



or documents for the design and construction of all architectural, geological, or engineering work related by building standards, prior to agency approval of this work. The bill would also provide that, notwithstanding existing law, all state and local enforcement agencies shall return any incomplete building plans, specifications, reports, or documents, accompanied by a statement to the applicant identifying the part or parts of the plans that are incomplete, and specifying the actions required to be taken by the architect, engineer, geologist, or building designer to complete the plans, specifications, reports, or documents prior to any resubmission. [S. H&LU]

## ■ LITIGATION

On February 9, the Attorney General's Office issued *Opinion No. 94-819* in response to a request by Senator Milton Marks, who questioned whether a state or local agency may contract with a private firm for construction project management services if all or part of such services are to be performed other than under the direction and control of a licensed architect, registered engineer, or licensed general contractor. The opinion noted that local agencies often divide construction project management services into smaller sub-projects to allow small business contractors to bid on the subprojects or, as an alternative, allow prime consultants to associate with smaller firms to provide certain components of the prime contract, often to promote the utilization of businesses owned by minorities, women, and disabled veterans.

The question the Attorney General was asked to resolve was whether the sub-consultants, as well as the prime consultants, are required to be duly licensed to carry out construction project management services; the opinion concluded that a state or local agency may not contract with a private firm for construction project management services if all or part of such services are to be performed other than under the direction and control of a licensed architect, registered engineer, or licensed general contractor. The Attorney General noted that in awarding contracts for professional services, state and local agencies are statutorily required to select firms of demonstrated professional competence with the professional qualifications necessary for the satisfactory performance of the services required; the underlying policy objective is to ensure that the contractor delivers a quality product, on schedule, within budget, and in conformance with the project documents. According to the Attorney General, given the

widespread use of subconsultants to perform components of construction project management, the purposes and policies underlying this requirement would be undermined if subconsultants were permitted to carry out their function without being either duly licensed themselves or subject to the direction and control of the licensed prime consultant.

## ■ RECENT MEETINGS

At its February 10 meeting, BAE agreed to participate in NCARB's nationwide field test for the computer administration of the ARE in February 1996. By participating in the field testing, BAE will have first-hand information about how the computer administration works, which will assist the Board in making the planned transition to administering the ARE by computer. BAE is seeking 200 candidates for the multiple-choice division and about 400 candidates for the graphic divisions; BAE will send information on the field test program to all candidates, and participants will be selected by NCARB and Education Testing Services (ETS) based on exam history and education. Those candidates taking the multiple-choice portion will receive the computer-generated grade; the exam results of those taking the graphic division will be graded by both the computer and by architect graders as usual. Only the scores assigned by the architect graders will apply; the scores assigned by the computer in the field test will be compared to the scores assigned by the architect graders to fine-tune the computer grading system.

Also at its February meeting, the Board adopted the Enforcement Committee's recommendation to establish minimum penalties for violations of various provisions of the Business and Professions Code. Since 1994, the Enforcement Committee has been reviewing the Board's disciplinary guidelines which BAE adopted in 1988; one goal was to expand the guidelines and make them more specific so as to give guidance to administrative law judges (ALJs), Deputies Attorney General, Board licensees, those involved in the Board's disciplinary process, and the Board itself. Deputy Attorney General Steve Kahn noted that the guidelines are used as general parameters; depending on the circumstances, it may be appropriate to seek discipline other than that recommended in the guidelines. After discussion, the Board adopted minimum penalty guidelines ranging from 60 to 90 days for four Code sections governing violations.

## ■ FUTURE MEETINGS

May 30 in Sacramento.

