



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



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

New BBC Regulations. Two years after its creation, BBC is still in the process of adopting a comprehensive set of regulations to implement its new enabling act. In March 1993, BBC finally 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, comprised of 13 articles. Article 3 (apprenticeship) and Article 8 (required curricula) were subsequently separated out, making a total of three rulemaking packages which BBC prepared and submitted to the Office of Administrative Law (OAL). [14:1 CRLR 34]

On March 11, OAL disapproved the main regulatory package, consisting of eleven articles dealing with the practices of barbering, cosmetology, and electrolysis. OAL found that the rulemaking file failed to satisfy the necessity, consistency, and clarity standards of the Administrative Procedure Act (APA); BBC failed to properly notice or identify several forms which were incorporated by reference into the regulations; and BBC failed to follow certain procedural requirements of the APA. At this writing, BBC staff is modifying the rulemaking file in response to OAL's comments, and the Board is scheduled to consider adoption of the revised package at its June meeting.

OAL also disapproved Article 8 (curricula) (sections 951-962) on March 11, finding that the proposed regulations do not satisfy the APA's clarity standard. At this writing, BBC staff is modifying the rulemaking file in response to OAL's comments, and the Board is scheduled to consider the adoption of the revised package at its June meeting.

BBC's proposed adoption of Article 3 (apprenticeship) (sections 913-925) was

initially disapproved by OAL in December 1993; among other things, OAL found that the regulatory action did not comply with the APA's standards of consistency, clarity, and necessity. [14:1 CRLR 34] Following the disapproval, BBC modified the rulemaking package and released it for an additional 15-day public comment period. At its January 10 meeting, the Board adopted the revised package, which awaits review and approval by OAL.

Occupational Analysis of Barbering. Last fall, the Department of Consumer Affairs' (DCA) Central Testing Unit announced its intention of conducting an occupational analysis of barbering; the results of the project will be used to produce new examination testing plans. The project, which will draw heavily on the actual work tasks of barbers statewide and will require the involvement of barber practitioners for successful completion, was to begin in October 1993 and end in July 1994; however, at BBC's February 21 meeting, Executive Officer Olivia Guebara reported that DCA has had difficulty in obtaining a sufficient number of barber licenses to participate in the project. Consequently, DCA suspended all work on the occupational analysis until there is positive support from the barbering industry. Guebara noted that, if participation by the industry is not sufficiently demonstrated, CTU may recommend that all testing for barber licenses be suspended; this could result in a sunset review of barber licensure and possible deregulation (*see* LEGISLATION).

LEGISLATION

SB 2036 (McCorquodale), as amended May 18, would create a "sunset" review process for occupational licensing agencies within DCA, requiring each to be comprehensively reviewed every four years. SB 2036 would impose an initial "sunset" date of July 1, 1997 for BBC; create a Joint Legislative Sunset Review Committee within the legislature, which would review BBC's performance approximately one year prior to its sunset date; and specify 11 categories of criteria under which BBC's performance will be evaluated. Following review of the agency and a public hearing, the Committee would make recommendations to the legislature on whether BBC should be abolished, restructured, or redirected in terms of its statutory authority and priorities. The legislature may then either allow the sunset date to pass (in which case BBC would cease to exist and its powers and duties would transfer to DCA) or pass legislation extending the sunset date for another four years. (*See* agency report on

DCA for related discussion of the "sunset" concept.) [*S. Appr*]

AB 3787 (V. Brown), as amended May 11, would direct the Department of Health Services (DHS) to establish sterilization, sanitation, and safety standards for persons engaged in the business of tattooing, body piercing, and permanent cosmetics, and distribute those standards to county health departments; require practitioners of tattooing, body piercing, and permanent cosmetics to register with the county in which they practice, comply with DHS' standards, and pay a fee sufficient to cover the costs of regulation; and require county health departments to inspect the locations where tattooing, body piercing, and permanent cosmetics are practiced, and impose civil penalties for violation of sanitation standards or failure to register. This bill also creates a DHS Task Force, including a BBC representative, and charges it with recommending additional legislation concerning licensing, training, sanitation, and other related matters by January 1, 1996. [*A. Floor*]

SCR 28 (Calderon), as amended March 3, would direct the Department of Fair Employment and Housing to conduct an undercover consumer investigation to identify businesses in the dry cleaning and cosmetology professions which practice gender-based price discrimination and take appropriate action to penalize such discrimination. [*S. B&P*]

SB 1288 (Calderon), as amended May 10, would—among other things—direct DCA, by June 1, 1995, to create a pilot project to provide notice to BBC licensees that the Unruh Civil Rights Act prohibits gender-based pricing. The bill would require DCA, by June 1, 1996, to submit to the legislature, upon request, an assessment of the pilot project, and requires DCA's Division of Consumer Services to develop, by June 1, 1995, and distribute consumer information on the problem of gender-based price discrimination. [*A. Jud*]

AB 2418 (Speier). The Unruh Civil Rights Act prohibits a business establishment from discriminating against a person because of the gender of the person. As amended April 26, this bill would provide specifically that no seller of goods or services may discriminate, with respect to the price charged for the goods or services, against a person because of the person's gender. [*S. B&P*]

