



quired may be classified as an infraction punishable by a fine of not less than \$250 and not more than \$1,000. [A. CPGE&ED]

**AB 2593 (Frazee)**, as amended April 21, would provide for the issuance of a "retired architect's license" to an architect who holds an active license upon payment of a specified fee. The holder of such a license would be prohibited from engaging in any activity for which an active architect's license is required. [A. Floor]

**AB 2456 (Klehs)**, as amended May 13, would provide that in the event of damage to residential real property caused by a natural disaster declared by the Governor, if the damage may be covered by insurance, any architect or other person who has prepared plans used for construction or remodeling shall, upon request, release a copy of the plans to the homeowner's insurer, the homeowner, or the duly authorized agent of the insurer or the homeowner, for use solely for the purpose of verifying the fact and amount of damage for insurance purposes. The bill would also prohibit a homeowner or any other person from using any copy of the plans, released for such specified purpose, to rebuild all or any part of the residential real property without the prior written consent of the architect or other person who prepared the plans. In the event prior written consent is not provided, no architect or other person who has prepared the plans who releases a copy of the plans, as required, shall be liable to any person if the plans are subsequently used by the homeowner or any other person to rebuild all or any part of the residential real property. [A. Floor]

**AB 2743 (Lancaster)**, as introduced February 14, would add section 5535.5 to the Business and Professions Code, to provide that it is unlawful for any person, except as specifically excepted in Chapter 3, Division 3 of the Business and Professions Code, to practice architecture or to offer to practice architecture unless at the time of so doing he/she holds a valid unexpired license issued under Chapter 3. [A. Floor]

## RECENT MEETINGS:

At its January 27 meeting in San Luis Obispo, the Board elected Merlyn Isaak, a public member who is a civil engineer, as President, architect Betty Landess as Vice-President, and architect Dick Wong as Secretary.

## FUTURE MEETINGS:

To be announced.

## ATHLETIC COMMISSION

*Executive Officer: Richard DeCuir*  
(916) 920-7300

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 Buchanon, William Eastman, Ara Hairabedian, Bill Malkasian, Jerry Nathanson, Carlos Palomino, and Robert Wilson. Citing health reasons, Commissioner Thomas Thaxter, M.D., resigned his seat in November 1991, leaving one Commission seat open for appointment.

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.

On March 12, the Senate unanimously approved Governor Wilson's appointment of William Eastman to the Commission.

## MAJOR PROJECTS:

**Update on DCA Study of Neurological Examination.** In May 1991, the Commission agreed to have the Department of Consumer Affairs' (DCA) Central Testing Unit (CTU) evaluate the Commission's neurological exam program for boxers, which has recently been the subject of considerable controversy. [12:1 CRLR 44; 11:3 CRLR 60; 11:2 CRLR 55] CTU's research will be completed this summer; the study is expected to be based on the profiles of 2,800 prior examinees, rendering a database with comparative statistics on cultural background, age, and numerous other factors. The results will be used in evaluating the feasibility and

validity of the professional boxers' neurological examination. The program is often opposed by boxing promoters for financial reasons.

**Budget Crisis.** Currently, the Commission is projecting a budget deficiency of over \$34,000 for fiscal year 1991-92. Because of this fiscal crisis, the Commission will seek alternative funding sources and investigate measures to reduce its current spending. At its February 28 meeting, the Commission decided to space its regular meetings seven weeks apart in order to save money; the Commission also voted to pursue an emergency budget change proposal for additional funding for fiscal year 1992-93.

In its *Analysis of the 1992-93 Budget Bill*, the Legislative Analyst's Office (LAO) recommended that legislation be enacted to change the funding source of the Commission's budget from the general fund to a special fund; LAO also recommended that the legislature adopt budget bill language to limit the Commission's expenditures to the revenues collected in 1992-93. According to LAO, the Commission annually receives part of its support from a general fund appropriation. In turn, revenues from various fees collected by the Commission are deposited in the general fund. Fee revenues in excess of the Commission's annual expenditures remain as general fund revenues. However, there is no assurance that the Commission's fee revenues will cover its expenditures fully; any deficit is therefore funded from the general fund. According to LAO, the Commission has required a general fund subsidy every year since 1987-88; for 1992-93, the Governor's Budget proposes a subsidy of \$22,000 for the Commission. LAO opined that the Commission—like other boards that license occupations and professions—should be fully self-supporting from assessments and fee revenues. LAO concluded that there is no analytical basis for the Commission to be subsidized by the general fund, noting that with the general fund available as a back-up to fund any deficit, the Commission has no incentive to live within its revenues and does not have to raise fees to cover expenditure increases, as other boards and bureaus must. At this writing, the legislature has not yet acted on LAO's recommendations.

