



need for a written contract requirement. Board President Betty Landess will establish a committee of architects to begin gathering information, and BAE staff will develop a plan for the study and present it to the Board at its February 22 meeting.

**Oral Examination Issues Revisited.** At its December 13 meeting, the Board revisited two issues related to its oral examination, which it administers in addition to NCARB's 33-hour national written exam.

First, the Board discussed whether to institute an appeals process for those who fail the oral exam. Approximately 90-95% of candidates pass the Board's oral exam within their third attempt; however, it takes some candidates eight or nine attempts to pass the exam. The Board has discussed the creation of an appeals process for two years, but has never reached consensus. [13:2&3 CRLR 47; 13:1 CRLR 19-20] At the December meeting, the Internship and Oral Examination Committee explained its recommendation that the Board not establish an appeals process, stating that the exam is legally defensible because it is based on a current occupational analysis of the architectural profession, it uses structured objective questions and grading criteria, and it uses three-person panels of exam commissioners to help ensure fairness to examinees. The Committee also noted that an appeals process may expose exam questions, thus jeopardizing the security of the oral exam. In spite of the Committee's recommendation, the Board referred this issue back to committee for further study. [13:4 CRLR 9]

The Board also discussed the fact that it has been tape-recording oral exam sessions since August 1992 and retaining the tapes at the Board's office. [13:1 CRLR 20] BAE staff consulted with the Board's legal counsel on how long to retain the tapes. Legal counsel recommended that after exam results are released to candidates, the tapes of failing candidates should be retained for six months; the tapes of passing candidates should be destroyed or erased. The Internship and Oral Examination Committee recommended that all oral examination tapes (those of both passing and failing candidates) be retained for six months, but the Board referred this issue back to the Committee for further study as well.

## LEGISLATION

**Future Legislation.** During 1994, BAE is expected to sponsor legislation authorizing it to take disciplinary action against a licensee based solely on the fact that another public agency has taken disciplinary action against that licensee. [13:4 CRLR 31] Also, the Board's Legislative, Administrative and

Budget Committee is discussing a proposed legislative change which would stagger future Board member appointments so that there is more overlap. The Board's legal counsel drafted a proposed change which would affect future Board member appointments only and would result in the appointment of some members for two- or three-year terms. At this writing, the Committee is expected to revisit this issue at its January meeting.

**AB 1807 (Bronshvag)**, as amended September 8, would authorize BAE to establish by regulation a category of inactive licensure. [A. Inactive File]

**AB 1392 (Speier)**, as amended July 1, would—among other things—provide that BAE's executive officer is to be appointed by the Governor, subject to Senate confirmation, and that the Board's executive officer and employees are under the control of the Director of the Department of Consumer Affairs. [S. B&P]

## RECENT MEETINGS

At its December 13 meeting, the Board discussed the Written Examination Committee's request to study changing the requirements to take the written examination. Currently, over forty jurisdictions require applicants to have completed eight years of education/experience before they are admitted to the written exam, while California requires only five years before candidates may sit for the exam. The Board voted to keep the present five-year eligibility requirement and asked staff to provide the Board with candidate statistics and analysis of the issue at the Written Examination Committee's February 2 meeting.

Also on December 13, the Enforcement Committee reported that it has begun to implement the new complaint closure procedure approved by BAE last June. Under that procedure, two members of the Enforcement Committee will review all disciplinary cases closed by staff (with the exception of advertising cases). [13:4 CRLR 30-31] Reviewing cases closed between September 8-November 30, 1993, Enforcement Committee members Richard Crowell and Merlyn Isaak found that all case closures were appropriate and consistent with staff's summary report of closed cases.

Also in December, the Enforcement Committee presented a revised version of BAE's complaint disclosure policy to the Board for approval. Under the revised policy, the Board would disclose to an inquiring consumer whether a licensee has been the subject of prior Board discipline (e.g., license revocation, suspension, or probation, citation, accusation, statement of issues, or stipulated settlement); the Board

would also disclose the number of complaints pending at the Board against a licensee which are under active investigation. Following discussion, the Board referred the proposed policy back to the Enforcement Committee for further work. Occupational licensing agency complaint disclosure policies are currently the subject of much controversy (see agency report on MEDICAL BOARD OF CALIFORNIA for related discussion).

