



exam. Among other things, Dr. Hertz responded 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. At its March meeting, BAE referred the matter to its Internship and Oral Examination Committee for further consideration. [12:2&3 CRLR 62]

At BAE's May 29 meeting, the Committee recommended that the Board continue its contract with CTB/McGraw-Hill for the administration, scoring, and recording of the oral examination, and continue the oral exam in its current format until the Internship and Oral Examination Committee and the Written Examination Committee complete their review and make a recommendation regarding the future of the exam. Although this motion passed by a vote of 6-3, the Board immediately voted unanimously to reconsider that vote, and then voted unanimously to table any decision on the CTB/McGraw-Hill contract, as well as the entire subject of the elimination of the oral examination, until the next BAE meeting, and to refer the matter back to committee. BAE also directed staff to conduct a detailed anonymous survey of BAE members' opinions regarding the oral examination.

■ LEGISLATION

The following is a status update on bills reported in detail in CRLR Vol. 12, Nos. 2 & 3 (Spring/Summer 1992) at pages 62-63:

SB 2044 (Boatwright) declares legislative findings regarding unlicensed activity and authorizes all DCA boards, bureaus, and commissions, including BAE, to establish, by regulation, a system for the issuance of an administrative citation to an unlicensed person who is acting in the capacity of a licensee or registrant under the jurisdiction of that board, bureau, or commission. This bill also provides that the unlicensed performance of activities for which a BAE license is required may be classified as an infraction punishable by a fine of not less than \$250 and not more than \$1,000. SB 2044 also provides that if, upon investigation, BAE has probable cause to believe that a person is advertising in a telephone directory with respect to the offering or performance of services without being properly licensed by BAE to offer or perform those services, the Board may issue a citation containing an order of correction which requires the violator to cease the unlawful advertising and notify the telephone company furnishing services to the violator to disconnect

the telephone service furnished to any telephone number contained in the unlawful advertising. This bill was signed by the Governor on September 28 (Chapter 1135, Statutes of 1992).

AB 2593 (Frazee) provides for the issuance of a "retired architect's license" to an architect who holds an active license upon payment of a specified fee. The holder of such a license would be prohibited from engaging in any activity for which an active architect's license is required. This bill was signed by the Governor on September 22 (Chapter 862, Statutes of 1992).

AB 2456 (Klehs) provides that in the event of damage to residential real property caused by a natural disaster declared by the Governor, if the damage may be covered by insurance, any architect or other person who has prepared plans used for construction or remodeling shall, upon request, release a copy of the plans to the homeowner's insurer, the homeowner, or the duly authorized agent of the insurer or the homeowner, for use solely for the purpose of verifying the fact and amount of damage for insurance purposes. The bill also prohibits a homeowner or any other person from using any copy of the plans, released for such specified purpose, to rebuild all or any part of the residential real property without the prior written consent of the architect or other person who prepared the plans. In the event prior written consent is not provided, no architect or other person who has prepared the plans who releases a copy of the plans, as required, shall be liable to any person if the plans are subsequently used by the homeowner or any other person to rebuild all or any part of the residential real property. This bill was signed by the Governor on September 22 (Chapter 859, Statutes of 1992).

AB 2743 (Frazee) was amended to delete previous language which would have added section 5535.5 to the Business and Professions Code, to provide that it is unlawful for any person, except as specifically excepted in Chapter 3, Division 3 of the Business and Professions Code, to practice architecture or to offer to practice architecture unless at the time of so doing he/she holds a valid unexpired license issued under Chapter 3.

■ RECENT MEETINGS

At BAE's May 29 meeting, Board President Merlyn Isaak presented a certificate of appreciation to former BAE President Larry Chaffin; Isaak also presented a certificate to Alex Malinkowski, architect consultant, who retired from the Board after over seven years of service.

■ FUTURE MEETINGS

To be announced.

