



REGULATORY AGENCY ACTION

Attorney's General's Office, and the number of pending complaints which have been referred to the Attorney General's Office and have resulted in the issuance of an accusation or statement of issues; and that the Board furnish a copy of the accusation or statement of issues if requested. Following discussion, BAE unanimously adopted the proposed policy revision.

Also at its February 18 meeting, BAE elected architect Dick Wong to serve as President, public member Sheldon Grossfeld to serve as Vice-President, and public member Peter Chan to serve as Secretary during 1994.

At its May 13 meeting, the Board agreed to extend its oral examination contract with CTB/McGraw-Hill; the Board also approved its 1994-95 contract with NCARB for the ARE.

■ FUTURE MEETINGS

To be announced.

ATHLETIC COMMISSION

Executive Officer:

Richard DeCuir

(916) 263-2195

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 Buchanan, 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

Neurological Examination Program Update. At the Commission's January 7 meeting, staff presented an update on recent changes to the neurological examination program. [14:1 CRLR 31-32; 13:4 CRLR 32-33] Effective in January 1994, the Commission's traditional neurological exam is being replaced with a streamlined version dubbed the "Mini-Mental Status Exam." This streamlined version is designed to be completed in about thirty minutes at a cost of \$100 per exam. Staff also reported that it had asked over 1,800 licensed neurologists and neurosurgeons in California to assist in administering the exam, and received positive replies from approximately 60 doctors. By increasing the pool of potential examiners, the Commission hopes to reduce costs associated with the exam, and to make the exam more widely available in all geographical regions within the state. The Commission also passed a motion to reduce the neurological assessment fee from \$1.50 to \$1.25 per ticket, and to require that boxers and/or managers pay their \$30 assessments at the time of licensing.

At the Commission's February 18 meeting, Dr. Robert Karns of UCLA Medical Center reported that the Commission had held five meetings throughout the state for the purpose of training neurologists in the administration of the Commission's exam; Dr. Karns expressed confidence that an adequate number of qualified neurologists in the state are now familiar with the exam, and that those neurologists have been sufficiently trained in its administration to ensure consistency throughout the state. Dr. Karns predicted no delays or problems with the new doctors participating in the neurological testing, and suggested that the training program has significantly broadened the pool of potential examiners.

At this time, the Commission is not expected to pursue the proposal of allowing or requiring the administration of magnetic resonance imaging (MRI) tests as an alternative method of detecting brain damage in boxers. According to the California Medical Association, an MRI scan is an inappropriate substitute for the Mini-Mental Status Exam. [14:1 CRLR 32]

Pension Plan Update. For several months, the Commission has been preparing an invitation for bid (IFB) to retain an investment services provider for its Professional Boxers' Pension Plan. [14:1 CRLR 32] On January 28, the Commission officially re-

leased the IFB to potential bidders, and on March 28 selected the investment firm of Columbia Trust to administer the pension plan. Columbia Trust is based in Portland, Oregon, and works exclusively on pension fund investment plans.

In a related matter, at its January 7 meeting the Commission held a public hearing on proposed amendments to section 401, Title 4 of the CCR, which sets forth pension fund contribution requirements. 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 Boxers' Pension Account. [14:1 CRLR 32-33] Following the January public hearing, the Commission discussed the proposed amendments, as well as other revisions to the pension plan submitted by Center for Public Interest Law Director Robert C. Fellmeth, who chaired the Athletic Commission at the time the pension plan was established. Among other things, Professor Fellmeth's proposal has the following features:

- Instead of a \$1,000 cap on promoter contributions, a sliding scale (rather than the current flat 3%) would be employed to allow promoters' contributions to decrease as revenues increase; promoter contributions would be absolutely capped at \$10,000 per event.

- Boxers would not contribute at all to the pension plan until they "vest" (have enough rounds and years to receive benefits), saving the Commission the cost of tracking and returning funds to the majority of boxers who are temporary and never vest.

- 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.

- The last California-licensed manager of a boxer would be required to exercise due diligence in maintaining contact with that boxer.

- The Commission would be authorized 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.

Commissioner Kim Welshons reported that the Pension Fund Committee, which has researched pension plan issues for months, preferred Professor Fellmeth's proposal to the amendments which were the subject of the public hearing. Welshons argued that the proposed revisions to section 401 constitute a "piecemeal" approach to solving the problems in the pension fund program, and recommended that the Commission postpone action until its April meeting, at which time Professor Fellmeth's proposal could be thoroughly reviewed and considered. Following discussion, however, the Commission modified the proposed action to cap the promoter's contribution at \$1,500 per event (instead of \$1,000), and adopted the rulemaking proposal; Commissioners Welshons and Buchanon, the members of the Pension Fund Committee, cast the only two votes in opposition.