## FUTURE MEETINGS

May 13 in Los Angeles (tentative).

## 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, H. Andrew Kim, Jerry Nathanson, Carlos Palomino, Kim Welshons, and Robert Wilson. The term of Ara Hairabedian recently expired and no replacement has been named at this writing.

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 Considers Use of MRI as Substitute for Neurological Examination.** Last June, the Commission de-



cided to suspend the administration of its traditional neurological examination of professional boxers and replace it with a less comprehensive test which can be administered by any licensed physician who specializes in neurology or neurosurgery. Under Business and Professions Code section 18711(a), the Commission is required to ensure annual neurological examinations of all professional boxers. The old neurological exam has been challenged as being overly complex, discriminatory toward undereducated or limited-English-speaking boxers, and excessively expensive. [13:4 CRLR 32-33] The new exam, dubbed the "Mini-Mental Status Exam," takes approximately one-half hour to administer and costs \$100.

At the Commission's September 27 meeting, Commissioner Kim Welshons reported that she and Commission Executive Officer Rich DeCuir met with Dr. Robert Karns of UCLA and Mr. Shelley Blank of Medical Plaza Imaging (MPI), a medical and imaging research center at UCLA. The purpose of the meeting was to discuss the possibility of a joint study between UCLA-MPI and the Commission wherein the MPI facility would administer magnetic resonance imaging (MRI) tests as an alternative method of detecting brain damage in boxers.

Dr. Karns, who was present at the September 27 meeting, explained that UCLA and MPI are interested in seeking funding for a grant project under which all boxers would undergo yearly MRI testing at the UCLA-MPI facility. He indicated that the Commission's traditional neurological examination, which has been administered for seven years, has no standing in the medical community and is recognized only by the people who designed it. He stated that MRI tests currently being administered at MPI detect brain damage better than clinical tests; according to Dr. Karns, an MRI shows mild changes in white and grey matter in the brain and goes well beyond anything the traditional examination can reveal.

Commission Chair Bill Eastman asked whether the MRI would be subject to a cultural bias challenge; Dr. Karns responded that an MRI is primarily a physical examination, much like a detailed X-ray. However, some form of neuropsychological testing may still be required. Dr. Karns indicated that the Commission's current "Mini-Mental Status Exam" would be sufficient for this purpose, but stated that he did not know whether the neuropsychological component of that exam creates a risk of bias toward undereducated or non-English-speaking boxers.

Although it agreed to proceed with a study of the UCLA-MPI proposal, the Commission and Dr. Karns agreed that Executive Officer DeCuir should consult with the California Medical Association (CMA) about the acceptability of MRI tests as a method of satisfying the Commission's statutory obligation under Business and Profession Code section 18711(a), and about whether the neuropsychological component of the "Mini-Mental Status Exam" is culture-neutral. Accordingly, DeCuir wrote a letter to Robert Sparacino, Manager of CMA's Department of Special Sections and Scientific Programs.

On December 21, Sparacino responded to DeCuir's letter, noting that he had consulted with 16 physicians who are members of CMA's Scientific Advisory Panels on Neurology and Neurosurgery. While conceding that CMA is "steadfastly oppose[d] to the sport of boxing," Sparacino noted CMA's "overwhelming consensus" that an MRI scan is an inappropriate substitute for the "Mini-Mental Status Exam." First, CMA contends that "MRI and cognitive examinations are not necessarily correlated. Many structural abnormalities do not relate well to mental functioning and conversely mental problems do not show up on MRI. One may have brain dysfunction without significant structural lesions. An MRI scan, therefore, is not a substitute for a carefully performed neuropsychological examination, which assesses cognitive brain functions." Sparacino stated that an MRI might be an appropriate "back-up" to the Commission's examination, but noted that MRI tests are extremely expensive—ranging from \$1,000-\$1,500 per examination.