## ATHLETIC COMMISSION

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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 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

**Broadcasting Tax Cap.** SB 2101 (McCorquodale) (Chapter 1275, Statutes of 1994) amended Business and Professions Code section 18824 to authorize the Commission to charge a fee of up to 5% of the gross price, as defined, for the sale, lease, or other exploitation of broadcasting or television rights associated with professional boxing and full-contact martial arts events televised in California. At its September 1994 meeting, the Commission discussed the possibility of establishing a dollar cap on the amount of fees collected from any one event, in order to be competitive with what other states charge promoters. Following discussion, the Commission directed staff to research the issue and present recommendations at the November meeting. In November, staff recommended that the Commission pursue regulatory language stating that the fee prescribed by section 18824 with respect to broadcasting rights shall be 5% of the gross price paid for the sale, lease, or other exploitation of broadcasting rights, exclusive of any federal taxes paid thereon, up



## REGULATORY AGENCY ACTION

to a maximum of \$25,000 per event. The Commission unanimously agreed to pursue this proposed regulatory language. [15:1 CRLR 42]

At its April 7 meeting, the Commission noted that staff had not yet initiated the formal Administrative Procedure Act (APA) rulemaking process to adopt the regulatory change. The Commission observed that a professional boxing event was scheduled to take place on May 13 in Sacramento; the Commission noted that the event could generate \$2.5 million in revenue, and commented that the promoters chose California as the fight site based in part on the Commission's intent to adopt the \$25,000 cap. Executive Officer Richard DeCuir announced that if the cap is not in effect, the fight would be moved from California to another site. Following discussion, the Commission unanimously directed staff to implement the \$25,000 cap for the May 13 fight and all subsequent fights, and to begin the rulemaking process to adopt the appropriate regulatory language.

At the Commission's May 12 meeting, however, staff reported that Assistant Attorney General Ron Russo had opined that the proposed cap is exempt from the APA rulemaking process pursuant to Government Code section 11343(a)(1), which exempts the establishment of "rates, prices or tariffs"; according to Russo, the Commission could simply approve and implement a scale setting forth the chosen rates. Accordingly, the Commission voted to establish a rate of 5% for broadcast revenue up to the first \$150,000 (with a maximum fee of \$7,500), 3% for the revenue between \$150,001-\$500,000 (with a maximum fee of \$10,500), 1% for the revenue between \$500,001-\$1.2 million (with a maximum fee of \$7,000); anything over \$1.2 million would be subject to a 0% rate. Under this cumulative rate schedule, the maximum fee per event would be \$25,000.

**Pension Plan Update.** The Commission is continuing its efforts to revise various aspects of its Professional Boxers' Pension Plan; the Commission has agreed that comprehensive reforms to its pension fund program are warranted. Prompting this reform movement is Center for Public Interest Law Director Robert C. Fellmeth, who chaired the Athletic Commission at the time the pension plan was established, and who has submitted a proposal which revises many aspects of the pension plan. Among other things, Professor Fellmeth's proposal would establish a sliding scale to determine promoter contributions to the pension plan; cap promoter contributions at \$10,000 per event; provide that boxers would not contribute at all to the pension

plan until they "vest" (have enough rounds and years to receive benefits); allow the Commission to approve early withdrawal of a boxer's own contributions for the limited purpose of vocational training, education, or apprenticeship; require the last California-licensed manager of a boxer to exercise due diligence in maintaining contact with that boxer; and authorize the Commission to use up to 20% of the pension fund's annual receipts for the monitoring and tracking of potentially eligible boxers and for fund education, outreach, and administrative costs directly related thereto, to ensure the receipt of benefits by those who are eligible for them. Another proposal was submitted to the Commission by attorney Kevin Long, the Commission's consultant on pension plan issues; Long's proposal incorporates many of Professor Fellmeth's recommendations. Additionally, Long's proposal would convert the defined benefits plan to a defined contribution plan; also, there would only be one assessment on the boxer's purse and the disability payments would be converted to a disability retirement type of plan. [15:1 CRLR 42-43; 14:4 CRLR 39; 14:2&3 CRLR 38-39]

At its April 7 meeting, the Commission unanimously directed staff to publish notice of the Commission's intent to adopt regulatory changes to its pension plan program. At this writing, the proposed changes have not been published in the *California Regulatory Notice Register*. However, the proposed changes are expected to replace the current defined benefit pension plan with a defined contribution pension plan; this change would mean that the boxer's benefit would no longer be determined by the number of rounds the boxer fought but by the amount of contributions allocated to the boxer's account. The proposed changes are also expected to define specified terms; describe who is eligible to participate in the plan; describe the method of funding, contributions, and valuation; provide a method of determining benefits and appealing from the denial of a claim; provide for the administration of the plan; and limit a boxer's ability to transfer or assign benefits in the plan. At this writing, the Commission is expected to publish the proposed changes in late May and hold a public hearing on the matter at its July 13 meeting in South Lake Tahoe.

