



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

Executive Officer: Olivia Guebara (916) 445-7061

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 professions, holds meetings at least four times per year.

MAJOR PROJECTS

BBC Regulations. The long process of adopting a new set of regulations for BBC continues. In March 1993, BBC voted to repeal Divisions 3 and 9, Title 16 of the CCR (formerly the regulations of BBE and BOC), and adopt a new set of regulations for BBC in Division 9, Title 16 of the CCR. Division 9 contains 13 articles addressing Board administration, qualifications for examination, apprenticeships, licensing examinations, mobile units, schools, continuing education, required curricula, licenses, disciplinary proceedings, administrative citations and fines, health and safety rules, and revenue. At its March 1993 meeting, BBC adopted all of the articles except Article 8 (curricula), subject to minor modifications. [13:2&3 CRLR 53] Subsequently, Article 3 (apprenticeships) was also severed from the package for separate treatment, as it had generated several comments.

The other eleven articles of the new regulations (excluding Articles 3 and 8) were submitted to the Department of Consumer Affairs' (DCA) Regulatory Review Unit for approval last fall. [13:4 CRLR 36] The Unit recommended many changes, some of which were incorporated into the rules by the Board, released on October 7 for a 15-day comment period, and approved by the Board at its October 25 meeting. These articles were resubmitted to DCA in December for final review and approval by the DCA Director; thereafter, the regulations must be submitted to the Office of Administrative Law (OAL) for review and approval.

However, BBC refused to approve some of DCA's suggested changes, which may lead to rejection by DCA Director Jim Conran. Specifically, DCA suggested that BBC withdraw Article 7 on continuing education (CE), as the Department generally opposes overly complex CE programs and is formulating Department-wide CE guidelines pursuant to SB 2044 (Boatwright) (Chapter 1135, Statutes of 1992) [12:4 CRLR 44]; DCA suggested that BBC defer adopting CE regulations until these guidelines have been finalized. However, the Board declined to withdraw Article 7. Also, DCA objected to section 984(c) of BBC's health and safety

regulations, which states that "[b]lood-borne diseases, such as HIV/AIDS, shall not be considered infectious or communicable diseases for the purpose of this section." BBC states that the Department of Health Services has approved its language excluding HIV/AIDS as concerns in the hair care setting "since transmission from worker to client is not a significant likelihood."

With regard to Article 8 (curricula) (sections 951-962), BBC adopted all sections in Article 8 at its June 7 meeting except sections 954 (nail care curriculum) and 960 (prohibition on reciprocal credit for apprentice and school training). At its August 16 meeting, the Board revised the language of section 954 to increase the required nail care curriculum from 350 to 400 hours. [13:4 CRLR 35] Following a 15-day comment period ending on September 30, the Board adopted revised section 954 at its October 25 meeting. Also on October 25, the Board adopted section 960, which includes a provision stating that "[t]raining received as an apprentice shall not be credited toward a course of training in a school. Training received in a school shall not be credited toward training in an apprenticeship program." Article 8 was approved by DCA on December 23, and awaits review and approval by OAL at this writing.

Article 3 (sections 913-925), governing apprenticeship, was submitted to DCA for review and approval in September. Following DCA's approval, BBC submitted Article 3 to OAL for review in November. On December 6, OAL disapproved BBC's adoption of Article 3 based upon its findings that: (1) the regulatory action failed to comply with the Administrative Procedure Act's standards of consistency, clarity, and necessity; (2) the Board failed to summarize and respond fully to all of the public comments it received; (3) the rulemaking file failed to include several required documents; and (4) the Board failed to follow all required procedures. At this writing, BBC is making changes to Article 3 which, if approved by the Board, will be resubmitted to OAL for review within 120 days.

Changes Without Regulatory Effect. On October 4, OAL approved BBC's renumbering of sections 208, 213, 215, 916, 919, 950, and 961, Title 16 of the CCR. These nonsubstantive amendments relocate the sections to correspond to the curriculum sections. These changes became effective on November 4.

