

BACKGROUND PAPER FOR THE CALIFORNIA STATE ATHLETIC COMMISSION

Joint Oversight Hearing, April 8, 2013

**Senate Committee on Business, Professions and Economic
Development**

**Assembly Committee on Business, Professions and Consumer
Protection**

**Assembly Committee on Arts, Entertainment, Sports, Tourism
and Internet Media**

**IDENTIFIED ISSUES, BACKGROUND AND RECOMMENDATIONS
REGARDING THE CALIFORNIA STATE ATHLETIC COMMISSION**

BRIEF OVERVIEW OF THE CALIFORNIA STATE ATHLETIC COMMISSION

The California State Athletic Commission (Commission) is responsible for protecting the health and safety of its licensees; boxers, kickboxers and martial arts athletes. Established by initiative in 1924, stemming from concerns for athlete injuries and deaths, the Commission provides direction, management, control of and jurisdiction over professional and amateur boxing, professional and amateur kickboxing, all forms and combinations of full contact martial arts contests, including mixed martial arts (MMA) and matches or exhibitions conducted, held or given in California. The Commission oversees licensing, prohibited substance testing, and event regulation. Functionally, the Commission consists of four components; licensing, enforcement, regulating events and administering the Professional Boxers' Pension Fund (Pension Fund).

The Commission is responsible for implementation and enforcement of the Federal Muhammad Ali Boxing Reform Act (Federal Boxing Act) and the California Boxing Act or State Athletic Commission Act (State Act). The Commission establishes requirements for licensure, issues and renews licenses, approves and regulates events, assigns ringside officials, investigates complaints received, and enforces applicable laws by issuing fines and suspending or revoking licenses. In 2012, the Commission supervised close to 200 events. The Commission has so far supervised 38 events in 2013, including 21 boxing, 10 MMA, and 7 kickboxing.

The current Commission mission statement, as stated in its 2013-2015 Strategic Plan, is as follows:

The California State Athletic Commission is dedicated to the health, safety and welfare of participants in regulated competitive sporting events, through ethical and professional service.

The Commission is one more than 36 boards, bureaus, committees, and other programs at the Department of Consumer Affairs (DCA).

The Commission is comprised of seven members. Five members are appointed by the Governor and subject to confirmation by the Senate Committee on Rules confirmation. One member is appointed by the Senate Committee on Rules and one member is appointed by the Speaker of the Assembly. Commissioners are part-time employees who receive a \$100-a-day per diem. There are no qualifications for an individual appointed to the Commission; however, no person currently licensed as a promoter, manager or judge may serve on the Commission. The law also specifies that efforts should be made to ensure at least four members have experience in either medicine as a licensed physician or surgeon specializing in neurology, neurosurgery, head trauma or sports medicine, financial management, public safety, and the sports regulated by the Commission.

The Commission meets about six times per year to:

- Handle matters related to licensure and appeals of license denials, suspensions and fines.
- Propose and review regulations or legislation focused on maintaining the health and safety of fighters.
- Consider issues related to the Boxer’s Pension Program and the Neurological Examination Account.
- Evaluate funding and revenue strategies.
- Address a variety of topics brought forth by stakeholders.

All Commission meetings are subject to the Bagley-Keene Open Meetings Act. The following is a listing of the current members of the Commission:

Name and Short Bio	Appointment Date	Term Expiration Date	Appointing Authority	Professional or Public
<p>John Frierson, Chair A member of the Commission since 2001 Frierson is also a 26 year veteran of the Los Angeles Police and Sheriff’s Departments. He has been a member of the Los Angeles Transportation Commission since 2001, and is currently its Vice President.</p>	1/1/2011	1/1/2015	Speaker of the Assembly	Public
<p>Christopher Giza A member of the Commission since 2005, Dr. Giza currently serves as an assistant professor at the UCLA David Geffen School of Medicine, as a pediatric neurologist at UCLA's Mattel Children's Hospital and as a researcher at the UCLA Brain Injury Research Center. Dr. Giza is board certified in neurology and child neurology by the American Board of Psychiatry and Neurology.</p>	1/2/2011	1/1/2015	Governor	Professional

