



tion, and provide for penalties. The Committee proposed that candidates be asked to acknowledge these sections by signing an affidavit stating that they have read and understand the consequences of discussing the exam with others. DCA legal counsel Don Chang advised that candidates may not be legally required to sign an affidavit of this type in order to take the oral examination. After discussion, the Board decided not to distribute to oral examination candidates an affidavit to sign, but agreed instead to provide copies of the relevant Code provisions in each candidate's information package sent in advance of the oral examination.

Also at its September 9 meeting, BAE discussed a suggestion to hold elections for new Board officers prior to the end of the calendar year so that each new Board officer can serve for a full year term. At this writing, elections are tentatively scheduled to be held at Board's December 12 meeting in San Francisco.

■ FUTURE MEETINGS

October 17-18 in Newport Beach.
December 12 in San Francisco.

ATHLETIC COMMISSION

Executive Officer:
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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 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

Pension Plan Update. The Commission is continuing its efforts to revise various aspects of its Professional Boxers' Pension Plan. On July 11, the Office of Administrative Law (OAL) approved the Commission's amendments to section 401, Title 4 of the CCR, which sets forth pension fund contribution requirements and specifies a schedule of contributions to finance the pension plan to be paid by professional boxers, managers, and promoters. These amendments 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. [14:2&3 CRLR 38-39; 14:1 CRLR 32-33]

Despite these recent changes, however, the Commission has agreed that more 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; 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.

At the Commission's July 15 meeting, Commissioner Kim Welshons reported that the Pension Plan Review Committee was in the process of reviewing and merging the two proposals, and had scheduled a September 5 meeting with Professor Fellmeth, Kevin Long, and top officials of the Department of Consumer Affairs to hammer out an agreement. When that process is complete, the Committee is expected to present a formal reform proposal at a future Commission meeting.

Commission to Update Numerous Regulations. At the Commission's July 15 meeting, Executive Officer Richard DeCuir reported that staff was in the process of reviewing all of the Commission's regulations in Title 4 of the CCR, and drafting proposed changes as necessary to reflect changes in law and practice. On September 2, Assistant Executive Officer Rob Lynch circulated a draft of those changes to all interested parties for their review and comment. Among other things, the draft changes would:

- amend section 216 to require boxers and managers licensed in other jurisdictions, before signing a contract with a promoter to box in this state, to have made application for a license with the Commission;

- repeal section 223, which provides that managers shall not have more than three boxers under their management in any one show without written permission from the Commission;

- repeal section 214, which provides that no referee, timekeeper, or matchmaker may perform any services for or on behalf of any club unless licensed by the Commission;

- amend its vision requirements in section 282 to provide that the Commission may deny, suspend, revoke, or place restrictions on the license of a professional or amateur boxer if it determines that the applicant or licensee cannot safely engage in boxing activities because of a visual condition, including but not limited to uncorrected visual acuity of less than 20/200 in either eye or 20/60 with both eyes; a visual field of 60 degrees or less extending



over one or more quadrants of the visual field; the presence of glaucoma, whether or not such condition has been treated; the presence of aphakia or dislocated lens in either eye; or any other visual condition which the Commission determines would prevent the applicant or licensee from safely engaging in boxing activities;

- amend section 294 to provide that current language requiring all clubs to set aside an emergency room on their premises is not applicable if paramedics are present during the event;

- amend section 322 to provide that twelve-ounce gloves or more may be approved by the Commission or its designee on a special request basis, and that when two contestants differ in weight classes, as specified, the contestants will wear the gloves as stated in the higher weight classification;

- revise section 337's list of fouls in boxing to include hitting below the hip line (instead of below the belt); hitting an opponent who is down, is getting up after being down, or who is hanging helplessly over the ropes; excessive holding or deliberately maintaining a clinch; biting; grabbing or holding the ropes; hitting with the forearm or the knee; deliberate use of the rabbit punch (hitting behind the head); and excessive taunting, abusive language, or gestures;

- amend section 338 to provide that any boxer guilty of an intentional foul shall be penalized one or more points as determined by the referee, and may be disqualified, have his/her purse withheld, and be subject to suspension;