LEGISLATION

Future Legislation. At its October 24 meeting, BBC's Legislation Committee

discussed proposals for the upcoming legislative year and identified four areas of possible action: the regulation of permanent cosmetic tattooing, reduction of unlicensed activity, increased authority of BBC inspectors, and clean-up legislation. At this writing, BBC is preparing possible legislation strategies in each of these areas.

AB 292 (Polanco), as amended May 18, would require all licensed cosmetologists, manicurists, and estheticians to complete sixteen hours of continuing education (CE) during each license renewal period and all licensed barbers to complete eight hours of CE during each renewal period. [13:1 CRLR 25] The bill would provide for approval by BBC of a CE program on health and safety topics. The bill would exempt from these CE requirements those instructors who meet the requirements for continuing education under the Council for Private Postsecondary and Vocational Education. The bill would also require BBC to adopt regulations establishing standards for the approval of CE courses and for the effective administration and enforcement of its CE requirements. The bill would make specified findings related to the above, and provide that specified provisions of the bill shall become operative on July 1, 1996. [S. B&P]

At its September 28 meeting, BBC's Legislation Committee met to review the language of AB 292, and formulated several amendments to the bill, including one which would require an equal number of CE hours for all licensees. At its October 23 meeting, the Committee recommended that the Board's position on the bill be support-in-concept, pending discussion with Assemblymember Polanco's office about the suggested amendments. The Board approved this position at its October 25 meeting.

AB 1392 (Speier), as amended July 1, would—among other things—provide that BBC'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]

AB 1358 (Karnette). Existing law defines the term "employee" for purposes of unemployment insurance and personal income tax withholding. As amended April 15, this bill would further define the term "employee," for purposes of unemployment insurance and personal income tax withholding, to include booth renters in the cosmetology industry, as defined, unless specified conditions and requirements are met that would result in them being



considered independent contractors. [A. F&I]

RECENT MEETINGS

At its October 24 meeting, the Board discussed its goals and objectives. The goals developed by the Board are to: (1) establish as a priority its commitment to protecting health and safety for consumers of barbering, cosmetology, and electrology services; (2) eliminate unlicensed activity; (3) improve the content of its examinations and the processes used in their administration; (4) increase consumer and licensee awareness of its activities; and (5) promote legislative and regulatory changes that will enhance its authority to protect consumers. BBC is presently working to develop strategies for the achievement of these goals.

At the Board's October 25 meeting, Executive Officer Olivia Guebara presented a statistical report of BBC's activities for the first three months of the 1993-94 fiscal year. During the first quarter of this year, BBC received twice the number of complaints it received in the first quarter of the 1992-93 fiscal year. From July to September 1993, BBC received 713 complaints, closed 524 complaints, and had 1,563 complaints pending as of September 30. During the same period, it opened 28 investigations, closed 32 investigations, and conducted 12,263 inspections of licensed establishments. From July to October 1993, the average waiting period for application processing decreased from 67 days to 46 days. Guebara also stated that the cumulative pass rate on all licensing examinations administered by BBC during fiscal year 1992-93 was 73% on the written portion of the exam and 74% on the practical portion.

BBC's December 13 meeting was cancelled.

FUTURE MEETINGS

April 17-18 in northern California.

June 12-13 in southern California.

BOARD OF BEHAVIORAL SCIENCE EXAMINERS

Executive Officer:
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Authorized by Business and Professions Code section 4980 *et seq.*, the eleven-member Board of Behavioral Science Examiners (BBSE) licenses marriage, family

and child counselors (MFCCs), licensed clinical social workers (LCSWs), and educational psychologists (LEPs). The Board administers tests to license applicants, adopts regulations regarding education and experience requirements for each group of licensees, and appropriately channels complaints against its licensees. The Board also has the power to suspend or revoke licenses. The Board consists of six public members, two LCSWs, one LEP, and two MFCCs. The Board's regulations appear in Division 18, Title 16 of the California Code of Regulations (CCR).