At the Commission's April 22 meeting, Professor Fellmeth requested reconsideration of the Commission's January 7 vote, and presented argument in favor of his comprehensive proposal for reforming the pension fund structure. In response to Professor Fellmeth's comments and proposed revisions, the Commission passed a motion to approve, conceptually, the idea of making comprehensive reforms to the pension fund contribution requirements. Although the Commission took no specific action in this regard, all Commission members agreed that a more comprehensive restructuring of section 401 should be pursued. At this writing, the Commission is expected to renounce the proposed amendments heard at its January 7 meeting, and incorporate more comprehensive revisions to the pension fund structure.

Commission Explores Reciprocity Issues with Nevada Counterpart. In March, the Commission held a strategic planning meeting in South Lake Tahoe, the primary purpose of which was to meet jointly with the Nevada State Athletic Commission. At its subsequent meeting on April 22, the Commission reported preliminary success in pursuing a system of reciprocity with the Nevada Commission. In particular, the two commissions will explore issues relating to contracts, licensing, the elimination of redundant fees, and the use of a boxer "passport" which would cover health and safety issues and provide an accurate record of the identity and performance of each boxer.

Drug Screening Regulation Rejected. On January 14, the Office of Administrative Law (OAL) published notice

of its disapproval of the Commission's proposed adoption of new section 280(c), Title 4 of the CCR, which would have required boxing and martial arts license applicants who have been convicted of drug-related crimes to undergo drug screening. [14:1 CRLR 33; 13:4 CRLR 34]

OAL determined that the proposed regulation does not meet the clarity requirement of the Administrative Procedure Act (APA) because it does not specify whether "screening" includes or is limited to any particular type of test (such as urinalysis using an immunoassay screening test), require a specified degree of reliability, or establish standards as to confidentiality, acceptable laboratories, chain of custody, effect of prescription medications, false positives, or applicant appeal rights (if any). OAL also determined that the proposed regulations do not meet the APA's necessity requirement, stating that although the Commission described generally the public problem the regulation is intended to address, the Commission failed to include information explaining why the particular regulation is necessary to carry out the described purpose. Finally, OAL found that the rulemaking file did not contain all documents and findings required by the APA.

The Commission is expected to correct the deficiencies and renounce the proposed regulation, with a public hearing tentatively scheduled for July.

Martial Arts and Kickboxing Regulations. For over 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. [14:1 CRLR 33; 13:4 CRLR 34]

On March 4, the Commission finally published notice of its intent to adopt a new Chapter 4, Title 4 of the CCR (consisting of sections 700, 702, 705, 710, 711, 720, and 723), to establish rules governing amateur full-contact martial arts and kickboxing. Among other things, the proposed sections would:

- provide that any contestant who has participated in three or fewer full-contact martial arts or kickboxing contests approved by the Commission may be in the novice class;

- provide that any contestant who has participated in more than three full-contact martial arts or kickboxing contests approved by the Commission shall be in the open class;

- require that, in addition to the equipment required in section 513, Title 4 of the CCR, every contestant shall wear (1) at least ten-ounce gloves; (2) optional head-

gear that is approved by the American Boxing Federation or an equivalent organization; and (3) padded shin guards that extend from the ankle or instep to the top of the shin, and a safety boot that covers the toes;

- provide that the maximum number of rounds allowed for any contestant in the novice class shall not exceed three two-minute rounds with a one-minute rest period between rounds;

- provide that the maximum number of rounds allowed for any contestant in the open class shall not exceed five two-minute rounds with a one-minute rest period between rounds; and

- provide that, between contestants in the novice class, the only kicks allowed are to the outside of the legs or boot and kicks to the upper body; all other kicks shall be considered a foul.

Also on March 4, the Commission published notice of its intent to amend sections 500, 501, 502, 510, 512, 513, 520, 521, 522, and 542, and adopt new sections 514 and 533, Title 4 of the CCR, regarding professional full-contact martial arts and kickboxing. Among other things, the proposed changes would:

- increase the maximum number of two-minute rounds in kickboxing and martial arts events from nine to ten, and provide that an additional two rounds shall be allowed for the purpose of championship events;

- specify that all contestants shall have short fingernails and toenails and that contestants shall have at least one extra pair of shorts in an opposing color with them at each match, contest, or exhibition;

- provide that contestants who weigh 147 pounds or less shall wear eight-ounce gloves, and that contestants who weigh more than 147 pounds shall wear ten-ounce gloves;

- provide that when judging a martial arts contest, weight shall be given to executed punches and kicks, and that on close or evenly scored rounds, greater weight shall be given to the fighter with the most effective kicks;

- provide that referees and judges shall score all contests and determine the winner through the use of the ten-point system, in which the winner of each round receives ten points and the opponent a proportionately less number, each fighter receives ten points if the round is even, and no fraction of points may be given;

- require each contestant to execute a minimum of five kicks during the course of each round; if either fighter does not execute his/her minimum kicks, he/she may receive a warning or point deduction at the discretion of the referee;



REGULATORY AGENCY ACTION

—provide that the term “foul” includes —among other things—any unsportsman-like trick or action that causes any injury to an opponent or referee, failure to make five kicks per round, kicks to the joints, linear strikes to the legs and linear strikes across both legs simultaneously, any sweeps not executed boot-to-boot, and hitting or slapping with an open glove;

—provide that one or more groin kicks or punches, arm bars, kicking against any joint, intentional head butts, or use of elbows shall result in disqualification;

—provide that the Commission may, in its discretion, authorize alternate rules or provisions from time to time so long as the safety and welfare of the contestants and the public are not jeopardized; and

—provide that the Commission may waive the examination for a matchmaker applicant if he/she possesses a current and valid license as a matchmaker in another state or country, has not been subject to any disciplinary action, and has been involved in matchmaking in at least five amateur events.