<p>Dean Grafilo Mr. Grafilo served as associate government relations director at the California Medical Association starting in 2009. He served as chief of staff to Assemblymember Warren Furutani from 2008 to 2009 and as senior legislative assistant for Assemblymember Alberto Torrico from 2004 to 2008. Mr. Grafilo was an organizer representative for Service Employees International Union Local 925 from 2003 to 2004 and an organizer for International Longshore and Warehouse Union Local 142 from 1996 to 2001. He earned a Master of Public Administration degree from the University of Washington.</p>	6/25/2012	1/1/2014	Governor	Public
<p>Mary Lehman Ms. Lehman has been a civil appeals attorney at the Law Offices of Mary A. Lehman since 1995. She was an attorney with Gray Cary Ware and Freidenrich LLP from 1991 to 2002. She was a professional boxer from 1999 to 2002, ranking as high as number nine in the world for her weight class. Lehman earned a Juris Doctorate degree from the University of San Diego School of Law.</p>	3/28/2013		Governor	Public
<p>VanBuren Lemons Dr. Lemons is a neurosurgeon and known as one of the nation's top medical experts in brain injuries in athletes, particularly amateur and professional fighters. Prior to becoming a member of the Commission, Dr. Lemons served on the Commission's Advisory Committee on Medical and Safety Standards which worked to determine necessary minimum medical testing and reviewed important health and safety issues.</p>	1/1/2011	1/1/2015	Senate Rules Committee	Professional
<p>Martha Shen-Uquirdez Ms. Shen-Uquirdez has been CEO of USAsia since 2007. She was cross-cultural affairs expert for the Beijing Olympics Organization from 2006 to 2008, senior protocol officer with the California South Bay Economic Development Partnership from 1994 to 2001 and court appointed arbitrator at the Superior Court of California, County of Los Angeles from 1994 to 1999. Ms. Shen-Uquirdez was a judge pro tem for Los Angeles County from 1994 to 1998, attorney and training expert with multiple police departments in Southern California from 1989 to 2004 and an attorney in private practice from 1986 to 2005. She served as a credentialed boxing judge from 2000 to 2001. Shen-Uquirdez earned a Juris Doctorate degree from Whittier Law School.</p>	3/28/2013		Governor	Public
Vacant			Governor	Public

The Commission has two Committees in statute and has established sport specific Sub-Committees at its discretion:

- *Advisory Committee on Medical and Safety Standards*, established in statute, consists of six licensed physicians and surgeons appointed by the Commission who meet for the purpose of studying and recommending standards for contests.

- *Martial Arts Advisory Committee*, established in statute and appointed at the discretion of the Commission, is comprised of California residents who have previously served as promoters, fighters, trainers, managers or officials in kickboxing or full-contact martial arts events. In 2009, the Commission established an *Amateur MMA Sub-Committee* that met to discuss whether the Commission should delegate its authority for MMA oversight to a nonprofit organization. It is not clear whether the Amateur MMA Sub-Committee has been reestablished or if it will meet regularly.
- *Muay Thai Sub-Committee* hears from stakeholders and evaluates best practices for regulating this sport and ensuring the health and safety of athletes.
- *Officials Sub-Committee* oversees and evaluates proper training, education and pay of officials with a focus on ensuring that officials have awareness of and proficiency in California event rules and regulations.
- *Pension Plan Sub-Committee* works to ensure proper processes are followed and that the scope of the contract with plan administrators is adhered to.
- *Legislative Sub-Committee* evaluates pending legislative proposals and works with Commission staff on legislative issues related to regulating combat sports.

The Commission is a member of the Association of Boxing Commissions (ABC,) a federally recognized association which promotes uniform health and safety standards for boxing and MMA, keeps accurate records of athletes and event outcomes, encourages adherence to and enforcement of applicable federal laws and publishes medical and training information for boxing and MMA professionals. The ABC has federal oversight for boxing. The Commission has voting privileges with ABC and the current Executive Officer (EO) is a member of the ABC MMA Trainer Committee which approves standards for MMA officials and trainers. Prior to the appointment of the current EO, Commission representatives only attended one ABC meeting in 2011.