The current members of BBSE are Judy Brislain, LEP; Karen Walton, LCSW; Selma Fields, MFCC; Zalia Lipson, MFCC; and public members Thomas Knutson, Jerry Miller, Lorie Rice, Jane Emerson, Jeanne Smith, and Stephanie Carter. Currently, one LCSW seat is vacant on BBSE.

MAJOR PROJECTS

BBSE Reviewed by Senate Subcommittee. On November 10, BBSE and the Board of Psychology (BOP) presented testimony to the Senate Subcommittee on Efficiency and Effectiveness in State Boards and Commissions, chaired by Senator Dan McCorquodale, on several issues related to the possible restructuring of the boards. Specifically, the Subcommittee requested comments on (1) whether marriage counselors, social workers, educational psychologists, and psychologists should be deregulated and both boards abolished; (2) whether the two boards should be merged; and (3) whether either or both boards should be transformed into bureaus which lack a multi-member policymaking board and operate under the direct control of the Director of the Department of Consumer Affairs (DCA).

BBSE Executive Officer Kathleen Callanan represented the Board at the November 10 hearing, and argued that deregulation of the psychotherapy profession would harm consumers. Among other things, she noted that when a consumer seeks psychotherapy, he/she is usually overwhelmed by personal problems and suffering from losses and/or disorders; he/she is not in the best position to evaluate the academic qualifications and experience of the therapist. During therapy, the therapist/client relationship is marked by a "power imbalance" in that the client discloses everything while the therapist discloses nothing; this imbalance encourages client dependency on the therapist. If the therapist is incompetent or deliberately exploits the client in the context of this dependency, the client could be irrep-

ably harmed. Thus, Dr. Callanan argued that therapists should continue to be licensed by the state.

On the issue of merger, Dr. Callanan noted that BBSE is already an "omnibus board" which regulates three different professions (23,000 MFCCs, 15,700 LCSWs, and 2,000 LEPs) and administers three registration programs for licensure candidates who are providing clinical services under the supervision of a licensee (10,000 MFCC interns, 6,000 MFCC trainees, and 3,600 associate clinical social workers); thus, BBSE already regulates in excess of 60,000 people. However, Dr. Callanan noted that certain areas of BBSE/BOP operations (such as the administration of exams, the investigation of complaints, and other operations common to occupational licensing agencies) are similar and could be centralized or consolidated.

Dr. Callanan also noted that BOP is currently part of the Medical Board of California (MBC) and utilizes MBC's investigative personnel and a special unit of prosecutors within the Attorney General's Office dedicated to MBC enforcement cases, while BBSE is an independent DCA agency and uses DCA investigators and generalist prosecutors within the AG's Licensing Division. This fragmentation causes problems when a complaint is lodged against a therapist who is "dual-licensed" by both boards. When a complaint is received against such a licensee, the two boards necessarily duplicate each other's efforts because the same complaint against the same licensee involving the same set of facts is investigated by two different investigators and may be prosecuted by two different deputy attorneys general. Dr. Callanan stated that, in light of the limited resources of both boards and the usual severity of cases which proceed to hearing, this duplication of time and effort is "not defensible."

At this writing, no legislative proposals have been introduced as a result of the hearing.

BBSE Discusses Electronic Testing Options. In order to accommodate the increasing MFCC and LCSW examination populations and to address the corresponding increase in cost, BBSE is exploring the possibility of replacing its written exam with daily electronic testing; Dr. Norman Hertz, manager of DCA's Central Testing Unit (CTU), attended the Board's November 9 meeting and provided information on electronic testing. Dr. Hertz explained that under electronic testing, the current written exam would be used but would be administered by a computer. After an applicant is approved by BBSE to take the exam, he/she would contact the