ATHLETIC COMMISSION

Executive Officer:
Richard DeCuir
(916) 920-7300

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

Update on Study of Neurological Examination. At the Commission's August 7 meeting, Chair William E. Eastman reported that on July 31-August 1, the Neurological Validity Study Panel met in Los Angeles to review and evaluate the Commission's neurological exam given to boxers. [12:2&3 CRLR 63] Dr. Norman Hertz of the Department of Consumer Affairs' (DCA) Central Testing Unit (CTU) directed the panel of thirteen internationally-renowned neurologists which evaluated data on the Commission's neurological exam program to determine whether the exam is valid as designed.



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Among other things, the Panel's review of data produced the following conclusions:

- the neurological exam works as it is intended, as a screen for cumulative head injuries;

- the mental status portion of the test, which has been modified and streamlined, effectively serves as a screen to show degenerative process;

- based on available current research and available data, neuropsychological testing is more effective at detecting early neurological damage than other available techniques;

- consultants suggest that the exam continue as modified;

- to be fairly administered, all aspects of the exam require standardized, consistent administration by trained neurologists or neuropsychologists; and

- inherent cultural bias appears low or minimal in combined examinations.

Chair Eastman also reported that future plans for CTU's neurological validity study include the following: 100 boxers who have previously passed the exam will be given the exam again so that internal norms may be developed; existing data will be further analyzed; boxers will be tracked over the long term; CTU will design a study to assess the reliability of the exam and examiners; and, following future meetings, the final results will be published.

The Commission also discussed a possible joint neurological study involving the Commission and Johns Hopkins University. The study, which may be funded by the U.S. Olympic Committee Amateur Boxing Foundation and the National Institutes of Health, would involve the University's review and evaluation of the Commission's neurological data on 300 California professional boxers who would be studied over the next four to five years, in order to more accurately assess the risk of chronic brain damage as a result of participation in professional boxing.

At the Commission's September 25 meeting, Drs. Walter Stewart and Barry Gordon of Johns Hopkins' Department of Epidemiology discussed the proposed study, which would determine what factors influence the safety of professional boxers in California; identify ways to increase protection of the health of boxers; determine ways to effectively validate early signs of neurological damage; and establish valid and practical screening procedures. The Commission unanimously agreed to cooperate with Johns Hopkins in designing the study and securing funds.

Drug Screening. At its August 7 meeting, the Commission reviewed a proposed

drug screening policy, which would require applicants for licensure who have been convicted of a drug-related offense to undergo drug screening at the time of application and/or renewal. [12:2&3 CRLR 65] Following discussion, the Commission agreed to commence the rulemaking process in order to add subsection (c) 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 any dangerous drugs or controlled substances as a part of the application process at a time and place to be designated by the Commission.

Commission staff also reported that Deputy Attorney General Ron Russo has opined that, pursuant to section 303, Title 4 of the CCR, the Commission may require urine screening when there is reason to believe a boxer or kickboxer is under the influence of alcohol, drugs, stimulants, or injections in any part of the body during a match; section 390 addresses enforcement action that can be taken against licensees who have violated the laws of the State of California.

Commission staff contracted with a Sacramento company to assure that the drug/alcohol screening tests are standardized throughout the state. The company has supplied Commission inspectors and physicians with urine sample kits for onsite use; once the samples are forwarded to the company, it will document the chain of evidence, code the samples, and mail the results to the Commission's Sacramento office within 3-5 days of testing. The \$35 fee for the test will be borne by the boxer.

Commission's Budget Crisis Continues. As signed by Governor Wilson on September 2, the state's 1992-93 Budget Act contains specific language which restricts the Commission's expenditures to its revenues, as was recommended by the Legislative Analyst's Office. [12:2&3 CRLR 63] In 1991-92, the Commission's expenditures exceeded its revenues by \$183,000. This amount was subsidized from the state general fund, but such subsidies will no longer be available to the Commission. The 1992-93 state budget also imposed a 10% across-the-board cut on all DCA agencies; this cut will result in a \$125,000 reduction in the Commission's budget. (See *supra* COMMENTARY.) To meet this budget reduction goal, the Commission tentatively decided to close its Los Angeles office, which it predicts will

lower expenditures by \$125,000. At its September 25 meeting, the Commission projected a year-end expenditure total of \$574,000, based on its current rate of spending; in 1991-92, the Commission's revenues totaled only \$500,000.

