



agreed to adopt the use of the sparring report as Commission policy, so long as a penalty for perjury clause was added to the report.

FUTURE MEETINGS:

December 13 in Los Angeles.

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 sections 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 eight 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.

Under the direction of Chief James Schoning, the Bureau is assisted by a nine-member Advisory Board which consists of five public and four industry representatives. The terms of three of the Advisory Board members—Herschel Burke, Vincent Maita, and

Alden Oberjuerge—expired in June; they will remain on the Board until replacements are appointed. The remaining Advisory Board members are William Kludjian, Jack Thomas, Carl Hughett, Joe Kellejian, Louis Kemp, and Gilbert Rodriguez.

MAJOR PROJECTS:

Executive Vacancies Filled. On July 29, BAR Chief Jim Schoning announced the appointments of Keith Smith as Chief of the Bureau's Field Operations Division and Wendy Wohl-Shoemaker as Chief of BAR's Administrative and Technical Services Division. Smith, who assumed his duties on August 19, previously served as Assistant Division Chief for Field Operations with the California Department of Motor Vehicles. Wohl-Shoemaker, who has worked at BAR for over ten years and was responsible for overseeing BAR's quality assurance and referee functions, assumed her new responsibilities on August 5.

In addition, Schoning announced that Larry Sherwood would fill the newly-created position of Assistant Chief of Field Operations. Sherwood, who previously served as the manager of BAR's Engineering Branch and was the lead designer of the BAR-90 analyzer, began his new job on August 5.

Clean Air Act Update. In April, the U.S. Environmental Protection Agency (EPA) issued its "Draft Guidance Document" for smog check programs nationwide. The document describes two types of smog check programs: basic and enhanced; the type of program necessary for a given metropolitan area depends upon EPA classifications involving population growth, topography, and other factors. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 60 for background information.) The EPA was expected to release the final version of the guidance document in June; however, the document will not be released until January 1992.

Interim Hearings to be Held. Senator Robert Presley has scheduled interim legislative hearings on the future of the state's inspection and maintenance program—including the Smog Check Program—for December 16-18 in Sacramento. The hearings will address the controversy between the federal government's inspection program recommendations and the state's current inspection program. The issues of centralization, the proposed certification of technicians and equipment to handle air-conditioning refrigerants, and the proposed increase in the repair costs ceiling are at the center of the conflict. Proposals by Los Angeles District At-

torney Ira Reiner, concerning plans to reduce or eliminate tampering with automobile pollution control devices, will also be considered at the hearings. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 60 and Vol. 11, No. 2 (Spring 1991) p. 58 for background information.)

Regulatory Amendments Sought.

On October 15 in El Monte and October 21 in Sacramento, BAR was scheduled to hold public hearings regarding its proposed amendments to sections 3340.35 and 3340.50.4, Division 33, Title 16 of the CCR. Health and Safety Code section 44060 authorizes BAR to charge a fee of not more than \$7 for Smog Check Program certificates of noncompliance and compliance. The proposed amendment to section 3340.35 would raise the fee paid by licensed Smog Check stations for the certificates from \$6 to \$7. The proposed amendments to section 3340.50.4 would establish the same fee for certificates purchased by licensed fleet facilities participating in the Smog Check Program. Both amendments have a proposed effective date of January 1, 1992.

In other regulatory action, the Office of Administrative Law (OAL) has approved BAR's adoption of new section 3356.1 and amendments to sections 3303.2, 3305, 3356, and 3362.1, Title 16 of the CCR. These regulatory changes modify performance standards for lamp and brake stations and prohibit separate billing for nonitemized shop supplies or miscellaneous parts. OAL had previously disapproved these regulatory amendments, finding that they did not comply with the necessity, clarity, and consistency standards of Government Code section 11349.1. BAR amended the proposed action to comply with OAL's findings, and OAL approved the amendments on August 21.

