



REGULATORY AGENCY ACTION

RECENT MEETINGS:

At its July 15 meeting in Los Angeles, the Commission approved the licensure of boxing promoter Bill Hargrove. Also at the July meeting, the Commission ratified decisions to retire boxers Rickey Locke, Miguel Rodriguez, and Victor Gonzales.

At its August 19 meeting in San Diego, the Commission approved the licensure of boxing promoters Carlos Eguerra and William Jones, and wrestling promoter Robert DePhilippis. Also at the August meeting, the Commission took action against two former California boxing champions. Bruce Curry was denied a license due to diminished ability, and Miguel (Happy) Lora was suspended for violating California boxing rule 303 regarding drug use before a match.

FUTURE MEETINGS:

To be announced.

BUREAU OF AUTOMOTIVE REPAIR

Chief: Martin Dyer
(916) 366-5100

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. Approximately 39,200 auto repair dealers are registered with BAR. 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 22,000 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 are registered with the Bureau. Registration revenues support

an annual Bureau budget of nearly \$34 million. BAR employs 433 staff members to oversee the Automotive Repair Program and the Vehicle Inspection Program.

The Bureau is assisted by a nine-member Advisory Board which consists of five public and four industry representatives. They are Gilbert Rodriguez, Louis R. Kemp, Vincent L. Maita, Herschel Burke, Alden P. Oberjuege, Joe Kellejian, Kathryn Lee, Jack Thomas, and William Kludjian.

MAJOR PROJECTS:

Tulare County Smog Check Program. In January 1988, the Tulare County Board of Supervisors decided to implement California's Smog Check Program. The program officially commenced on September 1, with the Department of Motor Vehicles notifying selected Tulare County motorists that a Smog Check certificate is needed to complete registration renewal. Program headquarters are located in Visalia. Tulare County is a highly agricultural area, and smog levels have caused it to become borderline nonattainment. The main concern is crop loss due to poor air quality. BAR's goal was to have fourteen official Smog Check stations licensed after September 23.

Inspection and Repair Manual Challenged. Section 9 of the Bureau's *Licensed Smog Check Inspection and Repair Manual 1987*, entitled "How To Perform The After-Repair Test," has been challenged by C. Marshall Brown of San Rafael as being a regulation within the meaning of Government Code section 11342(b), which therefore must be adopted pursuant to the Administrative Procedure Act. Brown alleges that the "retest" procedures set forth in section 9 implement, interpret, or make specific Health and Safety Code sections 44012, 44013, and 44015. The Office of Administrative Law (OAL) was scheduled to issue its determination on the challenge in late September.

Regulatory Changes. In late August, the Bureau published proposed changes to sections 3340.35 and 3340.50.4 of its regulations, which appear in Subchapter 1 of Chapter 33, Title 16 of the California Code of Regulations. An amendment to section 3340.35 would authorize BAR to charge a fee of not more than \$6 to be paid by licensed Smog Check stations for certificates of compliance or noncompliance. Currently, the section provides for a \$5 fee. Amended section 3340.50.4 would establish the same \$6 fee for certificates purchased by licensed

fleet facilities participating in the Smog Check Program. The proposed effective date is January 1, 1989. A hearing on these proposed changes was scheduled for October 6 in Sacramento.

Regulatory changes affecting Smog Check Program station and inspector licenses and licensing fees, and establishing certification, decertification and recertification standards (see CRLR Vol. 8, No. 1 (Winter 1988) p. 44 for details), which were resubmitted to OAL in early June, were again rejected on July 22. OAL disapproved them on technical grounds, stating that the rule-making record was incomplete. The proposed regulations were scheduled for resubmission to the OAL in October.

LEGISLATION:

AB 3540 (Tanner) makes technical, nonsubstantive changes in the statutory provisions which require BAR to establish a program for the certification of Third Party Dispute Resolution Processes used for the arbitration of "lemon law" disputes. The bill was signed by the Governor on September 13 (Chapter 841, Statutes of 1988).

The following is a status update of bills discussed in CRLR Vol. 8, No. 3 (Summer 1988) at pages 47-48, and CRLR Vol. 8, No. 2 (Spring 1988) at pages 43-44:

SB 1997 (Presley) was signed by the Governor on September 30. The bill, as amended August 24, was substantially changed so that the Bureau will remain within the Department of Consumer Affairs (instead of being abolished and recreated within the Resources Agency). As approved by the Governor, the major provisions of the bill include the following:

- Extends the January 1, 1990 termination date of the Smog Check Program to January 1, 1999;

- Directs the Air Resources Board to develop a test procedure to detect excessive smoke emissions from heavy-duty diesel motor vehicles that could be used in roadside inspections;

- Establishes cost limitations for repairs required under the Program, including parts and labor, ranging from \$50 to \$300, depending on model year;

- Beginning in the 1990 model year, requires auto manufacturers to warranty all emissions components for three years/50,000 miles, and extend the coverage to seven years/70,000 miles on all parts that cost more than \$300; and

- Requires all vehicles manufactured in and after 1966 to obtain a certificate of compliance or noncompliance (except



those vehicles which are in an exempt category).