Regarding the "Mini-Mental Status Exam," Sparacino noted that most of the physicians consulted concluded that it satisfies the Commission's obligation under section 18711(a), but they were split on the issue of cultural bias. "Several commented...that patients who are illiterate or not conversant in English will certainly have difficulty understanding the instructions for and completing the mental status part of the examination. For the non-English speaking, it was recommended that interpreters should be used for optimum results."

At this writing, the Commission is expected to discuss CMA's response at its January 7 meeting.

**Commission to Seek Pension Fund Manager and Amend Pension Plan Regulations.** At its September 27 meeting, the Commission continued its August 20 discussion of the need to move the \$1.4 million in assets in its Professional Boxers' Pension Plan to a more appropriate invest-

ment services provider and develop objectives for the proper investment of the funds. Kevin Long, an employee benefits law consultant with the firm of Chang, Hallisey, Ruthenberg, Crawford and Long, was again present at the September 27 meeting to assist the Commission in formulating pension plan objectives. [13:4 CRLR 33-34]

Long explained that he met with Rich DeCuir and the Commission's Pension Committee (Commissioners Kim Welshons and Willie Buchanon) on September 17 to discuss several issues. First, Long noted the Commission's immediate need to move the assets of the pension plan to a financial institution or fund which can provide a more appropriate rate of return and diversified investment of those assets. With regard to the proper process for soliciting an investment services provider, Long advised that the Commission prepare an invitation for bids (IFB) as soon as possible; the receipt of proposals in response to the IFB will enable the Pension Committee and the Commission to choose a provider based on appropriate specifications, including money management, investment advisory services, appropriate fund accounting for the various sub-accounts, and competitive fees which are commensurate with other pension plans of similar size.

Finally, the group discussed the timeframe for preparation of the IFB. Long suggested that his firm prepare a draft IFB for review by the Pension Committee; he indicated that such a draft could be completed within two weeks of receipt of instructions to proceed. Thereafter, the timing for screening and selecting an investment services provider will be largely determined by the Public Contract Law, which establishes procedural requirements for the IFB process. Rich DeCuir estimated that the IFB process—from establishing the scope of the proposed contract to distribution of the contract to the lowest qualified bidder—would take approximately 22 weeks. The Commission approved Long's proposal.

At this writing, the IFB has been drafted and is currently being reviewed by the Pension Committee and the Department of Consumer Affairs' (DCA) Legal Division and Division of Administrative Services. After the draft has been approved, the IFB package will be finalized and sent to all potential bidders. The Commission is expected to discuss the progress of the IFB process at its January 7 meeting.

In a related matter, on October 15 the Commission published notice of proposed amendments to section 401, Title 4 of the



CCR. Section 401 specifies a schedule of contributions to finance the pension plan to be paid by professional boxers, managers, and promoters. The Commission's proposed amendments to section 401 would specify that (1) the manager's contributions shall not be assessed for the boxer's first and second bouts in a calendar year; (2) a professional boxer's contribution shall not be assessed until after the boxer's first and second bouts in a calendar year and after the boxer's total purses in a calendar year exceed \$1,500 less the manager's share; (3) a promoter's contribution shall be capped at \$1,000 per event; and (4) all contributions shall be deposited in and credited to the Boxer's Pension Account.

The Commission scheduled a public hearing on the proposed amendments to take place at its December 3 meeting. However, the meeting was cancelled and rescheduled for January 7. In the meantime, Commissioners Welshons and Buchanon met on December 22 with Center for Public Interest Law Director Robert C. Fellmeth to discuss various issues regarding the pension plan amendments. The Commissioners asked Professor Fellmeth, who chaired the Athletic Commission at the time the pension plan was established, for input on the proposed amendments to section 401, and Fellmeth suggested provisions which are significantly different from those proposed in the October 15 notice.