- amend section 340 to provide that a flagrant foul is any foul, intentional or unintentional, which causes the bout to be interrupted for the purpose of allowing the injured boxer time to recover, and provide that in such a situation, the referee shall penalize the boxer guilty of the foul one or more points;

- amend section 360 to provide that no licensee shall verbally or physically abuse an official or Commission representative, and provide that such abuse may result in suspension, fine, or disciplinary action as determined by the Commission;

- amend section 362 to provide that excessive coaching may lead to point(s) deduction by the referee, ejection from the venue, and disciplinary action by the Commission; and

- amend section 365 to provide that fans and the swinging of towels are prohibited.

At this writing, the Commission is expected to discuss these rulemaking proposals at its September 23 meeting.

Martial Arts and Kickboxing Regulations. After two years of work by the

Commission's Martial Arts Advisory Committee, OAL has approved the Commission's adoption of new regulations concerning full-contact martial arts and kickboxing, both professional and amateur. [14:1 CRLR 33; 13:4 CRLR 34]

On August 2, OAL approved new Chapter 4, Title 4 of the CCR (consisting of sections 700, 702, 705, 710, 711, 720, and 723), which establishes rules governing amateur full-contact martial arts and kickboxing. [14:2&3 CRLR 39-40] Among other things, these changes 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, and 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 headgear 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, and 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.

On September 14, OAL approved the Commission's amendments to sections 500, 501, 502, 510, 512, 513, 520, 521, 522, and 542, and addition of new sections 514 and 533, Title 4 of the CCR, regarding professional full-contact martial arts and kickboxing. [14:2&3 CRLR 39-40] Among other things, these revisions 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; provide that the term "foul" includes—among other things—any unsportsmanlike 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.

Drug Screening Regulation Update.

In January 1994, OAL disapproved 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. [14:2&3 CRLR 39; 14:1 CRLR 33; 13:4 CRLR 34] Although the Commission originally planned to correct the deficiencies and resubmit the proposed regulation, it subsequently decided to drop the rulemaking package and develop an entirely new proposal. At this writing, this proposal has not yet been published in the *California Regulatory Notice Register*.

Credentialing of Ringside Physicians. At the Commission's July 15 meeting, Executive Officer Richard DeCuir reported that staff had been working with Dr. Robert Karns, Chair of the Commission's Medical Advisory Committee, to develop minimum standards for ringside



physicians. Previously, the Commission had no written criteria or standards for acceptance as a ringside physician. Accordingly, staff and Dr. Karns created an application process for prospective ringside physicians.

Among other things, the proposed process would require each physician to submit a completed ringside physician application; proof of licensure; a list of hospital privileges; a letter from the administrator or chief of staff or other party of one of the hospitals showing that the physician is credentialed to practice emergency medicine, internal medicine, family practice, general practice, general surgery, or any other specialty that would be considered relevant to those tasks which a ringside physician should be able to perform; proof of malpractice insurance; and two passport-size photographs. However, the application form as drafted states that any ringside physician credentialed prior to 1987 need not forward anything but proof of licensure and malpractice insurance, although they are "encouraged" to provide the list of hospital privileges.

Following discussion, the Commission unanimously agreed to implement the application process, including a requirement that the physician sign the application under penalty of perjury.

Budget Update. At the Commission's July 15 meeting, Executive Officer Richard DeCuir reported on the final status of the Commission's 1993-94 budget. DeCuir noted that the Commission spent approximately \$565,450 of the \$701,000 it was authorized to spend; however, the Commission generated only \$507,475 in revenue. As a result, the Commission received a \$62,000 loan from the Bureau of Automotive Repair (BAR) to cover the difference between its revenue and expenditures. DeCuir also reported that the Commission's neurological examination program spent \$235,870 of the \$382,000 it was authorized to spend; however, the Commission's neurological revenue amounted to only \$184,730, necessitating a \$51,140 withdrawal from the neurological reserve fund. Also, DeCuir reported that Professional Boxers' Pension Plan contributions totalled \$125,240 for fiscal year 1993-94.