Pension Plan Update. Pursuant to the findings of the Auditor General after an investigation of the Commission's pension plan for professional boxers, the Commission held a public hearing on July 6 to discuss investment alternatives and suggested improvements in the overall administration of the pension plan. [12:2&3 CRLR 64] At the July hearing, Dean Witter representative Ron Ginyard offered to manage the pension fund and proposed investment strategies along with estimated fees and rates of return on the investments. Following a discussion, the Commission agreed to put the pension funds into an interim account until a final decision is made.

At its August 7 meeting, the Commission reviewed the findings of a separate audit of the pension plan which was conducted by DCA's Internal Audit Unit (IAU). Among other things, IAU's audit revealed the following:

- the administrative expenses billed to the plan from 1982 to November 30, 1991 by the plan's administrators appear to be appropriate;

- the Commission has never executed contracts or interagency agreements with the plan's administrators. Consequently, IAU was unable to determine whether the Commission adhered to proper procurement procedures in obtaining the services of the plan's administrators;

- the Commission did not always retain records for the proper administration of the plan;

- the Commission needs to evaluate its investment of pension funds regularly and consider alternative investments; and

- the Commission has not developed and documented procedures for coordinating the administration of the plan.

IAU also recommended that the Commission take the following actions regarding the administration of the plan:

- develop and document a method to completely and accurately account for the administrative expenses related to the plan;

- develop and document an investment plan containing investment strategies and objectives for the plan, and periodically evaluate the pension fund investment to obtain the best available rate of return;

- follow proper procurement procedures in accordance with the Public Contract Code in selecting administrators to assist in the administration of the plan;



—execute contracts with administrators selected to assist in the administration of the plan;

—develop and document record retention requirements for the plan;

—simplify boxing show records to reduce errors;

—develop and document procedure manuals for the administration of the plan;

—establish dual signature authority so it can withdraw monies or make payments with invested pension funds; and

—request in writing that IAU audit the plan every two years to ensure the plan is being properly managed.

Also at its August 7 and September 25 meetings, the Commission continued its discussion regarding ways to improve the plan; one proposal is to invest pension funds in programs which will benefit boxers before they reach the age of 65. DCA legal counsel Greg Gorges commented that the Commission needs to review applicable statutes and regulations to determine if legislative or regulatory amendments are necessary to effect any such changes.

Martial Arts/Kickboxing Committee Update. At its August 7 meeting, the Commission named David Key, Howard Sigman, Ruben Estinez, Lorenzo Rodriguez, Herb Cody, Yoski Tanioka, Tony Thompson, and Richard DeCuir to the Martial Arts Advisory Committee chaired by Commissioner Willie Buchanon. The Committee was formed to follow up on the work of the Commission's previous Martial Arts Advisory Committee, which disbanded prior to making any final recommendations. Major areas discussed by the previous committee included whether professional kickboxing should be conducted under a different set of rules than amateur kickboxing; whether martial arts should be regulated as a single sport or separated by the various martial arts forms; whether modifications should be made to weight classifications; types of kicks to be allowed; the applicability of the Professional Boxers' Pension Fund to kickboxers; whether protective equipment should be required; amateur round time limits; skill requirements for kickboxing referees; glove sizes; and purse amounts (if any). [12:2&3 CRLR 64] At the August 7 meeting, Committee Chair Buchanon added that the committee will look at international developments in kickboxing and martial arts in order to establish continuity in rules and regulations applicable to those sports; Commissioner Buchanon opined that the economic impact of such events could be very positive for the state.

