cal-OSHA's regulations are codified in Titles 8, 24, and 26 of the California Code of Regulations (CCR).

Cal-OSHA's Occupational Safety and Health Standards Board (OSB), authorized in Labor Code sections 140-49, is a quasi-legislative body empowered to adopt, review, amend, and repeal health and safety regulations that affect California employers and employees. Under section 6 of the federal Occupational Safety and Health Act of 1970, California's worker safety and health standards must be at least as effective as Fed-OSHA's standards within six months of promulgation of a given federal standard. When adopting, amending, or repealing health and safety regulations, OSB is generally subject to the rulemaking requirements of the Administrative Procedure Act (APA), Government Code section 11340 *et seq.* However, under Labor Code section 142.3(a)(3), when OSB is adopting or amending a California standard to identically conform it to the applicable federal standard, OSB is exempt from certain APA requirements. The Board is authorized to grant interim or permanent variances from occupational safety and health standards to employers who can show that an alternative process would provide equal or superior safety to employees. OSB may consider petitions for new or revised regulations proposed by any interested person concerning occupational safety and health. The Board holds monthly meetings to permit interested persons to address it on any occupational safety and health matter.

The seven members of OSB are appointed by the Governor to four-year terms. Labor Code section 141 permits Board members to continue to serve after their terms have expired until they are replaced. Under Labor Code section 140, the Board is composed of two members from the field of management, two members from labor, one occupational health member, one occupational safety member, and one member

from the general public. The Governor designates OSB's chair, who in turn appoints another member to serve in his/her absence. Under Labor Code section 142.3, the affirmative vote of at least four Board members is necessary to take regulatory action.

At this writing, OSB's Chair is Jere W. Ingram, the occupational health member. The terms of Gwendolyn W. Berman, the occupational safety member, and William Jackson, a management member, expired on June 1, 1999; at this writing, both continue to serve on OSB because they have not been replaced. Governor Davis has yet to fill two vacant seats—one labor representative and the public member post (see LITIGATION).

Under Labor Code section 6300 *et seq.*, the duty to investigate complaints and enforce OSB's safety and health regulations rests with the Division of Occupational Safety and Health (DOSH). DOSH issues citations and abatement orders (granting a specific time period for remedying the violation), and levies civil penalties for serious, willful, and repeated violations. The Division may refer egregious violations to a public prosecutor for criminal prosecution. In addition to performing routine investigations, DOSH is required by law to investigate employee complaints and accidents causing serious injuries, and to make follow-up inspections at the end of abatement periods.

The Occupational Safety and Health Appeals Board (OSHAB) adjudicates disputes arising out of DOSH's enforcement of OSB's standards. Cal-OSHA's Consultation Service provides onsite health and safety recommendations to employers who request assistance. Consultants guide employers in adhering to Cal-OSHA standards without the threat of citations or fines.

MAJOR PROJECTS

OSB Undertakes Title 8 Restructuring Project

OSB has begun a comprehensive project to restructure and reorganize its worker health and safety regulations in Title 8 of the CCR in order to make them better organized, more accessible, and more relevant to the safety and health concerns of today's workplace. Title 8 contains approximately