Pursuant to the 1994 Budget Act, the Commission is authorized to spend a total of \$1,042,000 during fiscal year 1994-95, including an estimated \$320,000 for its neurological examination program. The 1994 Budget Act also provided that loans made to the Commission from BAR's Vehicle Inspection Examination Account and the Boxer's Neurological Examination Account pursuant to section 14.00 of the 1992 Budget Act in the amount of

\$168,000 are forgiven. Also, the 1994 Budget Act provided that all revenues collected by the Commission, except those collected for the Boxer's Pension Account and the Disability Insurance Account, shall be deposited into the state's general fund instead of into the Athletic Commission Fund. [14:2&3 CRLR 40]

LEGISLATION

The following is a status update on bills reported in detail in CRLR Vol. 14, Nos. 2 & 3 (Spring/Summer 1994) at page 40:

SB 2036 (McCorquodale), as amended August 26, creates a "sunset" review process for occupational licensing boards within the Department of Consumer Affairs (DCA), requiring each to be comprehensively reviewed every four years. SB 2036 imposes an initial "sunset" review date of July 1, 1997 for the Commission; creates a Joint Legislative Sunset Review Committee which will review the Commission's performance approximately fifteen months prior to its sunset date; and specifies 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 still requires regular "sunset" review of the Commission. This bill was signed by the Governor on September 26 (Chapter 908, Statutes of 1994).

SB 2101 (McCorquodale), as amended July 7, authorizes the Commission to obtain and review criminal history information to determine whether any applicant or licensee has been convicted of or arrested for any offense for which disposition is still pending, and to use that information as grounds to deny an application if they are related to the licensed activity. This bill was signed by the Governor on September 30 (Chapter 1275, Statutes of 1994).

AB 2313 (Cortese), as amended in June 1993, would have authorized the Commission to register and establish recommended minimum safety and equipment standards for all martial arts studios or schools where contact sparring is performed; this bill died in committee.

RECENT MEETINGS

At the Commission's July 15 meeting, Executive Officer Richard DeCuir reported on staff's efforts toward establishing a system of reciprocity with the Nevada State Athletic Commission. [14:2&3 CRLR 39] DeCuir reported that Nevada's practice has been to require boxers to undergo a once-in-a-lifetime physical examination; however, effective January 1, 1995,

Nevada will be requiring annual physical examinations for its boxers. According to DeCuir, staff will continue their efforts to establish reciprocity guidelines for use by both state commissions.

Also at its July meeting, the Commission discussed a promoter's request to sponsor a "toughman competition" in California. According to Commission staff, a toughman competition is a tournament in which each winning competitor advances to a new round until only one undefeated competitor remains; these tournaments are based upon different weight classes and typically include fighters who have no professional experience. Although staff recommended that the request be granted, Supervising Deputy Attorney General Ron Russo expressed doubt about the Commission's legal jurisdiction over such an event. Because the promoter was not present at the July meeting to respond to the Commission's many concerns about such a competition, Commission Chair William Eastman instructed staff to notify the promoter that toughman competitions remain prohibited in California.

Also at the July meeting, staff asked for direction regarding situations in which a boxer is over the contract weight by less than one pound. According to Executive Officer DeCuir, many California contracts provide that if a boxer is one pound over the specified weight, he/she shall lose the weight or forfeit a percentage of the purse; however, no provision is made for boxers who weigh in at less than one pound over the contract weight. According to DeCuir, Commission practice has been to require such boxers to lose the weight or forfeit a percentage of the purse, just as if the boxer exceeded the contract weight by one pound or more. Following discussion, the Commission agreed that staff should prepare and distribute a policy memo to all licensees stating that boxers must weigh in "within one pound" of the contract weight, and that if a boxer is one pound or more over contract weight, he/she has three hours to lose that weight and come within one pound of the contract weight or forfeit a percentage of the purse.

Finally, the Commission unanimously rejected a proposal to exempt promotional tickets which are sold at a discounted price of \$5.00 or less from the \$1.25 neurological assessment fee per ticket; the Commission agreed that such an exemption could severely decrease the revenue base for its neurological examination program.

FUTURE MEETINGS

September 23 in Los Angeles.
November 18 in San Diego.
January 13, 1995 in Orange County.