In a related matter, the Commission considered at its September 25 meeting

whether it should adopt a fee schedule for the payment of amateur kickboxing referees, judges, timekeepers, and ringside physicians. Although no such fee schedule currently exists, the Commission noted that one might be necessary in order to provide some kind of consistency at amateur events. Noting that amateur officiating can be viewed as training and development and perhaps even a prerequisite for entering the professional ranks, Commission staff recommended that the pay scale for amateur officials be lower than the going rate for officiating at professional events, and that the pay scale be uniform, regardless of the net gate. Following discussion, the Commission referred the matter back to committee for further consideration.

Regulatory Changes. At this writing, the Commission's proposed amendments to sections 312 and 345, Title 4 of the CCR, are awaiting approval by the DCA Director; following that, the rulemaking file will be forwarded to the Office of Administrative Law for review and approval. [12:2&3 CRLR 64] The proposed amendment to section 312 would increase the number of ring ropes from three to four and specify that the fourth rope shall be 54 inches above the floor; the proposed amendment to section 345 would require that a mandatory time-out be called whenever the ringside physician examines a boxer.

LEGISLATION

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SB 2044 (Boatwright) declares legislative findings regarding unlicensed activity and authorizes all DCA boards, bureaus, and commissions, including the Athletic Commission, to establish, by regulation, a system for the issuance of an administrative citation to an unlicensed person who is acting in the capacity of a licensee or registrant under the jurisdiction of that board, bureau, or commission. This bill was signed by the Governor on September 28 (Chapter 1135, Statutes of 1992).

The following bills died in committee: **AB 649 (Floyd)**, which would have provided that participation in the existing pension plan for professional boxers who engage in boxing contests in California is voluntary instead of mandatory; **AB 647 (Floyd)**, which would have, among other things, deleted existing licensure requirements for ring announcers and deleted the Commission's authority to license doormen, ushers, and booking agents; and **AB**

648 (Moore), which would have made various revisions to existing law regarding the neurological examination required by the Commission, including deleting existing law which provides that the cost of required neurological examinations shall be paid from assessments on promoters of professional boxing matches in California and deleting the existing authority for the Boxers' Neurological Examination Account in the General Fund.

RECENT MEETINGS

At its August 7 meeting, the Commission welcomed new member Kim Welshons, a Carlsbad city planner; at its September 25 meeting, the Commission welcomed new member H. Andrew Kim, an Orange County businessman.

At the August 7 meeting, the Commission approved the nomination of Commissioner Hairabedian as chair of the new Referee Evaluation Committee, which will review and implement a system for evaluating the performance of all California referees. The Commission also created a committee to review the salaries of ring doctors, timekeepers, judges, and referees; Commissioner Kim was named to chair this committee.

At its August 7 meeting, the Commission discussed a May 21 request from Rudy and Joan Ortega that the Commission consider testing boxers for the human immunodeficiency virus (HIV) as a condition of licensure. The request was precipitated by a May 16 boxing match during which Mrs. Ortega, a California boxing judge, contends that blood flew into her eye as a result of an injury to a fighter. The Commission referred the matter to DCA legal counsel Greg Gorges.

At the Commission's September 25 meeting, Executive Officer Richard DeCuir announced that two lawsuits pending against the Commission should be resolved soon. In *Colome v. State of California*, Dio Colome is suing the Athletic Commission for not allowing him to compete in a tournament with a large purse; Colome was prohibited from fighting in the tournament after he failed the Commission's neurological exam. Colome is claiming that his test was improperly administered and that the test itself is educationally and culturally biased. In *Scott v. State of California*, Scott is bringing suit against the Commission on grounds of racial discrimination.

Also at the Commission's September meeting, a proposal to promote an amateur boxing event with 56-ounce gloves was withdrawn after it met with unfavorable reaction from the Commission.