Budget

The Commission is funded through regulatory fees and license fees. For each event held in California that the Commission regulates, the Commission collects a “gate fee” from the event promoter, which is a 5% fee on gross ticket sales for that event, not to exceed \$100,000. The Commission also collects a “TV fee” from the event promoter if the event is broadcast on television, which is a 5% fee on the revenue a promoter collects from broadcasting rights, not to exceed \$25,000. The following is the past (since FY 2008/09), current and projected fund condition of the Commission:

Fund Condition						
(Dollars in Thousands)	FY 2008/09	FY 2009/10	FY 2009/10	FY 2011/12	FY 2012/13	FY 2013/14
Beginning Balance	\$ 942	\$ 945	\$ 811	\$ 469	\$ 23	\$ 199
Revenues and Transfers	\$ 1,868	\$ 1,755	\$ 1,758	\$ 1,386	\$ 1,381	\$ 1,385
Total Revenue	\$ 2,810	\$ 2,700	\$ 2,569	\$ 1,855	\$ 1,404	\$ 1,584
Budget Authority	\$ 1,878	\$ 1,991	\$ 2,420	\$ 2,390	\$ 1,939	\$ 1,939

Expenditures	\$ 1,862	\$ 1,812	\$ 2,153	\$ 1,832	\$ 1,205	\$ 1,125
Loans to General Fund	0	0	0	0	0	0
Accrued Interest, Loans to General Fund	0	0	0	0	0	0
Loans Repaid From General Fund	0	0	0	0	0	0
Fund Balance	\$ 948	\$ 888	\$ 416	\$ 23	\$ 199	\$ 459
Months in Reserve	6.3	4.9	2.7	0.1	2.1	4.8

The Commission is currently operating according to a solvency plan implemented last summer to address a significant budget shortfall and the threat of no longer being able to conduct business and meet its statutory mandates. The Commission is authorized to spend less than \$1.2 million in FY 2014/15. Substantial cuts to the Commission may be impacting its ability to protect fighters and effectively regulate the sports within its jurisdiction. The drop in funding levels and requirements for significant expenditure reductions in order to build an adequate fund reserve have led to layoffs, decreased commission presence at regulated events and numerous executive management vacancies. The Commission has historically included athletic inspector wages as part of its enforcement expenditures due to the calculations of athletic inspector wages in those sums. The Commission's many budgetary struggles and problems, including overpayment to athletic inspectors and causes of insolvency are discussed further in the "Current Issues" section of this paper. The following is a breakdown of expenditures by program component of the Commission since FY 2008/09:

Expenditures by Program Component								
	FY 2008/09		FY 2009/10		FY 2010/11		FY 2011/12	
	Personnel Services	OE&E	Personnel Services	OE&E	Personnel Services	OE&E	Personnel Services	OE&E
Enforcement*	\$782,169	\$555,426	\$703,171	\$595,392	\$855,282	\$632,630	\$774,325	\$381,505
Examination	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Licensing	\$108,899	\$ 69,932	\$ 78,839	\$ 66,726	\$ 64,854	\$105,035	\$138,562	\$ 60,807
Administration **	\$140,013	\$ 89,913	\$101,364	\$ 85,790	\$ 83,384	\$135,046	\$178,151	\$ 78,180
DCA Pro Rata	\$0	\$115,853	\$0	\$178,785	\$0	\$174,533	\$0	\$211,709
Diversion (if applicable)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
TOTALS	\$1,031,080	\$831,124	\$883,375	\$926,643	\$1,003,520	\$1,047,244	\$1,091,038	\$732,201

*Includes Athletic Inspector wages, travel and all AG, evidence/witness fees, and court reporter services.
**Administration includes costs for executive staff, commission, administrative support, and fiscal services.

The Commission has not formally discussed pursuing increases to its current fee schedule yet may need to consider that option as part of its ongoing evaluation of available revenue.

