



in attendance at a match at the Commission's direction and those appointed by a club or the Commission to perform any examination of boxers; and (2) provide that the Commission shall assign the physician who attends a boxing match or exhibition. Some Commission-appointed physicians have terminated their contracts with the state because their malpractice insurance carriers do not provide coverage for examinations of professional athletes. These amendments provide Commission-appointed attending and examining physicians with the rights of representation and immunities provided to public employees under the Government Tort Claims Act, Government Code section 820 *et seq.* At this writing, Commission staff is preparing the rulemaking package on this regulatory change for submission to the Office of Administrative Law.

**Senate Oversight Hearings.** On October 25, the Senate Business and Professions Committee conducted an oversight hearing on the Department of Consumer Affairs and selected boards, including the Athletic Commission. The Committee requested information on the Commission's plans to implement SB 599 (Montoya) (which requires the reporting of injuries and knockouts which occur outside Commission-sanctioned events, and allows the Commission to establish standards for evaluating a professional boxer's ability) and the impact of deregulation of professional wrestling under AB 1040 (Floyd). (See CRLR Vol. 9, No. 4 (Fall 1989) p. 43 and Vol. 9, No. 3 (Summer 1989) p. 49 for background information.) Implementation of SB 599 may be problematical for the Commission, because its budget change proposal for \$47,000 to assure compliance with SB 599 was denied. All requests for increases from the general fund were denied because of the earthquake damage in northern California. The Commission's response to AB 1040 and its deregulation of professional wrestling is discussed below.

**Joint Meeting With Nevada Athletic Commission.** On October 20, the Commission held a joint meeting with the Nevada Athletic Commission in South Lake Tahoe to foster cooperation and uniformity between the two states. Several rules and policies were discussed. First, California is considering the adoption of Nevada's rule requiring each boxer to have an extra mouthpiece

at the fight. Nevada is considering the adoption of California's rule that it is a foul for a boxer to intentionally spit out his mouthpiece, and the referee has authority to decide whether to disqualify the boxer. Second, the commissions discussed drug policy and testing procedures. Drug testing appears to be similar in both states, with one exception. Nevada requires that fighters test negative for HIV; California law, however, prohibits HIV testing as a condition of employment, or in this case licensure. Regarding reciprocity, both states honor each other's medical and other suspensions and disciplinary actions.

**Deregulation of Wrestling.** AB 1040 (Floyd) was signed by the Governor and, except for the 5% tax on the gross sales of all professional wrestling matches, completely deregulates professional wrestling as of January 1, 1990. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 43 and Vol. 9, No. 3 (Summer 1989) p. 49 for background information.) The Commission will have to repeal and amend several of its regulations to comply with the statutory changes.

The Commission feels that complete divestiture by the legislature of its regulation of wrestling—a program originally created by the initiative process—may raise constitutional problems. As a result, the Commission has instructed its athletic inspectors to keep accurate records of their observations at each wrestling show and to keep a complaint log. At its December 15 meeting, the Commission voted to submit a budget change proposal to secure funds to challenge the new law.

**Martial Arts Committee.** At its November 17 meeting, the Commission appointed an advisory committee for two years pursuant to section 18769 of the Business and Professions Code. The committee was appointed to help the Commission formulate rules and regulations to assure safe and fair competition in the martial arts, as no consensus currently exists on how martial arts contests should be conducted. The committee, which is composed of nine members experienced in the martial arts, began its duties on December 1. The members are: Tony Thompson, Rebecca Byrne, Dan Rodarte, Sman Tonyala, Nelson Hamilton, Howard Hanson, James Wong, George Yoshinaga, and Greg Hampton.

#### RECENT MEETINGS:

At its meeting on October 20 in

South Lake Tahoe, the Commission reported that the Los Angeles County Superior Court refused to grant Gerardo Velazquez's petition for a writ of mandate on his claim to the California Junior Welterweight Title; and reaction to its new policy of withdrawing from boxing organizations which sanction championship contests has been minimal. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 44 for background information.)