**DCA Completes Internal Audit of Commission.** On February 10, DCA's Internal Audits Section released its completed fiscal and management audit of the Commission; the audit was performed at the request of the Commission. [12:1 CRLR 44]

The audit revealed that the Commis-



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sion lacks adequate written procedures to administer its rules; this has resulted in the inconsistent application of Commission regulations. DCA recommended that the Commission take the following actions to correct the problems:

- provide Commission staff with minimum administrative written procedures (e.g., the State Administrative Manual and departmental travel guidelines);
- review a detailed analysis of existing rules to determine which rules need further written explanation or procedures;
- develop and implement formal written internal administrative policies and procedures;
- consolidate sensitive approvals (e.g., approval of waiver of knockout rules) under the Executive Officer;
- provide training to the Commission's professional staff emphasizing the importance and necessity of health and safety regulations;
- provide training to all Commission staff on licensing procedures and general administrative policies concerning such issues as overtime, vacation approvals, and travel guidelines;
- implement procedures to quickly recognize and react to emerging issues, such as irregular compensations; and
- rank the priority of its responsibilities to ensure that the most important ones are performed adequately.

The fiscal portion of the audit focused on the feasibility of removing the Commission from the general fund (*see supra*). The audit concluded that the Commission should increase existing revenue sources and investigate new sources of funding, including increases in licensure fees and the gate tax. Since the Commission will experience a deficiency of over \$34,000 in fiscal year 1991-92, the audit recommended that the Commission consider the following options: close its Los Angeles office; shift all staff from Sacramento to the Los Angeles office; reduce staff by eliminating an Assistant Chief Inspector position; or seek additional funding sources. Commission staff noted that the first two suggestions would not reduce the Commission's deficit, and that the third suggestion is being pursued.

In response to the DCA audit and recommendations, the Commission decided at its February 28 meeting to adopt all eight recommendations regarding internal Commission management. The Commission also voted to have Commissioner Nathanson investigate alternative sources of funding to address the current fiscal crisis and the possibility that the Commission may be removed from the general fund. For example, the Commis-

sion may pursue legislation which would place fees on events which are broadcast on cable television.

**Update on Professional Boxers' Pension Plan.** The Commission's pension plan for professional boxers was recently the subject of an audit by the Auditor General. [11:4 CRLR 48, 60] Additionally, the Senate Business and Professions Committee's Subcommittee on Sports held an interim hearing last October on pending legislation which would affect the pension plan. [12:1 CRLR 43] At the hearing, legislators requested that DCA develop recommendations which would increase the accountability of the program and improve the return on investments of monies deposited in the Professional Boxers' Pension Account.

On January 31, DCA responded to this request; because DCA does not employ actuarial staff, its recommendations were limited to alternatives which can be accomplished within the Commission's current statutory and regulatory framework. DCA recommended that the Commission and DCA jointly hold public hearings to solicit alternative proposals to the current pension plan; that the Commission hire a firm with actuarial expertise to analyze the costs and benefits of the current pension plan, as well as any alternatives presented at the public hearings; that the Commission hire a firm with accounting expertise to assist the Commission's software programmer in developing software changes which would allow the Commission to maintain accurate investment records for each boxer; that the Commission submit a deficiency request for the current year and a Finance Letter for the budget year to appropriately fund the Commission's expenses to administer the pension program; and that the Commission obtain statutory authority to establish a continuous appropriation exclusively for the purpose of properly recording refunds and pension payments to eligible boxers.

At its February 28 meeting, the Commission adopted DCA's specific recommendation to transfer all Commission monies held by Aetna's Cash Management Trust to the Pooled Money Investment Fund managed by the State of California, but—due to fiscal reasons—did not commit the funds to annual audits. In addition, the Commission voted to hold a public hearing in April to discuss investment alternatives, and also to discuss overall improvements to the pension plan and whether the Commission should be administering the pension plan. However, that hearing, along with the regular Commission meeting scheduled for April 24, were cancelled due to lack of a quorum.

