



# REGULATORY AGENCY ACTION

architect's responsibilities as they relate to each other. Although BAE agreed at its January 1992 meeting to retain the oral exam, it referred the matter to its Internship and Oral Examination Committee for further consideration, and requested that Department of Consumer Affairs (DCA) Central Testing Unit Manager Dr. Norman Hertz respond to various questions regarding the oral examination. In response, Dr. Hertz opined that it is appropriate to reconsider the purpose and efficacy of BAE's oral examination, noting that oral examinations should be utilized only where there are absolutely no other alternatives available to assess candidates' competence. The oral exam discussion was postponed by the Board at its May 29 meeting, and the issue was referred to both the Internship and Oral Exam Committee and the Written Examination Committee. [12:4 CRLR 54-55; 12:2&3 CRLR 62]

At BAE's October 2 meeting, the two committees presented a joint report detailing specific recommendations for the future of the oral exam. The joint report recommended that (1) in addition to NCARB's national standardized written exam, the Board continue to administer a supplemental examination in California in the form of the current oral exam; and (2) the Internship and Oral Exam Committee be charged with monitoring, updating, and improving the current oral exam as long as it is being administered. Both recommendations were approved by BAE unanimously. BAE also decided to extend its contract with CTB MacMillan/McGraw-Hill to provide oral exam administration, scoring, and reporting services through June 30, 1993.

Also at its October 2 meeting, BAE approved the continuation of its pilot project to tape oral exams; the Board believes the project will be invaluable should it decide to offer an appeals process. The Board charged its Internship and Oral Exam Committee with the responsibility of recommending whether an appeal process for the oral exam should be developed and, if so, to include a recommendation on the use of the tape recordings as part of the appeals process.

These matters were subsequently discussed by the Internship and Oral Exam Committee at its November 19 meeting; the Committee noted that the benefits to the candidates of having an appeals process available to them outweigh any administrative difficulties, and agreed that such a process should be developed. At that meeting, BAE Exam Program Analyst Michelle Rankin stated that DCA's Central Testing Unit recommends that specific grounds for appeal be established so that

simply failing the exam is not sufficient grounds to file an appeal; Committee members unanimously agreed that the grounds for appeal should be limited to commissioner misconduct or bias, with the understanding that the term "misconduct" would cover an extensive range of commissioner behavior. The Committee also discussed possible actions which could be taken in order to resolve an appeal, including scheduling the next exam without payment of the exam fee; removing the failing score from the candidate's record; overturning the failing score and having the Committee listen to the tape of the exam and rescore the candidate's answers; and overturning the failing score and deeming the candidate to have passed the oral exam. The Committee directed staff to begin developing specific regulatory language regarding appeal procedures for review at its next meeting.

**BAE Looks at its Role for the Next Century.** Noting that a high school graduate entering a university this fall will be eligible for licensure as an architect in the year 2000, the Board recently affirmed its commitment to begin deliberation about what the requirements for California architectural licensing should be in the next century. Among other things, BAE will consider the level of formal education the state should require, given the increasing complexity, computerization, and demands of practice; whether the public would be better served by having architects in each state meet relatively similar licensing requirements; whether the citizens of California would be better served by having fewer but more educated and thoroughly trained architects; and whether architects will be able to practice competently in the next century without some type of formal education. The project, known as "Vision 2000," was scheduled to be given status as a full agenda item at the Board's January meeting.

## RECENT MEETINGS

At BAE's October 2 meeting, the Board welcomed Larry Segue as BAE's new Architect Consultant and approved an expenditure allowance sufficient to fund one annual Enforcement Committee meeting; recent Enforcement Committee meetings have been cancelled due to budget restraints.

Also, the Board unanimously adopted the recommendations of its newly created Disaster Response Task Force defining the Board's role in response to a state disaster. The recommendations include sending a sufficient number of its *Consumer's Guide to Hiring an Architect* and *Building Official Information Guide* publications to

building departments and American Institute of Architects chapters in areas affected by the disaster; issuing a press release detailing the provision of law regarding unlicensed practice during a declared emergency and publicizing the availability of Board publications; and responding to requests for additional services as needed.

## FUTURE MEETINGS

May 22 in Sacramento.

