



pending in the Senate Business and Professions Committee.

The following is a status update on bills reported in CRLR Vol. 10, No. 1 (Winter 1990) at page 54:

AB 1005 (Frazee) was signed by the Governor on May 16 (Chapter 94, Statutes of 1990). As amended March 29, the bill requires an architect to affix a stamp bearing, among other things, the architect's name, license number, the term "licensed architect," and the renewal date of the license, on plans and documents in lieu of noting his/her license number. Also, this bill makes it unlawful for any unlicensed person to use the stamp of a licensed architect or a stamp or seal which bears the legend "State of California" or words or symbols that indicate that he/she is licensed by the state on plans or documents for buildings or structures that are submitted to a governmental entity for approval or for the issuance of a permit.

SBX 16 (Roberti) and **ABX 24 (Eastin)** are twin bills aimed at preventing the victimization of persons suffering property damage in the October 1989 Loma Prieta earthquake, by making offenses by unlicensed architects, engineers, or contractors punishable as either a misdemeanor or a felony, as specified. **SBX 16**, amended January 4, is pending in the Senate Appropriations Committee. **ABX 24** was dropped by its author and reintroduced by Assemblymember Epple as **ABX 9**. The new bill has the same prohibitive language as **ABX 24** had, but additionally proposes to double the amounts of fines which may be imposed for certain offenses under those circumstances, require the defendant to make full restitution subject to the defendant's ability to pay, add a one-year enhancement where the offense is a felony and the defendant has a prior felony conviction of such an offense, and require probation of at least five years or until restitution is made. This bill was amended on May 8, and is currently pending in the Senate Appropriations Committee.

SBX 46 (Lockyer) would provide that an architect or engineer who voluntarily, without compensation or expectation of compensation, provides structural inspection services at the scene of a declared national, state, or local emergency caused by a major earthquake at the request of a public official, public safety officer, or city or county building inspector acting in an official capacity, shall not be liable in negligence for any personal injury or property damage caused by the good faith but negligent inspection of a structure used for habitation or owned by a public entity for

structural integrity or nonstructural elements affecting health and safety. This immunity would apply to inspections within 90 days of the earthquake, and would not apply to gross negligence or willful misconduct. This bill is pending in the Assembly Judiciary Committee.

AB 1789 (Cortese), which would give architects, engineers, and land surveyors a specified design professional's lien on real property for which a work of improvement is planned, and for which a specified governmental approval is obtained, is pending in the Senate Committee on Insurance, Claims and Corporations.

RECENT MEETINGS:

At its January 27 meeting, BAE conducted elections for the positions of Board President, Vice-President, and Secretary. Against the advice of legal counsel, a secret ballot was taken for the position of Secretary. The secret ballot constitutes a violation of the Bagley-Keene Open Meetings Act, which was brought to the Board's attention by the Center for Public Interest Law. At its May 15 meeting, the Board reconfirmed its election of officers during the open session of the meeting.

Members of the Nevada State Board of Architecture attended the Board's May 15 meeting. Various comity and WCARB issues were discussed, and BAE was briefed on the activities of the Nevada Board and Nevada law affecting architects.

Also in May, BAE discussed whether licensure candidates will be allowed to receive credit for passing portions of the ARE administered in Canada. The Board decided that the Canadian ARE exam is not equivalent to the ARE administered by California, and adopted the resolution of its Examination Committee not to grant BAE credit, at this time, to candidates who take the Canadian ARE.

BAE also discussed the issue of mandatory continuing education as a requirement for maintaining NCARB certification. Historically, the Board has supported voluntary continuing education because of its belief that there are significant incentives for architects to participate in continuing education without additional Board strictures. However, the Board has recognized that all states might not be similarly situated regarding this issue. The Board adopted no resolution regarding this subject at the meeting.

FUTURE MEETINGS:

September 17 in San Diego (tentative).

ATHLETIC COMMISSION

Executive Officer: Ken Gray
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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 Chapter 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 Bill Malkasian, Raoul Silva, Ara Hairabedian, P.B. Montemayor, M.D., Jerry Nathanson, Thomas Thaxter, M.D., Charles Westlund, and Robert Wilson.

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:

Commission's Drug Testing Policy Assailed. The Commission has recently been the object of complaints and news stories criticizing its failure to inform boxers and managers of banned medications and for its weak program of testing for the use of illegal drugs. Thus, at its May meeting, the Commission discussed a proposal to create an enhanced drug testing program, which would include random testing for performance-enhancing drugs and license revocation after a third offense. The Commission's legal counsel warned that, while the Commission may test a boxer for drugs when there is a reasonable suspicion of drug use, random drug testing authority must be authorized by statute; further, the Commission must seek additional funding to finance the drug testing program. The Commission will continue to discuss this matter at future meetings.



