



# REGULATORY AGENCY ACTION

**Regulatory Changes.** The Commission is drafting an amendment to section 330, subchapter 1, Chapter 2, Title 4 of the California Code of Regulations. The current regulation states that boxing "officials" include referees, timekeepers, announcers, physicians, and Commission representatives. The proposed amendment will broaden the definition of "officials" to include "physicians in attendance at a contest or exhibition at the Commission's direction," and "physicians appointed by the Commission to perform any examination of boxers."

The Commission seeks the amendment in response to a common practice among insurance carriers to refuse coverage to physicians who administer the Commission's neurological examinations. (See CRLR Vol. 8, No. 1 (Winter 1988) p. 43 for details.) By broadening the scope of boxing "officials" to include physicians who perform examinations of boxers, the Commission seeks to shield them from civil liability. "Boxing officials" are "public employees" under Business and Professions Code section 18735. Generally, the law grants public employees immunity from civil liability and affords them representation by the Attorney General in the event of a lawsuit.

As of this writing, the proposed regulation has not yet been published in the *Notice Register*.

## LEGISLATION:

**AB 529 (Floyd)**, a proposal to deregulate professional wrestling, was passed by the Assembly on January 25. (See CRLR Vol. 7, No. 2 (Spring 1987) p. 39 for details on this bill.) At its February 19 meeting in San Diego, Executive Officer Gray commented that the Commission will have to work hard to stop the bill in the Senate. The bill was referred to the Senate Business and Professions Committee on February 2, and is scheduled for hearing on May 23.

The Commission opposes the deregulation of professional wrestling for three reasons. First, the Attorney General's office has advised the Commission that the bill is unconstitutional. Since the California Constitution establishes the Athletic Commission's powers, the Commission contends that the legislature does not have the authority to abolish the Commission's authority to regulate wrestling. It is the Commission's position that deregulating sports within its jurisdiction may only be accomplished through a constitutional amendment.

Second, the Commission asserts that the regulation of professional wrestling is in the public interest. Regulation

should be performed at the state level, even if it is minimal. If the Athletic Commission is not permitted to regulate professional wrestling, local governments will have to bear the cost of regulating the "sport."

Finally, approximately 50% of the Commission's revenue comes from a tax on gate sales at wrestling exhibitions.

## RECENT MEETINGS:

At the Commission's February 19 meeting in San Diego, Ken Gray reported on newly emerging forms of contact martial arts. Since the Commission began its regulation of the sport two years ago, the popularity of different forms of martial arts has fluctuated. The Commission noted its lack of communication with newly emerging groups, and suspects that these groups are not familiar with the Commission's rules and regulations. Gray stated that some techniques employed in the newer sports may violate Commission regulations.

Deputy Attorney General Ron Russo reminded the Commission of its responsibility to regulate the sport under current statutes and regulations. Gray suggested that Commission members meet with principal players in the industry in order to educate them on the Commission's rules and regulations, as well as to educate themselves about the rules and techniques of the sport. As of this writing, no date or location for the meeting has been set.

## 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. The Bureau's other duties include complaint mediation, routine regulatory compliance monitoring, investigating suspected wrongdoing by auto repair dealers, 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. 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.

The Bureau is assisted by a nine-member Advisory Board which consists of five public and four industry representatives.

## MAJOR PROJECTS:

**Proposed Regulatory Changes.** At a public hearing on January 22, the Advisory Board discussed and approved the following regulatory changes, which affect Subchapter 1 of Chapter 33, Title 16 of the California Code of Regulations (CCR). As of this writing, these changes have not yet been submitted to the Office of Administrative Law (OAL).

New section 3340.1(j) would define the term "bureau" as used in Article 5.5, Title 16 of the CCR. Section 3340.15(d) was amended to repeal the requirement that Smog Check Program stations display station and inspection licenses under glass or other transparent material. An amendment to section 3340.17 deletes the requirement that licensed Smog Check Program stations maintain a service agreement with the manufacturer or manufacturer's representative of the station's test analyzer system. Also deleted is the provision that only Bureau-authorized representatives or authorized manufacturer's representatives shall have access to the test analyzer systems for service or inspection.