SB 1498 (Hughes). Existing law prohibits a licensed cosmetology establishment from employing an unlicensed person who performs or practices cosmetology. As amended May 17, this bill would provide that a student extern, as defined, may work at a licensed cosmetology es-



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establishment, and that the student extern may receive school credit, as provided, for the work. The bill would impose various requirements on the externship program. [A. CPGE&ED]

The following is a status update on bills reported in detail in CRLR Vol. 14, No. 1 (Winter 1994) at pages 34-35:

AB 292 (Polanco), as amended April 12, would require all licensed barbers, cosmetologists, manicurists, and estheticians to complete sixteen hours of continuing education (CE) during each license renewal period. [13:1 CRLR 25] The bill would provide for BBC approval of CE programs on health and safety topics; exempt from these CE requirements those instructors who meet the requirements for continuing education under the Council for Private Postsecondary and Vocational Education; require BBC to adopt regulations establishing standards for the approval of CE courses and for the effective administration and enforcement of its CE requirements; and provide that specified provisions of the bill shall become operative on July 1, 1996. [S. B&P]

AB 1392 (Speier), as amended July 1, 1993, 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 DCA Director. [S. B&P]

AB 1358 (Karnette). Existing law defines the term "employee" for purposes of unemployment insurance and personal income tax withholding. As amended January 14, 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. [S. IR]

RECENT MEETINGS

At its January 10 meeting, the Board viewed a segment produced by the "20/20" television program regarding permanent cosmetic tattooing. Although BBC staff believes the potential for harm is great with cosmetic tattooing, the Board has not received many complaints regarding this procedure. Following the viewing, the Board agreed to support legislation requiring enhanced regulation of permanent cosmetic tattooing to prevent disease transmission (see LEGISLATION).

Also at its January 10 meeting, BBC discussed its efforts to comply with AB 310 (Woodruff) (Chapter 521, Statutes of 1993), which establishes requirements for tanning establishments and requires BBC

to conduct a study and report to the legislature no later than July 1, 1994. [13:4 CRLR 36] Staff reported that it has prepared two informational sheets for tanning facilities and a tanning facility inspection survey; these will be given to Board-licensed establishments with tanning facilities at the time of inspection or upon request to any tanning facility. A computer database will also be created to compile and evaluate the information collected from the survey and to help in preparing the report.

At BBC's February 21 meeting, Executive Officer Olivia Guebara reported on the Board's enforcement activities for the period of July-December 1993. BBC received 1,070 complaints during this period, compared to 346 for the same period in 1992; conducted 12,441 inspections during this period, compared to 5,251 for the same period in 1992; opened 50 investigations, compared to 63 in the same period in 1992; and closed 58 investigations, compared to 131 in the same period in 1992. BBC also reported on its efforts to obtain badges for its inspectors; the badges would be used to provide additional identification for field inspectors and to help verify the right to inspect when confronted with hostile operators. At BBC's April 18 meeting, Guebara reported that badges have been ordered.

At its April 18 meeting, BBC adopted Sturgis' Rules of Order for use at Board meetings. Also at this meeting, the Board considered requiring all licensees to include their license number in advertisements, with the idea that this would help reduce unlicensed activity; the Board decided to research the proposal further and discuss it at its June meeting. Finally, Guebara reported that between July 1993 and February 1994, 76% of examinees passed the Board's total practical examinations and 63% passed the total written examinations.

FUTURE MEETINGS

June 12-13 in Los Angeles.

August 7-8 in northern California.

October 2-3 in southern California.

BOARD OF BEHAVIORAL SCIENCE EXAMINERS

Executive Officer:

Kathleen Callanan

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Authorized by Business and Professions Code section 4980 *et seq.*, the eleven-member Board of Behavioral Sci-

ence 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

Fee Bill Dropped; BBSE Facing Major Budget Shortfall. As introduced on February 25, SB 2109 (Alquist) would have raised, effective January 1, 1995, BBSE's biennial license renewal fees for MFCCs from \$150 to \$250, and for LCSWs from \$150 to \$180. BBSE sponsored the bill to build up its depleted reserve fund and to support the costs of its enforcement program. Over \$400,000 was recently taken from BBSE's reserve fund and transferred to the state's general fund, pursuant to 1992-93 Budget Act language. [12:4 CRLR 1] Simultaneously, the number of consumer complaints received by BBSE against its licensees doubled in fiscal year 1992-93. The costs of processing these complaints far exceeded BBSE's enforcement budget, causing BBSE to submit a deficiency request and deplete its remaining reserve fund. [14:1 CRLR 36] This year, the Board's enforcement costs so exceed its budget that it recently had to request the Attorney General's Office to curtail all non-essential work on BBSE enforcement cases, and reserve its remaining funds for cases which would result in immediate public harm if further delayed. Between January and June, the Board has at least twenty license revocation hearings scheduled; these cases will not be taken off calendar, but will be reviewed carefully to determine whether they can be delayed or settled with no further harm to the public.

However, a March 29 letter from the major trade association representing MFCCs caused Senator Alquist to drop the bill. In his letter, California Association of Marriage and Family Therapists (CAMFT) senior legal counsel Richard