The Commission plans to reschedule the public hearing to take place on August 7.

**Update of Martial Arts and Kickboxing Rules.** Kickboxing is authorized and regulated by the Commission pursuant to Business and Professions Code sections 18760-18827 and sections 500-545, Title 4 of the CCR. In 1989, the Commission created a Martial Arts Advisory Committee to review these rules and propose changes, but the Committee was disbanded before making any final recommendations; in January 1991, the Commission agreed to appoint a new six-member committee to develop a proposal for regulatory changes to ensure safe and fair competition in the martial arts. [11:2 CRLR 57]

Major areas discussed by the former committee are whether professional kickboxing should be conducted under a different set of rules than amateur kickboxing; whether martial arts should be regulated as a single sport or separated by the various martial arts forms; whether modifications should be made to weight classifications; types of kicks to be allowed; the applicability of the Professional Boxers' Pension Fund to kickboxers; whether protective equipment should be required; amateur round time limits; skill requirements for kickboxing referees; glove sizes; and purse amounts (if any).

At the Commission's February 28 meeting, Commissioner Buchanon listed three objectives in continuing the work of the advisory committee: ensuring the health and safety of the participants; promoting kickboxing as a sport in California; and pursuing funding sources for regulating this field. The Commission voted to allow David Kee to assist Commissioner Buchanon in the process of gathering members for the new advisory committee. Upon submission of final recommendations from the new advisory committee, the Commission will hold public hearings to receive input from both the public and the various sanctioning bodies and will pursue appropriate regulatory revisions.

**Regulatory Changes.** At this writing, the Commission's proposed amendments to sections 312, 345, and 401, Title 4 of the CCR, still await review and approval by the Office of Administrative Law (OAL). [12:1 CRLR 44] The proposed amendment to section 312 would increase the number of ring ropes from three to four and specify that the fourth rope shall be 54 inches above the floor. The proposed amendment to section 345 would require that a mandatory time-out be called whenever the ringside physician examines a boxer. In March, DCA rejected the



Commission's proposed amendment to section 401, which would provide that a boxer's contributions to the professional boxers' pension plan shall begin once the boxer's total purse exceeds \$5,000 per calendar year (instead of \$1,500 per year, as section 401 currently reads). Commission staff plans to submit the changes to sections 312 and 345 to OAL within the next few weeks, and return the changes to section 401 to the Commission for review and possible revision.

At its January 17 meeting, the Commission voted to include the repeal of regulations concerning professional wrestling (with the exception of those rules implementing Business and Professions Code section 18825 pertaining to the collection of state tax) in the Commission's 1992 rulemaking calendar; professional wrestling was statutorily deregulated in California in 1989. [9:4 CRLR 43]

#### LEGISLATION:

**SB 2044 (Boatwright)**, as amended April 2, would declare legislative findings regarding unlicensed activity and authorize all DCA boards, bureaus, and commissions, including the Athletic Commission, to establish, by regulation, a system for the issuance of an administrative citation to an unlicensed person who is acting in the capacity of a licensee or registrant under the jurisdiction of that board, bureau, or commission. [A. CPGE&ED]

The following is a status update on bills reported in detail in CRLR Vol. 12, No. 1 (Winter 1992) at page 44:

**AB 649 (Floyd)** would provide that participation in the existing pension plan for professional boxers who engage in boxing contests in California is voluntary instead of mandatory. [S. B&P]

**AB 647 (Floyd)** would, among other things, delete existing licensure requirements for ring announcers and delete the Commission's authority to license doormen, ushers, and booking agents. [S. B&P]

**AB 648 (Moore)** proposes to make various revisions to existing law regarding the neurological examinations required by the Commission, including deleting existing law which provides that the cost of required neurological examinations shall be paid from assessments on promoters of professional boxing matches in California and deleting the existing authority for the Boxers' Neurological Examination Account in the General Fund. [S. B&P]

The following bills died in committee: **AB 672 (Polanco)**, which would have, among other things, required any Commission representative to be admitted to

any place where a telecast of any current, live, or spontaneous contest or exhibition is shown or exhibited or to be shown or exhibited; **AB 699 (Polanco)**, a Commission-sponsored bill that would have, among other things, authorized the Commission to order a boxer or martial arts fighter to take a chemical test before or after a contest for the detection of substances which are prohibited under rules adopted by the Commission; and **AB 2133 (Polanco)**, which would have defined a booking agent to mean any person who books a licensed professional boxer or martial arts fighter to fight in a contest inside or outside of California.