Licensing

The Commission licenses a number of individuals related to the participation in, oversight for and management of events in California. The Commission does not require any *formal* education requirements for licensure of fighters, promoters, managers, seconds, matchmakers, referees, judges and timekeepers it licenses. Licensees must possess at least a certain level of skill to enable them to safely compete against one another and demonstrate his or her ability to perform. Licensees who do not fall into the combatant category such as referees, judges, timekeepers and ringside physicians (who

are approved by the Commission) must have adequate knowledge of laws and rules so as not to jeopardize the health and safety of athletes. Many licensees must also pass competency exams provided by the Commission unless they are licensed in other jurisdictions; however, it should be noted that the Commission may not be requiring exams and keeping records of exam results in licensee files. Fighters must also pass medical examinations that determine whether his or her health or safety may be compromised by licensure and participation in an event.

The following are explanations of the Commission’s licensee population, as defined in statute, regulations and the Commission’s Standard Operating Procedures within the Commission Administrative Manual, as well as the licensing fees and numbers of licensees for each category:

- **Fighter** – Professional or amateur boxer or martial arts fighter or wrestler who engages in a boxing or martial arts contest and who possesses fundamental skills in his or her respective sport. Prior to licensure, fighters are evaluated by the Commission Chief Athletic Inspector (Chief AI) and EO on their skills and experience to determine their status as an amateur or professional and determine if they are qualified to be a Commission licensee. The evaluation may also occasionally include input from referees, judges, and other regulators from the ABC. A fighter must also undergo review by a physician licensed in California to determine physical and mental fitness for competition (*\$60 licensing fee*).

FIGHTERS	FY 2008/09	FY 2009/10	FY 2010/11	FY 2011/12
Issued	206	178	151	327
Renewed	648	777	906	560
Total	854	955	1057	887

- **Promoter** – A corporation, partnership, association, individual or other organization which conducts, holds, or gives a boxing or martial arts contest, match or exhibition; an entity licensed by the Commission finally responsible for an approved event. Prior to licensure, a promoter must demonstrate financial stability by providing a recent Certified Public Accountant (CPA) financial statement showing liquid assets of at least \$50,000 and by providing the Commission with a surety bond of at least \$50,000. Applicants are required to submit fingerprint cards or utilize the “Live Scan” electronic fingerprinting process in order to obtain prior criminal history criminal record clearance from the California Department of Justice (DOJ) and Federal Bureau of Investigation (FBI). The Commission makes a final determination as to whether an applicant should be licensed as a promoter (*\$1000 licensing fee for professional promoters and \$250 licensing fee for amateur promoters*).

PROMOTERS	FY 2008/09	FY 2009/10	FY 2010/11	FY 2011/12
Issued	36	28	21	27
Renewed	33	38	43	34
Total	69	66	64	61

- **Manager** – A person who is paid to act as the athlete’s agent or representative, an individual who directs or controls the professional boxing or martial arts activities of a fighter, an officer, director, shareholder or organization which receives more than 10 percent of a fighter’s purse for services relating to the person’s participation in an event. Prior to licensure, a manager must include a statement of all persons connected with, or having a proprietary interest in, the management of a fighter and the application must be signed under penalty of perjury by the

sole proprietor, a general partner or officer of the corporation or association. Managers must submit changes in proprietary interest or shareholders in writing. A manager must pass a written exam administered by the Commission on the fundamentals of sports regulated by the Commission, management of fighters and laws and regulations related to the sports. This written exam requirement may be waived if the applicant is licensed as a manager in another state and has not been subject to disciplinary action (*\$150 licensing fee*).

MANAGERS	FY 2008/09	FY 2009/10	FY 2010/11	FY 2011/12
Issued	46	39	33	50
Renewed	69	54	40	27
Total	115	93	73	77

- **Second** – Also referred to as a “corner man,” a person who aides and assists a fighter between rounds. Prior to licensure, a second must pass a written exam administered by the Commission on the fundamentals of sports regulated by the Commission and laws and regulations related to the sports. Applicants for licensure as a second must also demonstrate the duties of second before a Commission representative. Both the written and demonstration requirements may be waived if the applicant is licensed as a second in another state and has not been subject to disciplinary action (*\$50 licensing fee*).

