



REGULATORY AGENCY ACTION

part of the application process at a time and place to be designated by the Commission. At this writing, however, no such notice has been published by the Commission in the *California Regulatory Notice Register*.

LITIGATION

In *Colome v. State of California*, (Nov. 6, 1992), a Los Angeles County Superior Court jury awarded boxer Dio Colome over \$1.2 million in damages after finding that the Athletic Commission-mandated neurological exam was improperly administered to him, resulting in his ineligibility to box in a tournament which many experts expected him to win. After a 35-day trial and six days of deliberation, the jury found that state law requiring the test to be administered by "a licensed physician and surgeon who specializes in neurology or neurosurgery" was violated when the neurologist who was assigned to administer the test to Colome assigned a professor of social work, who speaks Spanish, to administer the mental status portion of the test to the boxer.

The decision represents a staggering blow to the Commission's neurological exam program and its budget. The neurological examination has been the subject of controversy since its 1986 enactment; many critics, including former Commissioner Raoul Silva, contend that the exam is not educationally or culturally sensitive. Although Colome's attorney, Carl Douglas, also alleged that the test is educationally and culturally biased, in spite of the jury's decision, he "doubt[s] whether the state will accept the broader implication of this case, that [the test] is not a valid way of testing boxers of low education levels and those who speak only Spanish." According to Deputy Attorney General Michael Hughes, the state plans to appeal the decision.

RECENT MEETINGS

At its November 20 meeting, the Commission discussed a referee evaluation form and procedure being implemented by its Referee Evaluation Committee; the purpose of the evaluation program is to ensure that referees are in good condition, continue to demonstrate knowledge of the rules and regulations, and demonstrate their general gamesmanship in the ring and ability to protect the fighters at all times. [12:4 CRLR 57] Commission Chair William Eastman inquired whether just one person will be completing the evaluation; whether that person will be assigned by the Executive Officer; and who will review the evaluation. Commissioner Ara Hairabedian reported that these issues

were scheduled to be discussed at an officials' clinic to be conducted in early 1993; at that time, referees would have the opportunity to comment on the proposed evaluation program.

Also at the Commission's November meeting, staff asked for direction regarding boxers who sign a contract to box at a particular show, but due to some reason beyond their control do not appear on that show; according to staff, boxers often arrive for a weigh-in and find that their contracted bout has been canceled. Staff asked that the Commission consider the following: whether boxers should be compensated for items such as their time and effort, mileage, and other expenses if it is not their fault that they do not appear on a show; if boxers are to be compensated, how the figure should be calculated (*e.g.*, whether they should be compensated at a flat rate depending upon the number of rounds contracted); and whether the boxer should be guaranteed that he will appear on that promoter's next event. Staff recommended that, at minimum, boxers should be reimbursed for reasonable expenses such as mileage, lodging, meals, and other appropriate expenses. Commissioner Carlos Palomino was expected to review the issue and make suggestions at a future Commission meeting.

The Commission approved Commissioner Andrew Kim's attempts to open boxing relations with North Korea. Kim reported that he has not yet received a response to correspondence sent to North Korean officials regarding this matter.

FUTURE MEETINGS

June 4 in Sacramento.
July 30 in Sacramento.
September 17 in Sacramento.
November 5 in Sacramento.

BUREAU OF AUTOMOTIVE REPAIR

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Established in 1971 by the Automotive Repair Act (Business and Professions Code section 9880 *et seq.*), the Department of Consumer Affairs' (DCA) Bureau of Automotive Repair (BAR) registers automotive repair facilities; official smog, brake and lamp stations; and official installers/inspectors at those stations. The Bureau's regulations are located in Division 33, Title 16 of the California Code of

Regulations (CCR). The Bureau's other duties include complaint mediation, routine regulatory compliance monitoring, investigating suspected wrongdoing by auto repair dealers, oversight of ignition interlock devices, and the overall administration of the California Smog Check Program.

The Smog Check Program was created in 1982 in Health and Safety Code section 44000 *et seq.* The Program provides for mandatory biennial emissions testing of motor vehicles in federally designated urban nonattainment areas, and districts bordering a nonattainment area which request inclusion in the Program. BAR licenses approximately 16,000 smog check mechanics who will check the emissions systems of an estimated nine million vehicles this year. Testing and repair of emissions systems is conducted only by stations licensed by BAR.

Approximately 80,000 individuals and facilities—including 40,000 auto repair dealers—are registered with the Bureau. Registration revenues support an annual Bureau budget of nearly \$34 million. BAR employs approximately 600 staff members to oversee the Automotive Repair Program and the Vehicle Inspection Program.

MAJOR PROJECTS

Final EPA Rules Require Enhanced Vehicle I/M Programs for Much of California. In 1990, Congress passed amendments to the Clean Air Act requiring, among other things, that states have a centralized or equally effective vehicle emissions inspection and maintenance (I/M) program, as determined by performance standards to be adopted by the federal Environmental Protection Agency (EPA). [12:2&3 CRLR 66] EPA released its draft proposals for those performance standards on July 13, eight months after they were due. [12:4 CRLR 59]

On November 5, EPA published its final rules establishing performance standards and other requirements for basic and enhanced vehicle I/M programs. The final rules include a variety of minor changes from the draft rules based on comments received regarding specific details of the regulatory text; several major changes were also made in response to public comment. First, EPA decided to drop from the rule "provisional equivalency" for test-and-repair programs in enhanced I/M areas; according to EPA, public comment was strongly against this option and state governments made it clear that they saw no way to achieve the performance standard with a test-and-repair system. Second, the final rules allow six additional



months for initial implementation of basic and enhanced I/M programs, since the proposed deadlines would have left insufficient time after final action for states to develop and implement complying programs.