#### RECENT MEETINGS:

At the Commission's January 17 meeting, Commissioner William Eastman was unanimously elected as Chair for 1992; Commissioner Willie Buchanon was elected to the position of Vice-Chair.

Also at the January meeting, former Commissioner Thomas Thaxter, M.D., testified during the public comment period concerning his support for a valid neurological exam which is predictive of possible chronic brain damage in boxers. Dr. Thaxter urged the Commission not to take any action to eliminate the boxers' neurological exam before receiving the results of the independent study which is being conducted by DCA. (See *supra* MAJOR PROJECTS.)

Also at the January meeting, the Commission decided to require a fingerprint card, photo identification, and a "rap sheet" request form on all new promoter, matchmaker, and manager applications. The Commission is authorized to collect fingerprints from applicants pursuant to Business and Professions Code sections 18665 and 18660. Currently, section 211, Title 4 of the CCR, requires that two sets of fingerprints be submitted by applicants for licenses from the Commission. Additionally, the Commission took action to have staff prepare and distribute information sheets in "layman's terms" to new licensees concerning their statutory and regulatory responsibilities.

At its February 28 meeting, the Commission discussed the establishment of protocols on various issues related to Commissioners' attendance at boxing events. Additionally, the Commission discussed the fact that Commissioners must report complimentary tickets which are in excess of \$50; failure to report such tickets is a violation of Government Code section 83116 and may subject the violator to administrative action by the Fair Political Practices Commission, which can levy a fine of up to \$2,000 per violation. In order

to facilitate compliance with this law, promoters will be required to give the Commission a year-end accounting of complimentary tickets issued to all Commission members, guests, and staff.

The Commission also took action to implement its drug and alcohol policy by directing staff to draft a regulation requiring boxing license applicants to take a drug test as part of the pre-licensure process. The Commission also discussed the possibility of seeking statutory authority to conduct random drug testing, but took no action on this issue. Finally, the Commission discussed—but did not take action regarding—the rules which apply when a contestant in a title fight tests positive for drugs after the fight. Instead, the Commission decided to continue handling such situations on a case-by-case basis using the present regulatory framework.

The Commission also discussed whether California should have a standing eight count rule in boxing matches. Currently, a referee stops a bout when necessary and gives an eight count only when the contestant is knocked to the ground. Other jurisdictions allow a referee to stop a bout and count to eight where a boxer is standing but dazed and possibly helpless. Historically, the Commission's position has been that a standing eight count actually allows a boxer to take more of a beating than if the bout had been stopped earlier, because boxers may use the standing eight count to "catch their breath." Following a discussion and review of other states' policies, the Commission decided not to adopt a standing eight count.

In January, Commissioner Nathanson had requested that the Commission discuss, at its next regular meeting, seeking legislation to remove the Commission from DCA and establish it as an independent agency. Additionally, Nathanson requested that the Commission discuss seeking a constitutional measure to abolish the Commission in light of the extreme budget constraints faced by the Commission. He stated that "[t]he Governor and his Department of Consumer Affairs are not giving this Commission sufficient funds to execute our responsibility. Rather than jeopardize a fighter's economic health or physical safety, boxing should be abolished in the State of California." However, at the February 28 meeting, Commissioner Nathanson did not want to discuss these agenda items in light of the Commission's decision to seek new or alternative funding sources; since none of the other Commissioners wanted to discuss them either, the items were dropped from the agenda.



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The Commission's April 24 and May 17 meetings were cancelled and rescheduled to August 7.

### FUTURE MEETINGS:

September 25 in Sacramento.

November 20 in Sacramento.

January 15 in Sacramento.

### BUREAU OF AUTOMOTIVE REPAIR

Chief: James Schoning

(916) 366-5100

Toll Free Complaint Number: 1-800-952-5210

Established in 1971 by the Automotive Repair Act (Business and Professions Code sections 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.