SECONDS	FY 2008/09	FY 2009/10	FY 2010/11	FY 2011/12
Issued	399	391	384	369
Renewed	1370	1390	1411	1392
Total	1769	1781	1795	1761

- **Referee** – Also known as an official, a boxing or MMA referee is a person who directs and controls contests and enforces the rules governing a contest, standing in the ring to ensure a contest’s fairness and the fighters remain able to compete. Prior to licensure, referees and judges are evaluated on skills, experience and training, continuing education development, and records of that individual’s historical accuracy (based on ABC judging surveys) when available. The EO makes a recommendation to the Commission about an individual’s suitability for licensure, however the Commission makes a final determination as to whether an applicant should be licensed as a referee or judge. Individuals who have taken the ABC Certified Trainer courses and passed the accompanying Certified Trainer exam may have increased desirability as an official in California, given the additional education and instruction these applicants receive through the ABC course. Referees for boxing and MMA must have: two years documented experiences refereeing matches, be physically and mentally fit as determined by a physician with at least 20/100 vision in both eyes; be in good physical condition, pass a written exam administered by the Commission on the fundamentals of sports regulated by the Commission and laws and regulations related to the sports, demonstrate competence by refereeing a match before a Commission representative and two licensed referees and demonstrate competence in judging by judging at least 50 contests. These requirements can be waived if the applicant is licensed or approved as a referee by the World Boxing Association, World Boxing Council, North American Boxing Foundation for boxing referee applicants and the Professional Kickboxing Association or the World Kickboxing Association for MMA referee applicants (*\$150 licensing fee*).

REFEREES	FY 2008/09	FY 2009/10	FY 2010/11	FY 2011/12
Issued	0	1	2	8
Renewed	20	19	23	35
Total	20	20	25	43

- **Judge** – A person who scores contests. Prior to licensure as a judge, an individual must have been licensed in California for at least five years and pass a written exam administered by the Commission on the fundamentals of sports regulated by the Commission and laws and regulations related to the sports. This written exam requirement may be waived if the applicant is a judge in another state or country and has not been subject to disciplinary action (*\$150 licensing fee*).

JUDGES	FY 2008/09	FY 2009/10	FY 2010/11	FY 2011/12
Issued	1	3	5	8
Renewed	25	30	36	32
Total	26	33	41	40

- **Timekeeper** – A person who keeps time for an event. Prior to licensure, a timekeeper must pass a written exam administered by the Commission on the fundamentals of sports regulated by the Commission and laws and regulations related to the sports. Applicants for licensure as a timekeeper must also demonstrate the duties of timekeeper before a Commission representative. Both the written and demonstration requirements may be waived if the applicant is licensed as a timekeeper in another state and has not been subject to disciplinary action (*\$50 licensing fee*).

TIMEKEEPERS	FY 2008/09	FY 2009/10	FY 2010/11	FY 2011/12
Issued	6	3	0	1
Renewed	8	10	13	11
Total	14	13	13	12

- **Matchmaker** – A person who proposes, selects and arranges a fight and the fighters participating in that event. Prior to licensure, a matchmaker must pass a written exam administered by the Commission on the fundamentals of sports regulated by the Commission and laws and regulations related to the sports. The exam requirement may be waived if the applicant is licensed as a timekeeper in another state and has not been subject to disciplinary action (*\$200 licensing fee*).

MATCHMAKERS	FY 2008/09	FY 2009/10	FY 2010/11	FY 2011/12
Issued	11	8	5	10
Renewed	10	7	5	3
Total	21	15	10	13

The Commission also approves physicians who attend events to administer pre-fight medical examinations for fighters and referees, serve as primary emergency care physicians during contests and evaluate fighters after contests, recommending appropriate medical testing and suspensions as necessary.