Neurological Examination Program. Due to dramatic increases in the number of boxers taking the neurological and follow-up examinations and the cost of the exams themselves, the Commission's neurological examination fund is insufficient. (See CRLR Vol. 9, No. 3 (Summer 1989) p. 38 and Vol. 9, No. 1 (Winter 1989) p. 38 for background information.) For five years, these examinations have been funded by a \$1 per ticket assessment from promoters. At its January meeting, the Commission—by a slim majority—voted to temporarily increase the neurological assessment to the promoter by \$1 per ticket. The Commission subsequently sought legislation to assess the cost of the neurological examination program through licensure fees; the Commission could then allocate the examinations' cost to certain classes of licenses at its discretion. However, that legislation has been dropped by its author.

At its February meeting, the Commission discussed a recent event which prompted a reevaluation of its neurological exam program. Raul Perez, World Boxing Council Bantamweight Champion, was scheduled to defend his title on January 22, 1990. Prior to the bout, Perez failed two neurological examinations. After repeated telephone calls to the Commission, Perez was permitted to retake the examination, given by the same neurologist who administered the prior tests; Perez was a borderline pass. The Commission expressed concern that Perez may not have been fit to fight and that pressure may have been applied to the neurologist to pass him.

To review the entire program, the Commission created the Neurological Program Review Committee, chaired by Commissioner Thaxter. Committee members are Commissioners Montemayor, Silva, and Malkasian, and Joe Gagliardi, president of the California Boxing Promoters Association.

At the February meeting, the Commission also stated its interim position that a boxer will be allowed to take one neurological examination. Upon failure, the boxer may take one neuropsychological examination; if he fails that exam, he should not be permitted to box in California.

Conflict of Interest Policy. At its February meeting, the Commission stated its policy that any person holding a license issued by the Commission will not receive an assignment as an Athletic Inspector. The policy responds to the actions of Joseph Robledo, an Athletic Inspector and licensed second, who was fined \$100 for violating regulations prohibiting excessive coaching and abuse

of a referee. The purpose of the policy is to end problems encountered over the past several years, where actions of Athletic Inspectors also licensed as matchmakers, managers, second, or timekeepers were not appropriate or were in conflict with the duties and responsibilities of Commission employees.

Deregulation of Wrestling. As of January 1, 1990, professional wrestling was completely deregulated through AB 1040 (Floyd). (See CRLR Vol. 10, No. 1 (Winter 1990) p. 55; Vol. 9, No. 4 (Fall 1989) p. 43; and Vol. 9, No. 3 (Summer 1989) p. 49 for background information.) The Commission actively opposed the bill, and believes that complete divestiture by the state legislature of wrestling regulation—a program created by the initiative process—may raise constitutional problems. The Commission requested legal representation from the state Attorney General to challenge the statute in court, but was refused. The Commission now plans to prepare a budget change proposal to obtain funds to retain its own counsel to challenge the validity of the new statute.

Promotional Contracts Drafting Committee. Under existing law, a promoter may not have a financial interest in a boxer, and any agreement or contract between a boxer and a promoter is void and unenforceable unless it is in writing and approved by the Commission. For several months, the Commission and its legal counsel have been conferring with promoters in an attempt to develop a model promotional contract, a draft of which was reviewed by the Commission at its May meeting in Sacramento. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 43 for background information.) The proposed contract contains the following stipulations: the boxer may be held by a promoter for a period of up to three years; promoters must provide a full accounting to boxers and to the Commission, if requested; the boxer may come to the Commission for arbitration if he feels the contract is unfair; and the Commission must approve all contracts to ensure they are not unconscionable. The Commission approved the model promotional contract presented at the May meeting.

Pension Plan Review Committee. At the April meeting, the Commission's Pension Plan Review Committee, comprised of Commissioners Montemayor and Wilson, stated that there are problems with the boxers' pension plan, and recommended dropping the plan entirely or investing the plan's funds in higher-yield investments. Existing provisions of the Business and Professions Code

establish the pension plan for boxers, and provide for contributions to the plan by boxers, managers, and promoters. The fund was statutorily enacted, and an act of the legislature is required to modify it. Assemblymember Cortese has requested that the Auditor General review the pension plan (*see infra* LEGISLATION).

Regulatory Changes. At its February 16 meeting, the Commission approved amendments to section 220 of its regulations, which permits the Commission to approve contracts not on its printed form, if entered into in another jurisdiction, without requiring that the parties be nonresidents. The Commission also adopted new regulatory section 279, which requires promoters to provide the Commission with the names, addresses, and telephone numbers of persons recording boxing contests, and copies of any available videotape or other reproduction of boxing contests made with that promoter. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 54 for background information.) On June 11, the Office of Administrative Law (OAL) rejected these proposed regulatory changes on grounds they failed to meet the clarity and necessity standards of Government Code section 11349.1, and for failure to comply with the procedural requirements of the Administrative Procedure Act. The Commission plans to modify and resubmit these changes to OAL.

On March 1, OAL approved the Commission's amendments to section 330 of its regulations, regarding the "boxing official" status of Commission-appointed physicians in attendance at boxing contests. (See CRLR Vol. 10, No. 1 (Winter 1990) pp. 54-55 for background information.)