On April 22, the Commission conducted a public hearing on these proposed regulatory actions. Following the hearing, the Commission made minor modifications to the proposals, and adopted both rulemaking files. On April 29, the Commission released the modifications for an additional 15-day public comment period ending on May 16. At this writing, the rulemaking files await review and approval by OAL.

Budget Update. Governor Wilson’s 1994–95 proposed budget would fund the Athletic Commission through the state’s general fund, rather than through the current system of fee revenue funding through the special Athletic Commission Fund. The Governor’s budget proposes spending nearly \$1.1 million to support the Commission, with all but \$21,000 of that amount coming from the general fund. The budget also proposes that fee revenue currently deposited into the Athletic Commission Fund and the Boxers’ Neurological Examination Account, both of which are currently used to fund the Commission’s activities, instead be deposited in the state’s general fund.

Prior to 1992–93, the Commission was funded in a manner similar to this proposal. In 1992, however, the legislature, in response to a long series of general fund augmentations needed to fund shortfalls between fee revenues and Commission spending, created the Athletic Commission Fund. This fund, supported from fees, was to be the sole funding source for the Commission, thereby eliminating the need for any general fund support. The

current proposal would once again make the general fund responsible for any shortfalls between Commission spending and available fee revenues.

The Legislative Analyst’s Office (LAO) disagrees with the Governor’s proposal, and believes the Commission—like other boards which license occupations and professions—should continue to be budgeted on a completely self-supporting basis from fee revenues. According to LAO, the Commission is not required to “live within its revenues as other boards must do” if it can rely on the general fund as a backup to fund shortfalls. At this writing, the legislature has not yet acted on the Governor’s proposed 1994–95 budget.

LEGISLATION

SB 2036 (McCorquodale), as amended May 18, would create a “sunset” review process for occupational licensing agencies within the Department of Consumer Affairs (DCA), requiring each to be comprehensively reviewed every four years. SB 2036 would impose an initial “sunset” review date of July 1, 1997 for the Commission; create a Joint Legislative Sunset Review Committee within the legislature, which would review the Commission’s performance approximately one year prior to its sunset date; and specify 11 categories of criteria under which the Commission’s performance will be evaluated. Because the Commission was originally created in the state constitution, it may not be abolished by the legislature like other DCA agencies; however, SB 2036 would still require regular “sunset” review of the Commission. (*See* agency report on DCA for related discussion of the “sunset” concept.) [*S. Appr*]

AB 1807 (Bronshvag), as amended March 23, provides that a majority of the appointed members of the Commission constitutes a quorum for the transaction of business, and that the affirmative vote of a majority of those Commissioners present at a meeting of the Commission constituting at least a quorum is necessary to render a decision or pass a motion. This bill was signed by the Governor on March 30 (Chapter 26, Statutes of 1994).

SB 2101 (McCorquodale), as amended April 4, would authorize the Commission to obtain and review criminal history information to determine whether any applicant or licensee has been convicted of any offense or has been arrested for any offense for which disposition is still pending, and to use convictions or pleas of nolo contendere as grounds to deny an application if they are related to the licensed activity. [*A. Health*]

AB 2313 (Cortese), as amended June 15, 1993, 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

At its January 7 meeting, the Commission discussed section 356, Title 4 of the CCR, which provides that the Commission representative in charge at all boxing shows shall, before the start of each bout, give the referee and judges (when the latter are used), a regulation scorecard; the referee and judges shall score each round of the bout on the card and sign it. In the Commission’s discretion, individual round scorecards may be used in contests and, if so used, shall be picked up at the end of each round by the referee and delivered to the ringside inspector. At the conclusion of the contest, the Commission representative may then show the cards to accredited press representatives and immediately thereafter mail or deliver the score cards with the rest of his/her reports to the Commission office. Following discussion, the Commission agreed to exercise its discretion under section 356 and require that individual scorecards be used and collected round by round for scoring during boxing events.

At its January 7 meeting, the Commission elected William Eastman to serve as Commission chair and Willie Buchanon to serve as vice-chair for 1994.

FUTURE MEETINGS

- June 3 in San Diego.
- July 15 in Los Angeles.
- September 2 (location to be announced).
- October 28 (location to be announced).
- December 9 (location to be announced).

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