Also at the October meeting, the Commission granted a boxing license to Trevor Berbick, a boxer over the age of 36, provided he completes the application process. Berbick has a ring record of 31 wins (23 by knockout), five losses, and one draw.

At its December meeting in Sacramento, the Commission restated its policy on the receipt of free tickets to boxing and martial arts events by commissioners. Tickets received by Commission members and staff for their own use are not reportable as gifts. However, extra tickets received for guests and worth more than \$50 must be reported on annual conflict of interest reports. Promoters determine ticket value by the price for ringside seats at each event. If a commissioner receives more than \$250 worth of tickets from a promoter in a calendar year, that fact must be disclosed before that commissioner may vote on a matter involving that promoter.

#### FUTURE MEETINGS:

April 20 in Sacramento.  
May 18 in San Diego.  
June 15 in Los Angeles.  
July 20 in San Francisco.  
August 17 in Los Angeles.  
September 21 in San Diego.

#### BUREAU OF AUTOMOTIVE REPAIR

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Established in 1971 by the Automotive Repair Act (Business and Professions Code sections 9880 *et seq.*), the 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



## REGULATORY AGENCY ACTION

are located in Chapter 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 25,000 smog check mechanics who will check the emissions systems of an estimated six million vehicles this year. Testing and repair of emissions systems is conducted only by stations licensed by BAR.

Approximately 130,000 individuals and facilities—including 39,800 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 John Waraas, the Bureau is assisted by a nine-member Advisory Board which consists of five public and four industry representatives. They are Herschel Burke, Carl Hughett, Joe Kellejian, Louis Kemp, William Kludjian, Vincent Maita, Alden Oberjuerge, Gilbert Rodriguez, and Jack Thomas.

### MAJOR PROJECTS:

**SB 1997 Implementation.** SB 1997 (Chapter 1544, Statutes of 1988) became effective on January 1, 1990. (See CRLR Vol. 8, No. 4 (Fall 1988) pp. 44-45 for background information.) In order to comply with the legislative mandate, BAR has implemented many changes to the Smog Check Program. First, many motor vehicles that had previously been exempt from biennial smog testing will now be subject to such inspections. All model-year cars from 1966 to the present must now be biennially inspected; under pre-SB 1997 law, cars older than twenty years were exempt from the program. Also, the weight exemption has been repealed; thus, all gas-fueled vehicles, regardless of weight, will be subject to the pro-

gram. Owners of heavy-duty gas-powered vehicles (vehicles weighing 8,500 pounds) will be required to completely restore equipment without regard to cost limitations. This will affect truck, service van, motorhome, and schoolbus operators. Similarly, all vehicles powered by liquid petroleum gas, compressed natural gas, or methanol are required to be tested. Thus, many more vehicles are subject to BAR's Smog Check Program as of January 1, 1990.

SB 1997 also changed the repair cost limitations allowed by law. Previously, if a car failed a Smog Check inspection, and if that car could not be repaired at a cost less than \$50 so that it would pass the test, the Smog Check certificate could be waived. Under the new law, waivers may no longer be issued if emissions cannot be reduced sufficiently to pass inspection. Waivers are likewise unavailable if functional failures exist which cannot be repaired within the cost limits. Also, a significant increase in the allowable repair cost limits took effect on January 1. For vehicles manufactured from 1966 through 1971, the repair cost limit remains \$50. For vehicles built between 1972 through 1974, the repair cost limit increases to \$90. As for model year vehicles 1975 through 1979, the repair cost limit jumps to \$125. For vehicles manufactured during the 1980s, the new repair cost limit is \$175. And for vehicles of model year 1990 or newer, the repair cost limit as of January 1 is \$300.