Under the direction of Chief James Schoning, the Bureau is assisted by a nine-member Advisory Board which consists of five public and four industry representatives. The terms of three of the Advisory Board members—Herschel Burke, Vincent Maita, and Alden Oberjuege—

expired in June 1991; they remain on the Board until replacements are appointed. The other Advisory Board members are William Kludjian, Jack Thomas, Carl Hughett, Joe Kellejian, Louis Kemp, and Gilbert Rodriguez.

On March 19, the Senate confirmed Governor Wilson's appointment of Jim Schoning as Chief of BAR.

### MAJOR PROJECTS:

**BAR Implements Tijuana Smog Check Pilot Program.** In an effort to assist the Tijuana government in bringing some of that area's automobiles into compliance with California Smog Check standards, BAR began a pilot Smog Check program in Tijuana in mid-March. A committee consisting of staff from BAR, the Air Resources Board (ARB), the South Coast Air Quality Management District, the U.S. Environmental Protection Agency (EPA), and the Secretaria De Desarrollo Urbano y Ecologia (the Mexican government's equivalent of the EPA) developed the project which, in its first stage, will target government-owned vehicles. According to BAR Deputy Chief Amparo Garcia, the objective of the program is to help the Tijuana government crack down on automobile pollution, which in turn will help southern California's air quality problem. Upon successful completion of the pilot stage, the full program is expected to be implemented, focusing on vehicles registered in Mexico that are driven into southern California on a daily basis. During March, numerous Mexican technicians participated in training consisting of theoretical as well as hands-on experience. Manufacturers are lending the Mexican government three BAR-90 test analyzers for use during the pilot project.

**Clean Air Act Update.** The Clean Air Act Amendments passed by Congress in 1990 require states to have a centralized or equally effective Inspection/Maintenance (I/M) program as determined by performance standards to be adopted by the EPA. [12:1 CRLR 45] While it is anticipated that significant changes will have to be made to California's Smog Check Program, the direction those changes will take is still uncertain. At this writing, EPA's draft performance standards, originally scheduled for release last November, have not been published.

At the Advisory Board's February 21 meeting in San Diego, Richard Sommerville, Chair of BAR's I/M Review Committee, described the Committee's purposes and progress. He stated that California's I/M program is at a crossroads until EPA releases its performance standards. The Committee anticipates that the

federal government will require loaded-mode testing which, as a matter of economics, would most likely require conversion of California's decentralized program into a centralized program. One possible solution would be to separate the testing and repair functions of the program, with the testing portion under contract to the state. Members of the auto repair industry are opposed to centralizing the program, claiming such a move would put many of them out of business. Somerville noted that the machinery the federal government is advocating for use would cost individual stations over \$150,000, whereas the BAR-90 test analyzer used by California stations now costs between \$14,000-\$15,000. Somerville said that there may be room to integrate the BAR-90 analyzer into whatever total approach is eventually adopted.

**Fee Increases Approved.** In January, BAR held public hearings on its proposal to amend section 3351.1, Division 33, Title 16 of the CCR. The amendments increase BAR's registration and renewal fee for automotive repair dealers from \$100 to \$200 for each place of business in the state. The amendments also specify a \$50 late renewal fee for registrations not renewed on a timely basis. [12:1 CRLR 46] According to BAR, the increases are needed in order to effectively administer the Automotive Repair Act; registration and renewal fees have not increased since 1982. Surprisingly, the amendments were not met with any opposition at the hearings. The amendments, which have an effective date of July 1, were approved by the Office of Administrative Law (OAL) on March 11.

**BAR Proposes New Rulemaking Package.** In early March, BAR announced its intent to amend sections 3303, 3340.15, 3340.16, 3340.16.5, 3340.17, 3340.22.2, 3340.22.3, 3340.30, 3340.32, 3340.41, 3372.1, and 3373, and adopt new section 3340.22.3, Title 16 of the CCR.

The proposed amendments to section 3303 would delete existing language stating that vehicles of 10,000 pounds gross vehicle weight or greater are rebuttably presumed to be commercial vehicles.

Section 3340.15(d) requires that Smog Check station licenses, inspector licenses, and qualified mechanic certificates be posted prominently in an area frequented by customers. BAR proposes to amend this section to require that such licenses or certificates be displayed under glass or other transparent material. Proposed amendments to sections 3340.16 and 3340.16.5 would make clarifying, technical revisions. The proposed amendments