REGULATORY AGENCY ACTION

■ FUTURE MEETINGS

January 15 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

BAR Investigation of Sears Leads to Probation and Multimillion-Dollar Settlement. On June 11, DCA Director Jim Conran announced that BAR would seek the revocation or suspension of the registration of all 72 of Sears' auto repair shops in California, based on the results of a year-long investigation. After detecting

a pattern in consumer complaints involving Sears, BAR began the first phase of a two-part investigation of Sears' sales and repair procedures in late 1990. In the initial phase of the investigation, BAR undercover operatives conducted 38 tests at 27 Sears locations in California between December 1990 and December 1991. In each test, a BAR automobile in need of minor brake work was transported to an area near a Sears service center. The undercover operative then drove the car to the center and requested a brake inspection. In 34 cases, Sears employees recommended and performed what BAR considered to be unnecessary repairs or service. BAR further claimed that in some cases, scare tactics and other hard-sell methods were used that would likely influence the typical car owner into authorizing service. Additionally, BAR stated that the service was occasionally inadequate, with mechanics damaging cars and returning them in worse condition than when they arrived. In all cases, the test cars were thoroughly examined for defects by BAR both before and after the service.

In January 1992, BAR reported its findings to Sears. Later that month, BAR operatives conducted a second test series on ten shops. While the level of overselling had declined, the investigation showed that such practices still continued. BAR subsequently began license revocation proceedings in June.

BAR investigators stated they had uncovered a consistent pattern of fraud and abuse in Sears' sales tactics. The investigators reported that Sears employees were instructed to sell a certain amount of various brake and suspension services or repairs per eight-hour shift. Sears' sales employees confirmed that Sears had implemented a system whereby employees who met or exceeded their quota of sales were rewarded with prizes, trips, and merchandise. Sears began the incentive system after reducing its employees' hourly pay in a cost-cutting move. Such incentive systems linked to quotas are not common in the auto industry, and many consumer activists have argued that such systems can easily lead to abuse and overselling.

Sears initially responded by denying BAR's allegations and claiming that its investigations were flawed. Sears claimed that BAR investigators tricked its employees into thinking cars needed certain repairs by using older cars with artificially aged parts and other signs of wear; what BAR referred to as unnecessary repairs, Sears called preventive maintenance. On June 14, Sears ran a full-page advertisement entitled "Open Letter to

Sears Customers" in major California newspapers, in which Sears contended that the behavior challenged by BAR amounted to no more than "recommending replacement of worn parts, when appropriate, before they fail" and characterized this action as an "accepted industry practice." However, in an attempt to restore consumer confidence, Sears discontinued its incentive compensation program, conceding that "mistakes may have occurred." BAR maintained, however, that Sears had systematically defrauded the public and continued to press for the revocation of Sears' registrations.

In the face of the BAR's administrative action and continuing public opprobrium, Sears began negotiating a settlement with BAR and analogous agencies in other states where similar misconduct was suspected or alleged. In September, Sears announced that—as part of its settlement of both BAR's administrative action and numerous class action lawsuits which had been filed all over the country—it would distribute up to \$46.6 million in coupons to qualifying customers who had their automobiles serviced at Sears between August 1, 1990 and January 31, 1992. Beginning November 1, any customer who purchased certain brake components is entitled to \$50 in coupons good for any Sears merchandise. In addition, full refunds are due to any California customer overcharged by more than \$50 for unnecessary work performed by Sears. Sears also agreed to pay DCA \$3.5 million to cover the cost of BAR's investigation, and to make a \$1.5 million contribution to auto mechanic programs at California's community colleges. In return, BAR modified the administrative action against Sears such that Sears will be on probation for three years. Sears admitted no wrongdoing in the settlement. BAR will continue to use undercover operatives to monitor Sears' performance during the probationary period. According to DCA Director Conran, "Sears is on a very short leash."

State Budget Crisis Impacts BAR's Function, Eliminates Advisory Board. After months of debate, Governor Wilson and the legislature produced California's 1992-93 budget, which reflects the state's economic downturn and the resultant loss of revenue by making major cuts in most state-funded programs. At one time, DCA was scheduled to be eliminated, and later an 18% cut in expenditures by all DCA agencies was contemplated. The final Budget Act mandates a 50% reduction in travel costs for DCA, in addition to a 10% cut in general expenditures by each agency; the savings will be transferred to the state's general fund in June 1993. In addi-