Another significant feature of SB 1997 is the requirement that BAR adopt equipment standards for test analyzer equipment. Toward that end, BAR has required that the new BAR-90 test analyzer systems be operational by July 1, 1990, and each Smog Check station will be required to use this equipment when conducting emissions testing. (See CRLR Vol. 9, No. 2 (Spring 1989) p. 47 for background information.) Eight firms are currently building prototypes of the BAR-90 system. Two prototypes are in fact finished and are now subject to agency testing, although none is yet commercially available. BAR estimates that the cost for each Smog Check station to acquire this equipment will be between \$13,000-\$20,000.

SB 1997 has a few other effects on BAR's Smog Check Program as well. First, BAR implemented the new two-tiered mechanic testing program as a result of the new law. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 44 for background

information.) Also, BAR instituted a new fee schedule for licensing Smog Check stations, mechanics, and inspectors. Finally, new areas will be brought into the biennial program as of July 1, 1990. These areas are the counties of Merced, San Luis Obispo, Santa Barbara, and Stanislaus, the remaining portions of Los Angeles and Kern counties, and the Coachella Valley part of Riverside County.

**Regulatory Changes.** Following several public hearings throughout September, BAR adopted numerous proposed regulatory changes to implement SB 1997; these changes revise Article 5.5, Chapter 33, Title 16 of the CCR. (See CRLR Vol. 9, No. 4 (Fall 1989) pp. 44-45 for a detailed description of these amendments.) However, BAR declined to adopt new section 3372.2 regarding the advertising of "lubrication" services, due in part to industry opposition to BAR's definition of "lubrication." BAR submitted these regulatory changes with some minor modifications to the Office of Administrative Law (OAL) in late December, and currently awaits OAL's decision.

**Certification of Third Party Dispute Resolution Processes.** On September 14, BAR's Arbitration Review Program (ARP) submitted to OAL proposed regulations which would establish standards to determine whether a third party dispute resolution process used for the arbitration of new car warranty disputes is in substantial compliance with various provisions of the Song-Beverly Consumer Warranty Act. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 45; Vol. 9, No. 3 (Summer 1989) p. 39; and Vol. 9, No. 2 (Spring 1989) p. 47 for background information.) The proposed regulations include standards requiring manufacturers to disclose the existence and purpose of the arbitration program. The disclosure must also notify the consumer that he/she has the option of rejecting the arbitrator's decision and may go to court, but that should the consumer accept the decision, it will be binding on the manufacturer. The regulations would also establish standards designed to ensure that the arbitration is decided fairly and impartially, and establish a procedure for certifying arbitrators.

However, OAL rejected the regulations on October 16 for a variety of reasons. First, some of the required documents were incomplete; specifically, a description of the problem that each reg-



ulation is designed to address and a statement of the specific purpose of each adoption or amendment were missing from the rulemaking file. Secondly, ARP failed to summarize and respond to all public comments. Finally, ARP failed to comply with the necessity, consistency, and clarity standards of Government Code section 11349.1.

ARP revised the rulemaking package and resubmitted it to OAL on December 4. OAL's decision is currently pending.

**Federal Clean Air Legislation.** Recently, the environment subcommittee of the U.S. House of Representatives' Energy and Commerce Committee unanimously passed a proposed amendment to the federal Clean Air Act which would adopt California's auto emission standards and apply those standards to the entire nation. Representative Henry Waxman's office expects the provision to easily pass through the full committee, whereupon it will be sent to the House floor. Although this measure is still subject to amendment, if passed and signed into law in its present form, enforcement of auto exhaust standards would shift to the federal Environmental Protection Agency. As a result, the jurisdiction of BAR and other California agencies over auto emissions would be diminished.

## LEGISLATION:

The following are two-year bills and will be pursued in the 1990 session:

**AB 2532 (Vasconcellos)** would require the use of BAR-approved refrigerant recycling equipment in servicing air conditioners with chlorofluorocarbon (CFC) refrigerants. The bill would also require BAR to establish and enforce procedures regarding the installation and use of that recycling equipment and to certify people trained to use such equipment. This bill is pending in the Senate Rules Committee.