The Board voted to repeal section 3340.20, which provided that a Smog Check Program customer whose vehicle requires repair must sign an acknowledgment and waiver of his/her right to have such repairs performed at a facility other than the one at which the vehicle was tested. BAR suggested the repeal of this section because the topic is adequately addressed by section 44033(c) of the Health and Safety Code.

Subsection 3340.30(h), as adopted, establishes performance standards for qualified mechanics participating in the Smog Check Program. The Board voted to amend subsection 3340.35(a), to clarify that Smog Check Program certificates of compliance and noncompliance may be obtained only from BAR.

The Board also agreed to a technical



change to subsection 3340.35(b). The section previously provided that a licensed Smog Check station may sell a certificate to a customer whose vehicle has been inspected in compliance with section 3340.40, Title 16 of the CCR. This technical revision changes the cited section from 3340.40 to 3340.42.

Subsections 44015(b) and (c) of the Health and Safety Code provide that a licensed repair station may issue a certificate of compliance or noncompliance when a qualified repair mechanic certifies that no adjustment or repair can be made which will reduce emissions from the inspected vehicle without exceeding established cost limitations (so-called "cost-exceedance waivers"). The Board added regulatory section 3340.35.1 to provide that, in one district to be selected by the Bureau, the Bureau would establish and evaluate the effectiveness of a program prohibiting cost-exceedance waivers unless a referee station concurs in the determination that such issuance is appropriate. The program is temporary and will conclude no later than December 31, 1989.

The Board adopted a proposal to change the title of section 3340.41 from "Low Emissions Service and Adjustment" to "Test and Test Report."

The Board's adoption of proposed section 3340.41.3 concerns invoice requirements for low-emissions service and adjustments performed as part of the Smog Check Program. Because of frequent inadequate documentation of work performed and parts supplied by automotive repair dealers performing low-emissions service and adjustments, this regulation clarifies that the invoice documentation requirement in section 9884.8 of the Business and Professions Code applies to low-emissions service and adjustments performed as part of the Smog Check Program, and provides that general descriptions such as "low-emissions tune-up," "scope and adjust," or "reduce emissions" are inadequate descriptions of such service work.

The adoption of a proposed amendment to subsection 3340.50(e) revises an incorrectly cited subsection. Section 44020 of the Health and Safety Code provides for the licensing of owners of fleets of fifteen or more vehicles subject to the Smog Check Program. Section 3340.50(e) previously provided that a Smog Check Program fleet facility must meet the work area requirements specified in subsection 3340.15(b) of the CCR. This technical revision changes the cited subsection from 3340.15(b) to 3340.15(a).

The Board adopted an amendment to subsection 3340.50.4(a), to conform BAR regulations to current law regarding Smog Check Program certificates for fleet owners. The old regulation required a licensed fleet facility to pay a fee of \$6 for each Smog Check certificate, and provided that such fees are not refundable. On May 1, 1986, the fee paid by all licensed facilities for Smog Check Program certificates was reduced from \$6 to \$5 and such fees were made refundable. This change specifies a fee of \$5 for a certificate purchased by a licensed fleet facility and deletes the provision that such fees paid are not refundable.

The adoption of new section 3362.1 specifically prohibits a vehicle engine change which degrades the effectiveness of the vehicle's emissions control system.

BAR's adoption of new sections 3363.1, 3363.2, 3363.3, and 3363.4 implements section 9882.14 of the Business and Professions Code, which requires BAR to designate stations which may install ignition interlock devices and to develop standards regarding such devices for this pilot program. Section 3363.1 defines interlock device standards in terms of their application to electrical devices which measure breath samples for alcohol content. New section 3363.2 requires manufacturers of interlock devices to develop detailed written instructions for their installation in accordance with guidelines adopted by the Office of Traffic Safety. Under new section 3363.3, only automotive repair dealers, as defined by the Automotive Repair Act, are authorized to install ignition interlock devices.