LEGISLATION:

AB 4022 (Cortese). Existing law establishes a pension plan for boxers and provides for contributions to the plan by boxers, managers, and promoters. This bill would have required the Auditor General to calculate the number of boxers receiving benefits under that pension plan, make a comparison with the number of persons contributing to the fund, and report the results, along with an assessment of the overall financial condition of the plan, to the legislature on or before January 1, 1992. The bill has been dropped, but Assemblymember Cortese has formally requested the Auditor General to undertake the study.

AB 2961 (Floyd). Business and Professions Code section 18654 currently provides that it is grounds for the revocation of a license for any licensed



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training gymnasium owner or operator, fighter, boxer, trainer, second, or manager to fail to report to the Athletic Commission an injury or knockout of a licensed boxer, or the holder of a sparring permit. This bill would delete that provision and would instead require all boxing club physicians to report all cases where boxers have been injured during a bout or have applied for medical aid after a contest, and would require a boxer, with his manager, to submit to the Commission a full report from a physician when the boxer has suffered a knockout or other serious injury, whether or not arising from boxing, and when he has been treated for that injury by his personal physician or has been hospitalized. This bill is pending in the Senate Business and Professions Committee.

AB 3156 (Polanco). Business and Professions Code section 18711 provides that the Athletic Commission shall require an applicant for licensure as a professional boxer or for renewal of a license if the boxer has boxed within the preceding year, as a condition of licensure or renewal, to be examined by a physician who specializes in neurology, and authorizes the physician to recommend additional tests as deemed necessary. This bill would have provided that those additional tests may be performed by a psychologist who specializes in neurology, within the scope of his/her licensure, and who is approved by the Athletic Commission, and that any person performing an examination pursuant to that provision shall be considered to be a boxing official. This bill was dropped by its author.

RECENT MEETINGS:

At its January meeting in San Diego, the Commission unanimously elected Jerry Nathanson as Chair and Charles Westlund as Vice-Chair. Also at the January meeting, the Commission reviewed its decision to withdraw from all boxing organizations which sanction championship contests. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 44 for background information.) Chair Nathanson appointed a committee of Commissioners Silva, Montemayor, and Westlund to submit a report on boxing organizations with their recommendations.

At its March meeting in Los Angeles, the Commission announced four clinics for boxing officials throughout 1990. Two clinics each will be held in Los Angeles and Sacramento. Topics will include medical aspects of officiating, timekeepers' responsibilities, and a referee clinic. The Commission also discussed the Governor's directive to use

state facilities for agency meetings. The Commission will attempt to comply with the directive; however, overcrowding of public facilities has resulted and may interfere with complete compliance.

Also in March, the Commission granted professional boxer's licenses to Monroe Brooks and Stan Ward, and a professional martial arts fighter's license to James Claggett. These licenses were granted pursuant to Rule 281, which requires applicants over the age of 36 to have special permission from the Commission for the granting of a license. The Commission adopted the following policy regarding Rule 281: (1) boxers licensed under Rule 281 must appear before the Commission every second calendar year until they have reached their fortieth birthday; and (2) boxers forty years of age or older must appear before the Commission every calendar year.

FUTURE MEETINGS:

- September 21 in Los Angeles.
- October 19 in Sacramento.
- November 16 in Los Angeles.
- December 14 in Los Angeles.

BUREAU OF AUTOMOTIVE REPAIR

Chief: John Waraas
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Toll Free Complaint Number:
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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 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 Oberjuege, Gilbert Rodriguez, and Jack Thomas.

MAJOR PROJECTS:

SB 1997 Implementation. Among other things, SB 1997 (Presley) (Chapter 1544, Statutes of 1988) required the establishment of a new process for the certification of mechanics who perform Smog Check Program inspections. As of January 1, 1990, all mechanics were required to be retested pursuant to the two-tiered mechanic testing program. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 56 and Vol. 9, No. 4 (Fall 1989) p. 44 for a detailed description of the program.) As of March, 22,000 mechanics had been retested; of those, about half have passed and are currently certified to perform smog checks.

BAR is also in the process of implementing SB 1997's requirement mandating new equipment to perform the emissions testing. Four prototypes of the new BAR-90 test analyzer system machines have already been submitted to BAR for testing. At this writing, three have passed the testing stage and are currently certified, and will soon be available on the market. Seven thousand new machines are expected to be in place by July 1 when the new systems must be used for motor vehicle inspections. Also as of July 1, the following areas will be incorporated into the Smog Check Program: Stanislaus, Merced, Santa Barbara, San Luis Obispo, Kern, Coachella, Ventura, and Riverside counties, and the remainder of Los Angeles County.

Regulatory Changes. BAR's numerous proposed regulatory changes revising Article 5.5, Chapter 33, Title 16 of the CCR, were submitted to the Office of Administrative Law (OAL) on