**SB 787 (Rosenthal)**, which would authorize a state-certified third party arbitration process for used cars and require BAR to establish regulations, forms, and minimum standards for implementing the program, is pending in the Senate Committee on Insurance, Claims, and Corporations.

**SB 155 (Leonard)**, which would impose an additional tax on specified motor vehicle fuels at designated rates, based on whether the fuel meets specified standards, is pending in the Senate Transportation Committee.

**AB 1718 (Hayden)**, which would

require BAR to establish and administer procedures for the installation and use of refrigerant recycling equipment and to certify businesses and persons who are trained to use such equipment, is pending in the Senate Committee on Natural Resources and Wildlife.

**AB 2025 (Farr)**, which would extend operation of the ignition interlock program in specified counties until January 1, 1994, is pending in the Senate Judiciary Committee.

**AB 2036 (Speier)**, which would permit any county in a nonattainment area to impose a \$1 surcharge on the fee for the issuance of a certificate of compliance with the Smog Check Program, and would require the surcharge to be allocated to the county's transportation planning agency, is pending in the Senate Transportation Committee.

**AB 2040 (Farr)**, which would require BAR to work with the Office of Traffic Safety in designating stations for the installation of ignition interlock devices and to establish standards for manufacturers of those devices, is pending in the Senate Judiciary Committee.

**AB 2404 (Connelly)**, which would prohibit on or after January 1, 1992, the sale or offer for sale of CFC coolants suitable for use in mobile air conditioners in containers smaller than fifteen pounds, is pending in the Assembly Natural Resources Committee.

**AB 292 (Floyd)**, which would eliminate the requirement that the Air Resources Board find by resolution that certain modifications of pollution control devices are not prohibited, is pending in the Assembly Transportation Committee.

**SB 1429 (Green)**, which would expand the ignition interlock program to eight counties and extend the program termination date to January 1, 1992, is pending in the Assembly Public Safety Committee.

## RECENT MEETINGS:

On November 3, the Advisory Board heard a presentation on BAR's enforcement program at its meeting in Palm Springs. BAR intentionally removes or tampers with major components of the smog control systems on its undercover cars such that the cars should fail a smog check inspection. Then the cars are tested at Smog Check stations. In 1984, approximately 75% of such undercover cars "passed" inspection. In recent years, however, the percentage of undercover cars which "pass" has

dropped to 25%. This indicates that the enforcement program has achieved its objective of inducing Smog Check stations to test cars accurately.

Additionally, a representative from the Bureau of Electronic and Appliance Repair (BEAR) spoke on car cellular telephone installation and repair. At present, no state or federal laws regulate the installation or sale of cellular phones. While some installers are currently registered with BEAR, BAR has not taken up this issue yet, but may do so during the next legislative session.

BAR's new publicity campaign was highlighted. In San Bernardino, Riverside, Orange, and Los Angeles counties, BAR conducted a media blitz to focus attention on its Smog Check Program via radio spots and informational events in local shopping malls.

The Assembly Committee on Environmental Safety and Toxic Materials held an interim hearing on October 24 regarding mobile air conditioners (MACs) using CFCs as refrigerants. The hearing served as the backdrop for a discussion of the latest CFC issues. Safe substitute coolants and alternative MACs exist but are not yet commercially viable. DuPont has come up with an alternative coolant known as HFC 134a, but it is still in the testing stage. Also, HFC 134a cannot be used until MAC manufacturers redesign their systems to accommodate the substance. Finally, it is not yet known whether HFC 134a will alleviate the greenhouse effect that MAC coolants are believed to exacerbate.

## FUTURE MEETINGS:

To be announced.

## BOARD OF BARBER EXAMINERS

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In 1927, the California legislature created the Board of Barber Examiners (BBE) to control the spread of disease in hair salons for men. The Board, which consists of three public and two industry representatives, regulates and licenses barber schools, instructors, barbers, and shops. It sets training requirements and examines applicants, inspects barber shops, and disciplines violators with licensing sanctions. The Board licenses approximately 22,000 barbers, 5,000 shops, and 20 schools.