On September 22, BAR submitted new sections 3340.22.2 and 3364, along with amendments to sections 3309, 3316, 3321, 3340.15, 3340.16, and 3340.16.4, Division 33, Title 16 of the CCR, to OAL for approval. The amendments would effect sign requirements for smog inspection stations, validity periods for certificates of adjustment, and equipment requirements for Smog Check stations. The new sections would specify sign requirements at Smog Check stations and prohibit automobile repair dealers from defacing labels which identify a vehicle's emission control requirements. Proposed amendments to sections 3306, 3340.10, 3340.42, and 3340.42.1 were dropped by BAR. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 61 for background information.)



REGULATORY AGENCY ACTION

LEGISLATION:

AB 598 (Elder), as amended August 19, would require the Air Resources Board (ARB) to prepare a list of models of motor vehicles that are significant sources of air pollution, and require the Department of Motor Vehicles (DMV) to develop and implement a program to acquire and scrap the designated vehicles. The DMV would also be required to assess a pollution mitigation fee on an individual if the cost of repairing his/her vehicle in order to bring it into compliance with emission standards exceeds the prescribed cost limitations. This two-year bill is pending in the Senate Transportation Committee.

SJR 26 (Presley), as introduced May 20, urges the EPA to refrain from publishing guidance regulations for states' inspection and maintenance programs until ARB and other interested parties review the data underlying the recommendations in the guidance document. It also urges the EPA to select provisions that will allow for substantial emission reduction while providing maximum flexibility to the state to demonstrate the effectiveness of its chosen form of inspection. This resolution was approved and sent to the EPA on June 27 (Chapter 42, Resolutions of 1991).

The following is a status update on bills reported in detail in CRLR Vol. 11, No. 3 (Summer 1991) at pages 61-62:

AB 438 (Lancaster), as amended June 26, specifically includes automotive body repair work within the definition of the term "repair of motor vehicles" for purposes of the Automotive Repair Act. This bill was signed by the Governor on September 8 (Chapter 387, Statutes of 1991).

SB 290 (Presley), as amended July 1, makes numerous changes to existing laws defining BAR's scope and responsibilities, and increases the maximum fee for automotive repair dealer registration and renewal from \$100 to \$200. This bill was signed by the Governor on September 8 (Chapter 386, Statutes of 1991).

SB 245 (Presley), as amended August 28, subjects fleet owners to existing provisions limiting the cost of repairs required under the Smog Check Program, and authorizes DCA to license the owner of a fleet of ten or more vehicles to conduct smog tests on the fleet's vehicles. This bill was signed by the Governor on October 14 (Chapter 1054, Statutes of 1991).

AB 211 (Tanner), as amended September 6, transfers the authority to establish and implement a program for certifying each third party dispute reso-

lution process used for the arbitration of certain disputes involving new motor vehicles from BAR to DCA. This bill was signed by the Governor on October 7 (Chapter 689, Statutes of 1991).

AB 624 (Bane), as introduced February 20, is aimed at deterring insurance fraud. Among other things, it would prohibit any automobile repair dealer from offering discounts to offset auto insurance deductibles and provide that any person convicted of fraud with respect to a policy covering a motor vehicle shall be liable for up to ten times the amount of the fraudulent claim filed with an insurer. The bill, which includes a January 1, 1996 sunset provision, is pending in the Assembly Public Safety Committee.

AB 1828 (Arelas), as amended May 20, would provide that in all instances where nonoriginal equipment manufacturer aftermarket crash parts are intended for use by an insurer in the repair of an insured's motor vehicle, a disclosure document containing specified information and printed in a specified type must be attached to the insured's copy of the estimate and be acknowledged by the insured. This bill is pending in the Senate Committee on Insurance, Claims and Corporations.

AB 1989 (Baker), as amended April 23, would exempt, from provisions prohibiting the release of residence and mailing addresses by the Department of Motor Vehicles, persons engaged in the sale or marketing of services related to the state smog inspection program. This bill is pending in the Assembly Transportation Committee.

SB 295 (Calderon), as amended April 8, would limit the cost of a smog check test only to \$50, exclusive of the charges for the certificate. It would require an additional \$1 charge for the certificate; the proceeds of this charge would fund a program for individuals to report vehicles which emit unusual amounts of pollutants. This bill is pending in the Senate Transportation Committee.