Section 3363.4 requires automotive repair dealers to install ignition interlock devices in enclosed buildings with separate waiting areas for customers; obtain reference manuals, specified test equipment, and tools needed to install devices and to screen vehicles for acceptable mechanical and electrical condition prior to installation; provide adequate security measures to prevent unauthorized persons from accessing secured materials; install devices appropriately taking into account each vehicle's mechanical and electrical condition and following accepted trade standards and the manufacturer's instructions; avoid installing devices in a manner which could adversely affect the performance or impede the safe operation of the vehicle; verify that the ignition interlock device functions properly after having been installed; and restore the vehicle to its original condition after the device has been removed.

Finally, the Board voted to repeal all regulatory sections regarding the Better Auto Repair Program pilot study established under section 9989.30 of the Business and Professions Code. The pilot study terminated on December 31, 1987, and the following implementing regulations have been repealed: sections 3397, 3397.1, 3397.2, 3397.20, 3397.30-.37, and 3397.40-.43. (See CRLR Vol. 7, No. 4 (Fall 1987) p. 40 for details on the Better Auto Repair Program pilot study.)

The Advisory Board recently adopted numerous other regulatory changes which were the subject of a December 9 public hearing. (See CRLR Vol. 8, No. 1 (Winter 1988) p. 44 for details on these changes.) On February 19, OAL rejected the proposed amendments on grounds that the standards of necessity and clarity were not met. BAR is currently in the process of revising the rule-making package for resubmission to OAL.

#### LEGISLATION:

*SB 1997 (Presley)*, as introduced February 9, would codify the Inspection and Maintenance (I/M) Review Committee's recommendations for statutory changes regarding the Smog Check Program. When SB 33 established the Smog Check Program in 1982, section 44021 authorized the creation of the I/M Review Committee to evaluate the program and make recommendations upon its sunset date. SB 1997 proposes the following revisions and additions to the Smog Check Program:

- the January 1, 1990 termination date of the Smog Check Program would be deleted;

- Bar and its location within the Department of Consumer Affairs would be abolished; the bill would create the Department of Vehicle Inspection and Repair (DVIR) within the Resources Agency, and would transfer all duties and functions of BAR to the newly-created DVIR;

- emissions reduction requirements for 1990 and later model-year motor vehicles would be specified;

- the bill would exempt only vehicles manufactured prior to the 1966 model year, instead of the current statute which exempts vehicles which are over twenty years old irrespective of when they were manufactured;

- the bill would direct the state Air Resources Board (ARB) to develop a test procedure to detect excessive smoke emissions from heavy-duty diesel motor vehicles which would be feasible for use in roadside inspections. The bill would direct ARB and the California Highway



# REGULATORY AGENCY ACTION

Patrol to cooperatively inspect these vehicles. Existing law does not include a requirement that heavy-duty diesel vehicles maintain emissions standards;

-SB 1997 would establish cost limitations for repairs required under the Smog Check Program, varying between \$60 and \$300, in accordance with the model year of the vehicle;

-public agencies, which are currently exempt from the Smog Check Program, would be required to obtain certificates of compliance for their vehicles;

-automobile sellers would be required to provide purchasers with a certificate of compliance or noncompliance; and

-the bill would limit existing manufacturers' warranty provisions for emissions parts to vehicles manufactured prior to the 1990 model year. For 1990 and later model year vehicles, the bill specifies new warranty requirements.

SB 1997 was scheduled for an April 5 hearing in the Senate Transportation Committee.