Boxers are issued a federal identification card (Federal ID) per the Federal Act and State Act that contains a number assigned to the fighter, the fighter's date of birth, height, weight and photo. These Federal IDs are issued by the state commission in which a boxer resides and are valid for four years from the date of issuance (the Commission issues Federal IDs for California-based fighters). MMA fighters may be issued a National Identification Card (National ID) that contains a number assigned to the fighter, the fighter's date of birth, height, weight and photo. National IDs can only be issued by a state commission or tribal commission in good standing with the ABC and while these are not mandatory they are recommended by the ABC.

For boxing fighters, promoters and trainers, fightfax.com is the official national boxing registry designated by the ABC in compliance with the Federal Act. This online database provides information on suspensions, information, and license revocations. The Commission checks this database prior to issuance of a license related to boxing and reports outcomes from California to the database. For MMA, mixedmartialarts.com, administered by Mixed Martial Arts, LLC, is a database used by athletic commissions under the ABC umbrella to verify event results and fighter suspension information as a safety measure, so that fighters issued a medical suspension in one state cannot fight in another before serving the term of that suspension. In addition to medical and administrative suspension data, the database contains statistics, upcoming bout cards, bout results, comments from commissions, and total fighter bout results. This database also has the ability to issue National IDs. The Commission recently began consulting the database prior to issuance of a license related to MMA.

The Commission may receive deficient applications and works with applicants to obtain missing information. While much of the evaluation of and background for an application approval takes place in the Commission's Sacramento office headquarters, due to the fluidity of the sports regulated and athletes participating in events, the Commission may also issue licenses at an event, or at the pre-event weigh-ins. The Commission has the ability to grant temporary licenses pending investigation of the qualifications or fitness of an applicant, however, these temporary licenses do not assume that an applicant will meet the requirements of licensure and may be terminated in the event the Commission denies licensure.

Enforcement

The Commission's enforcement activity differs greatly from the scope, methods and procedures used by other boards and bureaus within DCA. While other entities at DCA are subject to the Administrative Procedures Act (APA), due to the nature of the Commission regulated sports and the profession of fighters within these sports, the Commission is not subject to APA but rather has direct disciplinary authority to issue immediate suspensions and fines to ensure violations by Commission licensees are handled and reported quickly. The Commission also has the ability to issue cease and desist orders for unauthorized, illegal events in addition to the suspensions and license revocations for violations of the State Act and accompanying Commission regulations and rules. The Commission partners with the Office of the Attorney General (AG) when license revocations, suspension or application denials are appealed. The Commission also conducts arbitrations for its licensees when disputes arise within either the boxer-manager or boxer-promoter agreements and has sole authority over these arbitration proceedings.

During the last four years, a total of 35 licensing enforcement matters were handled by the AG's Office on behalf of the Commission. These matters consisted of arbitrations between boxers or MMA

fighters and their managers and/or promoters. In addition, license suspensions or revocations based on positive drug testing accounted for the administrative appeal cases before the Commission.

YEAR	ARBRITRATIONS	APPEALS
2009	3	5
2010	2	8
2011	1	8
2012	2	6

The Commission’s citation and fine option allows the Commission to penalize licensees rather than pursue formal discipline for less serious offenses, or offenses where probation or license revocation is not appropriate. According to the Commission, the most common violations which result in a citation and fine are:

- Weighing more than authorized for an approved contest.
- Testing positive for marijuana.
- Testing positive for performance enhancement substances.
- Testing positive for methamphetamine.
- Unlicensed activity as a promoter.

The Commission also aims to take action against unlicensed activity, relying primarily on reports from licensed stakeholders of any events or actions that appear to be unlicensed activity. The Commission staff investigates complaints of unlicensed activity, reports of which may also come to the Commission via a link on its website and scanning by the Commission staff of popular boxing and MMA websites and blogs for mention of illegal activity. When unlicensed activity does occur, the Commission staff coordinates with DCA’s Division of Investigation (DOI) or local law enforcement. The Commission also issues cease and desist notices and letters to further deter illegal activity.

Recent Legislative History, Action and Audits

Federal Law, the Muhammad Ali Boxing Reform Act (Boxing Act) prohibits events from taking place in a state without a regulatory commission unless the fight is regulated by either another state’s commission or on sovereign tribal land. Regulated events result in higher levels of protection for fighters than unauthorized or illegal events, in addition to added revenue for the state and a boon to the local economy where events take place.