AB 691 (Hayden), as introduced February 25, would require the use of refrigerant recycling equipment approved by ARB on and after January 1, 1993, in the servicing of vehicle air conditioners and other specified activities. This bill is pending in the Assembly Committee on Environmental Safety and Toxic Materials.

SB 573 (Rosenthal), as amended May 8, would require BAR to establish a program for certifying a third party dispute resolution process used for arbitrating disputes relating to the warranties on used cars. This bill is pending

in the Senate Committee on Insurance, Claims, and Corporations.

AB 1118 (Johnson), as amended May 1, would require DCA to publish the rules and regulations to be followed in order to suspend or revoke the license of a Smog Check station or mechanic. This bill is pending in the Assembly Transportation Committee.

AB 1893 (Lancaster), as amended August 19, is no longer relevant to BAR.

LITIGATION:

In *Opinion No. 90-923*, issued August 7, Attorney General Dan Lungren ruled held that BAR may direct licensed Smog Check Program stations to deny certificates of compliance to vehicle owners if the vehicle's emission control system contains an aftermarket component that has not been approved for installation on the vehicle by the Air Resources Board (ARB) pursuant to Vehicle Code section 27156. Aftermarket components are those that replace, modify, or add to the manufacturer's original equipment. Vehicle Code section 27156 prohibits the modification of any required motor vehicle pollution control device or the installation of a device as part of the required pollution control system which alters or modifies the original design or performance of the system, unless ARB has found that the particular alteration or modification does not reduce the effectiveness of the vehicle's pollution control system. Aftermarket parts which pass ARB's standards are deemed exempt under section 27156.

Citing Health and Safety Code section 44000 *et seq.*, the Attorney General opined that compliance certificates for vehicles equipped with nonexempt aftermarket parts may be denied even if the vehicle has all the other required emission-related components and passes the emissions test portion of the Smog Check test. Vehicle Code section 44012 provides that smog checks shall include a determination that "emission control devices and systems required by state and federal law are installed and functioning correctly. . . ." According to the Attorney General, this section includes both the manufacturer's original equipment and any devices subsequently approved for installation pursuant to Vehicle Code section 27156; unless an aftermarket component has been approved, it is not a device which is required by law to be installed correctly. Therefore, "the presence of an unexempted aftermarket part would cause a vehicle to fail a smog test because the required determination could not be made. If such a part is



found, a certificate of compliance must not be issued."

RECENT MEETINGS:

At the August 9 Advisory Board meeting, David Rutherford of the South Coast Air Quality Management District gave a report on reformulated gasolines such as EC One, EC Premium, and ECX; reformulated gasoline was recognized in the Clean Air Act as a form of alternate fuel. Rutherford discussed the reformulating process, its effects on air pollution, and its cost to consumers.

Also at the August 9 meeting, Jack Thomas and Carl Hughett were selected as Chair and Vice-Chair, respectively, of BAR's Advisory Board for 1992.

FUTURE MEETINGS:

To be announced.

BOARD OF BARBER EXAMINERS

Executive Officer: Lorna P. Hill
(916) 445-7008

In 1927, the California legislature created the Board of Barber Examiners (BBE) to control the spread of disease in hair salons for men. The Board, which consists of three public and two industry representatives, regulates and licenses barber schools, instructors, barbers, and shops. It sets training requirements and examines applicants, inspects barber shops, and disciplines violators with licensing sanctions. The Board licenses approximately 22,000 barbers, 5,000 shops, and 20 schools.

BBE's enabling act is currently found at Business and Professions Code section 6500 *et seq.*; the Board's regulations are located in Division 3, Title 16 of the California Code of Regulations (CCR).

On July 1, 1992, BBE and the Board of Cosmetology (BOC) will merge, pursuant to AB 3008 (Eastin) (Chapter 1672, Statutes of 1990). The Business and Professions Code sections which establish BBE and BOC will be repealed and replaced with an enabling act creating the Board of Barbering and Cosmetology (BBC), which will provide for the licensure and regulation of persons engaged in the practice of performing specified acts relating to barbering, cosmetology, and electrolysis.