*AB 4620 (Bader)*, as introduced February 19, also proposes revisions to the Smog Check Program, including the following:

-the bill would extend the termination date of the Smog Check Program until January 1, 1995;

-annual inspections for Smog Check compliance would be required, instead of the current biennial requirement;

-the exemption from the Smog Check Program of vehicles over twenty years old would be deleted;

-the Smog Check Program would become a mandatory statewide program;

-the current distinction between test stations and repair stations would be eliminated;

-the existing cost limitations applicable to low-emissions service and adjustments would be deleted;

-the bill would require vehicle owners to keep the compliance certificate with the vehicle at all times;

-all of the following would be deleted: the existing \$10 limit on annual test and repair station license fees and training courses; the existing \$6 limit on compliance certificate fees; the requirement that the Department of Consumer Affairs conduct a cost-benefit analysis concerning the Smog Check Program; and the requirement that test and repair stations transmit vehicle data and emissions test results to the Department;

-civil penalties applicable to violations by mechanics, inspectors, and stations would be revised; and

-the authorization of the state Air Resources Board (ARB) to retest

vehicles which fail to meet assembly line standards would be eliminated; instead, ARB would be required to test samples of all vehicle classes in actual use in the state. This bill would apply these requirements to new direct import vehicles.

*AB 4620* is pending in the Assembly Transportation Committee.

*AB 2283 (Areias, et al.)*, as introduced, pertained to written estimates for repair work. As amended in January, the bill is no longer relevant to BAR.

*AB 2550 (Allen)*, which would have required bonding of automotive repair dealers, died in committee. (See CRLR Vol. 8, No. 1 (Winter 1988) p. 44 for details of this bill.)

## RECENT MEETINGS:

The Board members viewed a recent public service announcement prepared by BAR starring Edward Olmos of "Miami Vice." The message in the announcement is that the Department of Motor Vehicles will no longer grant extensions to comply with Smog Check Program requirements.

Board member William Kludjian has been participating in Smog Check Program presentations to the public. BAR Chief Martin Dyer commented that field offices are directed to respond to requests from the public in addition to seeking out audiences for presentations regarding the Smog Check Program.

Board member Alden Oberjurge commented that perhaps the decline in the number of official lamp and brake stations is due to the independent shop's difficulty in obtaining tools and manuals needed to perform such services on vehicles which are equipped with newer technology.

## FUTURE MEETINGS:

To be announced.

## BOARD OF BARBER EXAMINERS

*Executive Officer: Lorna P. Hill (916) 445-7008*

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:

*Regulatory Changes.* On January 25, the Board conducted a hearing in Sacramento on proposed changes to Chapter 3, Title 16 of the California Code of Regulations (CCR). (For background information on these proposed changes, see CRLR Vol. 8, No. 1 (Winter 1988) p. 45.)

The Board voted to adopt substantive changes to sections 203.2 (examination appeals), 213 (uniforms during college hours), 213.1 (labels on bottles and containers), 214.1 (transfers), 216.1 (records), 217.1(a) (new course of instruction), 219.2 (barber students: 400-hour courses), 219.3 (instructor training program), 224 (display of shop license and certificates), and 236.1 (charge for dishonored checks). BBE also adopted amendments to sections 246.3 (attendance: changes in employment), 247 (approval of apprentice trainer; training requirements), and 300 (administrative fines).

The BBE voted not to adopt proposed changes to other regulations, including those affecting sections 224.1 (premises for practice of barbering) and 224.3 (leasing and rental agreements).

The Board voted to repeal regulations contained in Article 4.5, which pertain to BBE's educable mentally retarded program. The program was initiated in 1971 to provide educable mentally retarded persons with an opportunity for a profitable vocation. However, since the initiation of the program, no mentally retarded person has made application through the provisions of the article. Therefore, the Board has decided to terminate the program. The Board also voted to repeal subsections (e) and (f) of section 214 (student attendance).

In addition, BBE adopted several new regulations, including sections 203.5 (abandonment of applications) and 204.2 (student enrollments).

The Board also adopted technical, nonsubstantive changes to 23 other regulatory sections, including the renumbering of seven regulations which previously appeared in Article 4 into new Article 3.5 (Examinations).

Finally, BBE voted to remove several regulations from its proposed regulatory package, including sections 242 (seminars), 242.1 (inactive instructor license), 203.3 (conditional credit on examination), and 229 (model standards).

The Board's staff is in the process of compiling its rulemaking file for submission to the Office of Administrative Law.

The Board was scheduled to conduct a hearing on April 11 in San Diego on a proposed change to Chapter 3, Title 16