## ATHLETIC COMMISSION

*Executive Officer:*  
Richard DeCuir  
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The Athletic Commission is empowered to regulate amateur and professional boxing and contact karate under the Boxing Act (Business and Professions Code section 18600 *et seq.*). The Commission's regulations are found in Division 2, Title 4 of the California Code of Regulations (CCR). The Commission consists of eight members each serving four-year terms. All eight members are "public" as opposed to industry representatives. The current Commission members are Willie Buchanon, William Eastman, Ara Hairabedian, H. Andrew Kim, Jerry Nathanson, Carlos Palomino, Kim Welshons, and Robert Wilson.

The Commission has sweeping powers to license and discipline those within its jurisdiction. The Commission licenses promoters, booking agents, matchmakers, referees, judges, managers, boxers, and martial arts competitors. The Commission places primary emphasis on boxing, where regulation extends beyond licensing and includes the establishment of equipment, weight, and medical requirements. Further, the Commission's power to regulate boxing extends to the separate approval of each contest to preclude mismatches. Commission inspectors attend all professional boxing contests.

The Commission's goals are to ensure the health, safety, and welfare of boxers, and the integrity of the sport of boxing in the interest of the general public and the participating athletes.

## MAJOR PROJECTS

**Commission Issues Urgent Plea for Increased Funding.** At its November 20 meeting, the Commission decided to publicize its serious budget woes, which stem from the left hook/right cross combination it has recently suffered: The 1992-93



Budget Act requires Commission expenditures to be restricted to its revenues (that is, the Commission will no longer enjoy subsidies from the general fund) and, in addition, it was required to cut its 1992-93 budget by 10% from its 1991-92 budget. [12:4 CRLR 56] Executive Officer Richard DeCuir stated that the Commission's operating costs will undoubtedly overrun revenues, because the primary source of Commission income is a 5% tax on the gate at boxing shows—"not a predictable source of revenue because it fluctuates erratically from year to year," according to DeCuir. Additionally, widespread coverage of boxing on cable television is expected to reduce the Commission's gate tax revenue.

DeCuir and Commission members noted that a supplemental source of funding must be found, and urged the legislature to support increased licensing fees for its licensees and a 5% tax on boxing broadcast on cable television. According to Commission Chair William Eastman, "without additional funding, boxing will be out of business. There will be no Commission and no legal boxing in California."

**Commission to Tackle Controversial Issue of HIV Transmission in Contact Sports.** At its November meeting, the Commission continued its discussion of a request from Rudy and Joan Ortega that the Commission test boxers for the human immunodeficiency virus (HIV) as a condition of licensure; at its September meeting, the Commission had referred the matter to Department of Consumer Affairs (DCA) legal counsel Greg Gorges for further review. [12:4 CRLR 57]

On November 16, Gorges released his memorandum, which states that there have been no documented cases of HIV transmission between participants or contestants in a contact sport. According to Gorges, the risk of transmission of HIV is extremely remote, since the virus dies almost immediately outside the body.

Regarding the proposal for mandatory HIV testing, Gorges explained that California law provides that no person—with specific, narrow exceptions—may be tested for HIV without his/her consent. According to Gorges, medical experts have advised that required testing presents a false sense of security because (1) an infected person will not express sufficient antibodies to test positive until six weeks to six months after exposure to the virus; and (2) the test results are only reliable until the subject either has an unsafe and/or unprotected sexual encounter with another person or injects intravenous drugs using unclean works, raising an issue as to frequency of required testing.

Gorges also discussed the issue in light of the new Americans with Disabilities Act (ADA), which provides that an applicant or licensee may not be denied or restricted in his/her ability to practice or engage in his/her profession because he/she has a disability if he/she can perform the essential functions of his/her profession with or without reasonable accommodation; applicants and licensees who are diagnosed as HIV positive, although asymptomatic, are considered disabled under the ADA. According to Gorges, in order to restrict or suspend a professional boxer because he is HIV positive, the Athletic Commission would be required to prove that the boxer's fighting in a contest or match poses a direct threat to other contestants, officials, or spectators; the term "direct threat" refers to a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation. Gorges stated that the Commission would have to show the following in order to prove that a boxer with HIV is a "direct threat": a specific risk has been identified; the specific risk is a current risk, not a risk that is speculative or remote; there is a significant risk of substantial harm to other contestants, officials, and spectators; the risk is based on objective medical or other factual evidence regarding a particular individual; and the risk cannot be eliminated or reduced below the level of a "direct threat" by reasonable accommodation.