MAJOR PROJECTS:

BBE/BOC Continue Joint Hearings on Draft BBC Regulations. On June 17 in El Segundo, BBE and BOC held its second joint public hearing to receive

and discuss comments on proposed draft regulations which have been formulated by Department of Consumer Affairs (DCA) consultant Kirk Marston for BBC. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 62 and Vol. 11, No. 2 (Spring 1991) p. 59 for background information.) The proposed regulations and issues relating to them were discussed extensively during the hearing. Although no formal decisions will be reached until the merged Board comes into being in July 1992, the following regulatory proposals did receive considerable attention at the June hearing:

-Proposed section 75, regarding leasing and rental agreements, would prohibit the carrying out of any agreement which divides, limits, or restricts the authority or duties of the licensee supervising and managing the establishment; this regulation would appear to prohibit the practice of booth rental. Under a booth rental arrangement, a licensee is not an employee of the establishment owner or manager, but simply rents space from him/her. Because there is no employer-employee relationship, the owner/manager does not withhold income tax, social security, or other deductions from the licensee's paycheck; the licensee's customers pay him/her personally and the licensee independently reports his/her income to tax authorities.

At the June hearing, much of the discussion centered on methods of allowing the practice of booth rental while enabling the establishment owner/manager to maintain health and safety control, such the possibility of issuing two classes of licenses—an establishment license and a booth renter's license. Although booth rental has been criticized as creating an "underground economy" within the cosmetology profession, BOC representatives and audience members emphasized that prohibiting booth rental may drive practitioners from a salon setting into the home, resulting in more unlicensed activity. The two boards decided to defer this controversial issue to BBC.

-Proposed section 97 sets forth the requirements which must be met for a barber college seeking to teach the 400-hour course prescribed in Business and Professions Code section 7321.5; proposed section 105 sets forth the curriculum for students enrolled in a 400-hour cosmetology crossover course for barbers. Members of the Board and public reiterated comments made at the May hearing regarding the possibility of increasing the number of curriculum hours for the cosmetology crossover course to 600.

-Proposed section 108 specifies that a student enrolled in a school specified in the Barbering and Cosmetology Act shall not be permitted to work upon a patron paying for services until he/she has completed the freshman period of 150 hours of training and instruction. At the hearing, discussion centered on raising the 150-hour freshman period to 250 or 300 hours.

Another joint public hearing to receive additional comments was scheduled for March 15, 1992, in Fresno.

BBE Holds Merger Task Force Forum. On September 22 in San Diego, BBE held an open agenda meeting to prepare for and facilitate its upcoming merger with BOC. The most heated merger issue addressed by the Board and barbers present at the meeting was whether the quality of barber shop inspections will be maintained after the merger. BBE requires its inspectors to be licensed as barbers for five years before they are eligible to become inspectors. Warren Norman, instructor at the Associated Barber College, stated his concern that cosmetology inspectors are not as stringent as barber inspectors and that the quality of inspections will decrease after the merger.

Also at the meeting, the Board discussed a proposed change in the barber examination process. BBE member Robert Boulding suggested that after students have completed their coursework, they could work in a shop for about 60 days and then return to the school to take the barber examination, thus eliminating the state board examination. Several barbers stated that although this may lead to collusion between the school instructors and the students, the public ultimately decides whether a person is qualified as a barber.

BBE again discussed the necessity of the shave requirement on its licensing exam. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 59; Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 73-74; and Vol. 9, No. 4 (Fall 1989) p. 46 for background information.) A barber student present at the meeting claimed that he has not taken the license examination because he cannot find a person willing to be his shave subject. The student suggested that this part of the examination be worth less than the 7 points it is now worth of the minimum 75 points needed to pass the exam. Many meeting participants agreed that too many points are allocated to the shave portion of the exam, but maintained the importance of the shave requirement.

The Board also discussed section 75 of the BBC's proposed regulations,