The section 401 amendments proposed by Professor Fellmeth are designed to serve two objectives. First, the proposed changes would make California more attractive for big-name fights, thereby increasing revenues for the Commission. This would be accomplished through several provisions. Rather than a \$1,000 cap on promoter contributions, a sliding scale (rather than the current flat 3%) would be employed to allow promoters' contributions to go down as revenues go up. Fellmeth's amendments would also allow fighters to fight very occasionally in California without having to contribute to the pension plan, and would allow a boxer who retires or interrupts his boxing career before he vests to receive 75% of his contributions back with interest. Additionally, Fellmeth's proposed revisions would enhance a boxer's benefits based on contributions made after he has vested; this would increase a boxer's incentive to continue contributing to the pension fund.

Second, Professor Fellmeth's proposed amendments would add some flexibility to pension pay-outs. Specifically, the Commission would be allowed to approve early withdrawal of a boxer's own contributions for the limited purpose of

vocational training, education, or apprenticeship. This provision directly serves the pension plan's statutory purpose of assisting the boxer in the years after his boxing career has ended. Additionally, the proposed amendments would authorize the Commission to use up to 5% of the annual contributions for the purposes of monitoring the whereabouts of boxers, education, and outreach. This provision addresses the expressed concern that the intended beneficiaries will never be found when they are old enough to be eligible for pension pay-out.

At this writing, the Commission is expected to discuss the revisions proposed by Professor Fellmeth at its January 7 meeting.

**Martial Arts Advisory Committee Delays Regulatory Hearing.** For nearly two years, the Commission's Martial Arts Advisory Committee has been developing and reviewing proposed regulations concerning full contact martial arts and kickboxing, both professional and amateur. [13:4 CRLR 34] At the Commission's September 27 meeting, Commissioner Buchanon noted that two more Committee meetings were scheduled, one in northern California and one in southern California. The Committee hoped to receive input from the martial arts profession at those meetings, and then finalize the regulations in preparation for a formal rulemaking hearing in November or December 1993.

However, DCA legal counsel Greg Gorges indicated that it was premature to file a notice of a formal regulatory hearing because the language of the proposed regulations is not yet in its final form. Gorges recommended that the language be finalized after the two scheduled Committee meetings, and that notice of a hearing be filed only after the statement of reasons has been prepared.

**Drug Screening Regulation Update.** On August 20, the Commission adopted proposed new section 280(c), Title 4 of the CCR, which would require boxing license applicants who have been convicted of drug-related crimes to undergo drug screening. [13:4 CRLR 34] At this writing, the Office of Administrative Law is reviewing the proposed regulatory change.

**Commission Fee Increases to Take Effect on January 1.** With the Governor's approval of AB 2275 (Tucker) (Chapter 1057, Statutes of 1993), various Commission licensing fees increase as of January 1, providing the Commission with desperately-needed revenues. [13:4 CRLR 34-35] Original and renewal fees for the following categories have been increased: professional promoter (\$1,000); amateur

promoter (\$250); matchmaker (\$250); assistant matchmaker (\$200); professional boxer and martial arts fighter (\$60); manager (\$150); trainers and seconds (\$50); professional referee and professional judge (\$150); amateur referee and amateur judge (\$75); timekeeper (\$50); announcer (\$50); ticket seller/taker (\$50); box office employee (\$50); sparring permit (\$25); and gymnasium permit (\$10).

## LEGISLATION

**Future Legislation.** At its September 27 meeting, the Commission tentatively decided to seek legislative changes clarifying its authority to request fingerprint reports on licensure applicants from both the FBI and the state Department of Justice; and stating that a majority of Commission members constitutes a quorum for purposes of voting.

**AB 2313 (Cortese),** as amended June 15, would authorize the Commission to register and establish recommended minimum safety and equipment standards for all martial arts studios or schools where contact sparring is performed; require a specified form of application for registration of a martial arts studio or school, to be accompanied by a registration fee; and delete the exemption from regulation for light and noncontact kickboxing and martial arts, and for kickboxing and martial arts instruction and schools, and instead provide an exemption only for light and noncontact martial arts tournaments, or martial arts studios and schools. [S. B&P]

## RECENT MEETINGS

The Commission's December 3 meeting was cancelled due to dense fog in Sacramento and closure of the airport. The meeting was rescheduled to January 7.

## FUTURE MEETINGS

April 22 in Sacramento.

## BOARD OF BARBERING AND COSMETOLOGY

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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,