Gorges noted that fighters are currently not bandaged when they are cut during a fight, and that a fight is stopped only when a fighter is bleeding so much that it is unsafe to continue the fight. Assuming for the sake of argument that a risk does exist that HIV may be transmitted during a fight, Gorges noted that some steps may be taken to reduce that risk in the event a boxer is cut or otherwise caused to bleed. For example, the Commission could require that when a boxer is cut, the fight must be stopped so that the cut may be bandaged by the ringside physician; if the bleeding cannot be stopped, the fight could be stopped.

At the November meeting, Commissioner Kim Welshons suggested that the Commission invite Dr. Richard Ikeda, chief medical consultant at the Medical Board, to attend a boxing show so he can see firsthand the amount of blood involved in the ring. Welshons commented that perhaps Dr. Ikeda could identify those individuals, such as referees, judges, trainers, and spectators, who could be at risk to exposure; identify what kind of precautionary measures should be used and when they should be implemented; and provide

instructions on the proper handling and disposal of materials contaminated with blood, vomitus, or sweat.

Commission Chair William Eastman agreed with Commissioner Welshons' suggestions, but opined that the medical community has erred in the past regarding HIV transmission. He stated that because current medical evidence on HIV transmission is inconclusive, the Commission should err on the side of caution and safety. The Commission agreed to seek further guidance from the medical community on HIV-related issues, and then examine how the risk of transmission may be reduced by using appropriate barriers in the ring.

**Martial Arts/Kickboxing Update.** The Commission's Martial Arts Advisory Committee is still considering proposed amendments to regulations concerning professional and amateur martial arts. [12:4 CRLR 57] At its November 20 meeting, the Commission discussed the proposed amendments, which concern—among other things—modifications of weight classes, time limits for rounds, and protective gear. Following discussion, the Commission referred the proposals to legal counsel for review and minor modification. At this writing, the Commission has not yet published notice of its intent to adopt these amendments in the *California Regulatory Notice Register*.

**Regulatory Changes.** On November 16, the Office of Administrative Law approved the Commission's amendments to sections 312 and 345, Title 16 of the CCR. These changes increase the number of ring ropes from three to four and specify that the fourth rope shall be 54 inches above the floor, and require that a mandatory time-out be called whenever the ringside physician examines a boxer. [12:4 CRLR 57]

**Drug Screening.** According to Executive Officer Richard DeCuir, the Commission's drug and alcohol screening policy discussed at its August 7 meeting is now in place. [12:4 CRLR 56] The policy requires applicants for licensure who have been convicted of a drug-related offense to undergo drug screening at the time of application and/or renewal. In order to properly adopt such a requirement, the Commission announced plans to add subsection (l) to section 280, Title 4 of the CCR, to provide that any applicant for a license or the renewal of a license who has been convicted of a crime that is a violation of any state or federal statute or regulation relating to dangerous drugs or controlled substances shall be required to undergo screening for the presence of dangerous drugs or controlled substances as a



part of the application process at a time and place to be designated by the Commission. At this writing, however, no such notice has been published by the Commission in the *California Regulatory Notice Register*.

## LITIGATION

In *Colome v. State of California*, (Nov. 6, 1992), a Los Angeles County Superior Court jury awarded boxer Dio Colome over \$1.2 million in damages after finding that the Athletic Commission-mandated neurological exam was improperly administered to him, resulting in his ineligibility to box in a tournament which many experts expected him to win. After a 35-day trial and six days of deliberation, the jury found that state law requiring the test to be administered by "a licensed physician and surgeon who specializes in neurology or neurosurgery" was violated when the neurologist who was assigned to administer the test to Colome assigned a professor of social work, who speaks Spanish, to administer the mental status portion of the test to the boxer.

The decision represents a staggering blow to the Commission's neurological exam program and its budget. The neurological examination has been the subject of controversy since its 1986 enactment; many critics, including former Commissioner Raoul Silva, contend that the exam is not educationally or culturally sensitive. Although Colome's attorney, Carl Douglas, also alleged that the test is educationally and culturally biased, in spite of the jury's decision, he "doubt[s] whether the state will accept the broader implication of this case, that [the test] is not a valid way of testing boxers of low education levels and those who speak only Spanish." According to Deputy Attorney General Michael Hughes, the state plans to appeal the decision.