**New Rulemaking Proposals.** On May 5, the Commission published notice of its intent to amend section 219, Title 4 of the CCR, which authorizes the Commission to issue temporary licenses if certain criteria are met; the Commission's proposed amendments would specify the time limit during which a temporary license is valid

and prohibit a temporary license from extending from one license year into another. At this writing, the Commission is scheduled to hold a public hearing on this proposed change on July 13 in South Lake Tahoe.

Also on May 5, the Commission published notice of its intent to amend section 368, Title 4 of the CCR, which specifies that the Commission is authorized to change the decision of a bout if certain conditions are met; the proposed amendments would provide for a time limit and procedures to follow for a boxer or his/her manager to appeal the decision of a bout or for the Commission to hear an appeal. At this writing, the Commission is scheduled to hold a public hearing on this proposed change on July 13 in South Lake Tahoe.

At its May 12 meeting, the Commission reviewed section 264, Title 4 of the CCR, which provides, among other things, that no person other than a representative of the Commission shall have the right of admission without a ticket, complimentary ticket, or pass; specifically, the Commission discussed whether section 264 specifies or limits the number of complimentary tickets, if any, that each Commission member is entitled to receive for each event. Following discussion, the Commission agreed to pursue amendments to section 264 which would provide that each Commission member is entitled to one additional complimentary pass per event, and that the seating location of the additional complimentary pass shall be at the discretion of the promoter. At this writing, the Commission has not published notice of its intent to pursue this regulatory change in the *California Regulatory Notice Register*.

**Rulemaking Update.** In January, the Commission adopted its proposed changes to sections 216, 234, 242, 272, 282, 287, 294, 298, 302, 305, 318, 319, 320, 321, 322, 330, 335, 337, 338, 339, 341, 342, 345, 346, 347, 349, 351, 352, 353, 354, 356, 357, 360, 361, 362, 363, 365, 368, 371, 372, 373, 375, 376, 378, and 379, adoption of new sections 495 and 496, and repeal of sections 223, 313, and 340, Title 4 of the CCR. Among other things, the rulemaking proposal would require boxers and managers licensed in other jurisdictions, before signing a contract with a promoter to box in this state, to become licensed in California; repeal a provision which provides that managers shall not have more than three boxers under their management in any one show without written permission from the Commission; update the required emergency equipment that must be provided by a promoter, and delete the existing requirement that all



clubs set aside an emergency room on their premises; add new weight classifications and amend the existing weight and class specifications; specify that a minimum of two Commission-appointed physicians shall have seats at immediate ringside at all boxing matches; specify and limit the use of foreign substances to petroleum jelly or other similar substances; specify that a fair blow is a blow delivered above the hip line; delete language specifying what a referee should do if both contestants in a bout are in such condition that they are unable to continue, and clarify when a time out should be called when a ringside physician examines a boxer; give the referee the discretion to award a knockout decision to the opponent of a boxer who fails or refuses to resume boxing; specify what should be done when a boxer falls or is knocked from the ring by a legal punch; amend the scoring procedures by adding that the referee or Commission representative may reach a decision which is different from the decision of the judges; provide that no licensee shall verbally or physically abuse an official or Commission representative, and state that such abuse may result in suspension, fine, or disciplinary action as determined by the Commission; prohibit the use of fans and the swinging of towels between rounds; allow a referee to protest a negative evaluation; and provide that any licensed boxing referee, judge, timekeeper, or physician shall be admitted to any boxing show upon presentation of his/her license card. [15:1 CRLR 43-44]

On May 19, the Office of Administrative Law (OAL) disapproved the Commission's rulemaking package on grounds that the action did not meet the clarity and necessity standards of the APA; the rule-making record did not contain all documents or information required by the APA; the Commission failed to summarize and respond to all comments received in connection with the rulemaking; and the Commission did not follow the required procedure to incorporate a document by reference. The Commission has 120 days in which to correct these deficiencies and resubmit the rulemaking file to OAL.