The rules promulgate a two-level system of testing, including a basic system (unchanged from current standards) for less polluted areas and a new enhanced testing regime for serious, severe, and extreme ozone nonattainment areas with urbanized populations of 200,000 or more; carbon monoxide areas that exceed a 12.7 ppm design value with urbanized populations of 200,000 or more; and all metropolitan statistical areas with a population of 100,000 or more in the Northeast Ozone Transport Region. In California, the metropolitan areas which will be required to have the enhanced program include Los Angeles, Long Beach, San Diego, Oxnard-Ventura, San Bernardino-Riverside, Fresno, and Sacramento; the basic testing program has been mandated for most of the remaining areas of California. In total, I/M programs will be required in 181 areas nationwide, 56 of which do not now have I/M programs.

The rules adopted by EPA establish, as part of the enhanced I/M program, a high-tech emissions test able to accurately analyze today's high-tech cars. The test simulates actual driving and allows accurate measurement of tailpipe emissions and evaporative system purge; it can also accurately measure nitrogen oxide emissions. The test reliably identifies vehicles needing repair. According to EPA, the high-tech test is so effective that biennial test programs yield almost the same emission reduction benefits as annual programs. The equipment required for high-tech testing costs about \$140,000 per lane, compared to \$15,000-\$40,000 for today's idle test equipment. The total test time is also longer—10-15 minutes versus about five minutes for today's test.

EPA estimates that a high-tech test in a high-volume system will cost about \$17 per car, including oversight and administration costs; on a biennial basis, however, the cost drops to about \$9 per year. EPA notes that this cost is in line with the average cost of today's programs and is cheaper than many (current average costs are about \$18 for decentralized programs and about \$8 for centralized programs).

States have until November 15 to submit detailed plans for their enhanced testing program.

In a related matter, EPA is expected to grant California a waiver from Clean Air Act requirements sometime in January so the state can move forward with its own

low-emission vehicle program; California requested the waiver in October 1991. California has historically demanded cleaner cars than the rest of the country and, when the first federal clean air standards were enacted in the mid-1960s, it won the right to set tougher standards. Although waivers from federal requirements have been granted routinely since then, the current waiver request was delayed mainly because of opposition from automobile manufacturers, forcing EPA to conduct hearings. Under California's plan adopted by the Air Resources Board, new cars must become progressively cleaner, emitting 50-85% less pollution than current models; in 1998, 2% of cars each manufacturer produces for California must be "zero-emitting" vehicles, most likely electrically powered. The percentage would increase to 5% in 2000 and 10% by 2003. [11:1 CRLR 113]

I/M Review Committee Recommends Restructuring of Smog Check Program. After reviewing EPA's new I/M standards (*see supra*) and their impact on California's Smog Check Program, BAR's I/M Review Committee concluded that a fundamental restructuring of the state's program is warranted. [12:4 CRLR 59] The Committee concluded that although California has made significant strides in reducing harmful vehicle emissions, the current Smog Check Program is not detecting 20-30% of the cars that should fail the test. Among the Committee's major proposals is the creation of a largely centralized program with separate test and repair facilities in the state's most polluted areas; such a system would generally replace the current network of independent test-and-repair stations. Another proposed change would provide that drivers must spend \$450 on repairs before being granted a waiver; currently, repair ceilings in California are set at \$300 for newer cars, and less for older cars. The Committee's proposals are expected to be incorporated into legislation during the 1993-94 legislative session.

Smog Check Sweep Results in 32 Arrests. Following a six-month investigation, BAR investigators, in conjunction with a multi-agency task force, arrested 32 Smog Check Program mechanics and station owners on felony fraud charges for allegedly issuing fraudulent smog certificates; the December 17 action marks the first time BAR has used felony criminal charges in the enforcement of Smog Check standards. BAR contends that the smog check technicians were combining test results from clean automobiles with the serial numbers of potentially dirty cars into their testing systems; BAR estimates

that 80% of the 116,100 smog certificates issued during 1992 by the 24 stations involved were fraudulent. Those arrested were charged with computer fraud and perjury and could face up to three years in state prison on each count. According to BAR Chief Jim Schoning, this enforcement effort "reflects a careful and surgical approach to weed some of the bad apples out of a barrel that also contains a lot of honest people."

Smog Check Exam Requirements Increased. Beginning January 1, all applicants for the Smog Check Program technician examination must now have at least one year of automotive experience or education prior to taking the Clean Air Car Course (CACC). Alternatively, applicants with two or more years of education and/or experience may qualify to take the exam without having completed the CACC. According to BAR officials, the new requirements reflect changing state policy on vocational education.

LEGISLATION

SB8 (Lockyer), as introduced December 7, would—among other things—make it a public offense for any automobile repair dealer or its employees or agents to knowingly offer or give any discount intended to offset a deductible required by a policy of insurance covering a motor vehicle for making repairs to the motor vehicle. [S. Jud]

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.* The newly-created BBC provides for the licensure and regulation of persons engaged in the practice of performing specified acts relating to barbering, cosmetology, and electrolysis. The Board is also 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 consists of nine members, five public and four