## RECENT MEETINGS

At its November 20 meeting, the Commission discussed a referee evaluation form and procedure being implemented by its Referee Evaluation Committee; the purpose of the evaluation program is to ensure that referees are in good condition, continue to demonstrate knowledge of the rules and regulations, and demonstrate their general gamesmanship in the ring and ability to protect the fighters at all times. [12:4 CRLR 57] Commission Chair William Eastman inquired whether just one person will be completing the evaluation; whether that person will be assigned by the Executive Officer; and who will review the evaluation. Commissioner Ara Hairabedian reported that these issues

were scheduled to be discussed at an officials' clinic to be conducted in early 1993; at that time, referees would have the opportunity to comment on the proposed evaluation program.

Also at the Commission's November meeting, staff asked for direction regarding boxers who sign a contract to box at a particular show, but due to some reason beyond their control do not appear on that show; according to staff, boxers often arrive for a weigh-in and find that their contracted bout has been canceled. Staff asked that the Commission consider the following: whether boxers should be compensated for items such as their time and effort, mileage, and other expenses if it is not their fault that they do not appear on a show; if boxers are to be compensated, how the figure should be calculated (*e.g.*, whether they should be compensated at a flat rate depending upon the number of rounds contracted); and whether the boxer should be guaranteed that he will appear on that promoter's next event. Staff recommended that, at minimum, boxers should be reimbursed for reasonable expenses such as mileage, lodging, meals, and other appropriate expenses. Commissioner Carlos Palomino was expected to review the issue and make suggestions at a future Commission meeting.

The Commission approved Commissioner Andrew Kim's attempts to open boxing relations with North Korea. Kim reported that he has not yet received a response to correspondence sent to North Korean officials regarding this matter.

## FUTURE MEETINGS

June 4 in Sacramento.  
July 30 in Sacramento.  
September 17 in Sacramento.  
November 5 in Sacramento.

## BUREAU OF AUTOMOTIVE REPAIR

Chief: James Schoning  
(916) 366-5100  
Toll Free Complaint Number:  
1-800-952-5210

Established in 1971 by the Automotive Repair Act (Business and Professions Code section 9880 *et seq.*), the Department of Consumer Affairs' (DCA) Bureau of Automotive Repair (BAR) registers automotive repair facilities; official smog, brake and lamp stations; and official installers/inspectors at those stations. The Bureau's regulations are located in Division 33, Title 16 of the California Code of

Regulations (CCR). The Bureau's other duties include complaint mediation, routine regulatory compliance monitoring, investigating suspected wrongdoing by auto repair dealers, oversight of ignition interlock devices, and the overall administration of the California Smog Check Program.

The Smog Check Program was created in 1982 in Health and Safety Code section 44000 *et seq.* The Program provides for mandatory biennial emissions testing of motor vehicles in federally designated urban nonattainment areas, and districts bordering a nonattainment area which request inclusion in the Program. BAR licenses approximately 16,000 smog check mechanics who will check the emissions systems of an estimated nine million vehicles this year. Testing and repair of emissions systems is conducted only by stations licensed by BAR.

Approximately 80,000 individuals and facilities—including 40,000 auto repair dealers—are registered with the Bureau. Registration revenues support an annual Bureau budget of nearly \$34 million. BAR employs approximately 600 staff members to oversee the Automotive Repair Program and the Vehicle Inspection Program.

## MAJOR PROJECTS

**Final EPA Rules Require Enhanced Vehicle I/M Programs for Much of California.** In 1990, Congress passed amendments to the Clean Air Act requiring, among other things, that states have a centralized or equally effective vehicle emissions inspection and maintenance (I/M) program, as determined by performance standards to be adopted by the federal Environmental Protection Agency (EPA). [12:2&3 CRLR 66] EPA released its draft proposals for those performance standards on July 13, eight months after they were due. [12:4 CRLR 59]

On November 5, EPA published its final rules establishing performance standards and other requirements for basic and enhanced vehicle I/M programs. The final rules include a variety of minor changes from the draft rules based on comments received regarding specific details of the regulatory text; several major changes were also made in response to public comment. First, EPA decided to drop from the rule "provisional equivalency" for test-and-repair programs in enhanced I/M areas; according to EPA, public comment was strongly against this option and state governments made it clear that they saw no way to achieve the performance standard with a test-and-repair system. Second, the final rules allow six additional