## LEGISLATION

**SB 1288 (Alquist)**, as introduced February 24, would impose, on the promoter or producer of a pay-per-view telecast of a boxing or martial arts contest, a fee of 5% of the promoter's or producer's gross receipts attributable to the individual's or entity's pay-per-view telecast fees, exclusive of federal, state, or local tax, as specified; require that these fees shall be collected from the producer by the cable tele-

vision system operator or operators whose pay-per-view facilities are being utilized by the producer for this purpose and forwarded to the Commission; provide that a fee may not be assessed on the cable company transmitting the event or applied to a pay-per-view boxing event that originates in this state; require that payment of the fee be made within thirty days, accompanied by a form prescribed by the Commission that requires the payee to set forth the number of subscriptions sold, the gross receipts that it received from the pay-per-view telecast, and other information as the commission may deem appropriate; and provide that revenues received by the imposition of this fee are for the exclusive use of the Commission, as specified. [15:1 CRLR 44] Although this is a two-year bill, it is not known at this writing whether Senator Alquist will continue to carry the bill in light of opposition from the California Cable Association. [S. B&P]

## RECENT MEETINGS

At its February 23 meeting, the Commission reported that gym inspections were under way across the state. To date, few major violations have been detected; those found have been identified to the gym owners, who were instructed to bring the gyms into compliance by the next inspection. The Commission reported that a number of gyms, previously unknown to the Commission, have been identified as a result of the inspections.

Also at the February meeting, the Commission discussed the issue of amateurs sparring with professionals. Chair William Eastman opined that the Commission will get a sense during inspections whether this is a possible problem. While nothing prohibits amateurs from sparring with professionals, the Commission wants to ensure that the amateur is being trained; the Commission may consider the amendment of its rules to provide adequate safeguards for the amateur.

At its April 7 meeting, the Commission noted that it is still seeking an author to carry its HIV/HBV legislation, which would allow the testing of boxers. [15:1 CRLR 42; 13:2&3 CRLR 49; 13:1 CRLR 20] Although Senator Diane Watson had tentatively agreed to carry the bill if it did not impose mandatory testing, she is no longer willing to carry the bill due to the probable political implications. Staff expressed concern that until a boxer becomes HIV-positive in California or Nevada, the legislature will not take action on the issue.

At its April 7 meeting, the Commission discussed whether commissioners should receive per diem and reimbursement for attending Commission-related functions,

such as boxing events. Commissioners Willie Buchanan and Kim Welshons expressed support for the proposal on the basis that, by attending these functions, commissioners are better able to understand the various aspects of the sports they are regulating. However, Chair William Eastman was highly critical of the proposal on several grounds; among other things, Eastman reminded his colleagues that the Commission has had financial difficulties for the past several years, is currently not self-sustaining and must be subsidized by taxpayer money from the general fund, and has already raised boxers' fees in order to fund its current level of expenses. Eastman also objected to the proposal in concept, opining that it is inappropriate for commissioners to be paid for simply observing events; Eastman criticized his fellow commissioners for seeking or receiving other "perks" from the industry, such as an excessive amount of free tickets to events, special seating arrangements, and clothing. Following discussion, the Commission rejected a motion to allow commissioners who actively participate in a boxing match to be compensated.

## FUTURE MEETINGS

July 13 in South Lake Tahoe.

August 18 in Los Angeles.

October 6 (location to be announced).

December 8 (location to be announced).

## BOARD OF BARBERING AND COSMETOLOGY

*Executive Officer:*

*Pamela Ramsey*

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On July 1, 1992, pursuant to AB 3008 (Eastin) (Chapter 1672, Statutes of 1990), the enabling statutes of the Board of Barber Examiners (BBE) and the Board of Cosmetology (BOC) were repealed and replaced with an enabling act creating the Board of Barbering and Cosmetology (BBC); that act is found at Business and Professions Code section 7301 *et seq.* BBC licenses and regulates persons engaged in the practice of barbering, cosmetology, and electrolysis. The Board is authorized to conduct and administer examinations, adopt regulations governing public health and safety, and discipline persons in violation of its statutes or regulations. BBC represents the first merger of two California regulatory agencies. The Board, which consists of five public members and four members representing the