AB 4620 (Bader), which would also have made extensive revisions to the Smog Check Program, was dropped by its author.

AB 1250 (Lewis), among other things, exempts registered electronic and appliance repair dealers from the Automotive Repair Act. This bill was signed by the Governor on August 22 (Chapter 480, Statutes of 1988).

SB 2808 (McCorquodale), which would have prohibited any automotive repair dealer from charging more than the dealer's regular shop hourly rate, and defined and prohibited the use of the "flat rate" method of charging, died in the Senate.

AB 4468 (Elder), as amended August 12, would have required a third party administrator providing a service contract for consumer goods to obtain a service contract reimbursement policy of insurance coverage to back up that contract. The purpose of the bill was to indemnify the purchaser of the service contract. The Governor vetoed AB 4468 on September 28.

AB 3531 (Tanner) was incorporated into AB 3540 (Tanner) (see *supra* for description).

SB 1863 (McCorquodale), which would have authorized emissions warranty service providers to perform emissions warranty service work, died in the Senate Committee on Insurance, Claims and Corporations.

RECENT MEETINGS:

In Santa Ana on August 26, the Advisory Board discussed a new test analyzer which is to be developed for Smog Check repair stations. BAR plans to have it available for sale by July 1, 1990, and it will be required equipment in shops by July 1, 1992. The unit should cost approximately \$15,000, an amount which concerned some industry Board members. This new analyzer will conform to emissions reduction goals set for January 1, 1994.

The issue of unnecessary repairs performed on cars taken to Smog Check stations was also discussed. Currently, BAR is not authorized to regulate repair station fees. The Bureau, however, looks for patterns from data processing to detect possible problems with a given Smog Check station. It has also implemented undercover operations to reveal tampering, but such tampering was said not to be a significant or routine problem. Bureau Chief Martin Dyer suggested that the new test analyzers (discussed

above) might indicate the amount of repair needed.

The Board was advised that the San Joaquin County Smog Check Program is proceeding smoothly (see CRLR Vol. 8, No. 3 (Summer 1988) p. 47 for background information).

FUTURE MEETINGS:

To be announced.

BOARD OF BARBER EXAMINERS

Executive Officer: Lorna P. Hill
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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 schools, 6,500 shops, and 21,500 barbers.

MAJOR PROJECTS:

Withdrawal of Rulemaking File. At its August meeting, the BBE approved Executive Officer Hill's recommendation to withdraw the rulemaking file on section 229 of Chapter 3, Title 16 of the California Code of Regulations. Section 229 sets forth standards for models used by applicants taking the practical portion of the licensure examination, and proposed amendments to the section were adopted by the BBE at an April hearing. (See CRLR Vol. 8, No. 3 (Summer 1988) p. 48 for background information.) Executive Officer Hill noted that a motion to reject the proposed changes had been made by one of the Board members at the April meeting based upon comments made by witnesses at the hearing, and cited the need to explore alternatives raised by the comments. The Board will discuss section 229 at a future meeting.

Exam Passage Rate. The BBE remains concerned with the high failure rate at its examination and the backlog of examinees resulting from the high failure rate. (See CRLR Vol. 7, No. 4 (Fall 1988) p. 40 for background information.) In response to these problems, the Board considered the following proposals at its August meeting:

-The BBE considered and rejected a proposal to have barber college owners appear before the Board to give periodic

reports on school activities and the school's exam passage rate. The BBE rejected this proposal in the belief that it lacks statutory or regulatory authority to support it.

-The BBE also considered and rejected the use of a facilitator to arbitrate widespread differences in scoring between examiners of the licensure examination.

-Finally, the Board rejected the Department of Consumer Affairs' Central Testing Unit's (CTU) recommendation to establish multiple cut-off scoring for the barber examination. CTU recommends that Business and Professions Code section 6548.5 should be repealed or changed so that an overall combined passage rate of 75% would no longer be required. According to CTU, the examination should instead be graded based on separate passing scores for its written and practical tests. The separate minimum scores would prevent strong examinee performance on one part of the exam from compensating for weak performance on the other part of the exam.

LEGISLATION:

Future Legislation. At its October meeting, the BBE was scheduled to hear public testimony regarding proposed legislation to change the maximum amount allowed annually for fee increases. Current legislation allows the BBE to increase each of its fees up to \$5 per fee annually. The Board is considering an increase in fifteen different fees. Increases in application fees, examination fees, and annual renewal fees are among the fifteen fee variations being considered by the Board. In recent years, the BBE has been able to avoid raising fees over the \$5 limit, but at its August meeting, the BBE's conditional fund analysis indicated that the Board would be unable to meet its budget demands without a higher increase in fees.

RECENT MEETINGS:

At its August meeting in Ventura, the BBE conditionally approved certification of the Chino Youth Training Program's 1500-hour barber course. The certification was conditioned upon successful review of the program's curriculum by a committee set up by the BBE. The committee consists of a BBE inspector, representatives from the Chino Youth Training Program, and another approved barber school. (For background information, see CRLR Vol. 8, No. 3 (Summer 1988) p. 48.)

FUTURE MEETINGS:

To be announced.