In 2004, after a thorough review of the Commission, the Joint Legislative Sunset Review Committee (JLSRC) and the DCA recommended only a one-year extension of the Commission to address deficiencies in its operations. In 2005, the Commission still failed to address myriad personnel and financial issues to an acceptable level so the Joint Committee and the DCA recommended a sunset of the Commission. No proposals surfaced to extend the Commission that year and so on July 1, 2006, the Commission’s duties were transferred to DCA and its operation continued as a bureau within DCA.

In August 2006, following the July sunset of the Commission, the Legislature approved SB 247 (Perata, Chapter 465, Statutes of 2006) which recreated the Commission on January 1, 2007, as an independent board through July 1, 2009. While the Commission was fraught with issues and seemed to have continuous difficulty operating effectively, the key rationale for the reconstitution of an independent, regulatory body included as follows:

- Greater transparency and public accountability.
- Health and safety risks that rise in an unregulated environment.
- Federal conformity.
- Potential for major economic losses to the state.

SB 963 (Ridley-Thomas, Chapter 385, Statutes of 2008) extended the sunset date on the Athletic Commission and its Executive Officer from July 1, 2009 to January 1, 2011.

This Committee held an oversight hearing focused on the Commission in April 2010. At that time, numerous operational deficiencies, fighter safety issues and problems with amateur MMA regulation were explored and discussed. In addition to administrative issues that plagued the Commission, since it was reconstituted in 2007, the Committee members were especially concerned with the process and procedures by which the Commission delegated its authority for amateur MMA regulation. SB 294 (Negrete McLeod, Chapter 695, Statutes of 2010) extended the sunset date for one year, from January 1, 2011 to January 1, 2012.

The Commission was reviewed again by this Committee in 2011 as part of the Sunset Review process. At the time, the Commission appeared to be making some strides in meeting the many challenges it consistently faced with effective day-to-day operations, as well as appeared to be improving and on the road to implementing necessary systems and procedures to efficiently support its mission and statutory health and safety promotion mandates. The Commission finally completed a Strategic Plan which was submitted to the Legislature in December 2010, held regular meetings with little quorum problems and filled vacancies in key leadership and staff positions. It appeared that for the first time in many years, the Commission was not beleaguered with turmoil in personnel, issues involving conflicts of interest, and inappropriate activities on the part of staff. The Commission also reported that it was holding more frequent and regular trainings and informational sessions offered for field staff, covering a more consistent set of subjects, and finally convening the bi-annual training sessions as outlined in statute to ensure that field staff understood their responsibilities and duties relative to all applicable laws and regulations. The Commission went through the process of updating regulations in the California Code of Regulations to better conform to current practice and strengthen oversight of athletes and events, including clarifying rules for MMA. SB 543 (Price, Chapter 448, Statutes of 2011) extended the sunset date for 2 years, from January 1, 2012 to January 1, 2014.

Reports of problems with Commission operations and the potential impact to fighters and licensees continued to be raised during 2011 and 2012, the most substantial stemming from the aforementioned budget woes. As part of its role to investigate under The California Whistleblower Protection Act (Whistleblower Act), the Bureau of State Audits (BSA) reported on improper governmental activities by agencies and employees of the state in 2012, highlighting overpayment by the Commission to 18 part-time field inspector staff totaling \$118,700 from January 2009 through December 2010, because it inappropriately paid them an hourly overtime rate rather than an hourly straight-time rate for work they performed. BSA completed a subsequent review of the Commission in response to a request by the

Joint Legislative Audit Committee (JLAC) in June 2012, the results of which are contained in a report published March 2013 “*State Athletic Commission: Its Ongoing Administrative Struggles Call Its Future Into Question*”. The report found that: (1) The Commission’s solvency plan may not be practical; (2) The Commission does not track information about projected revenue and expenditures in a manner conducive to proper budgeting; (3) The Commission does not receive all of the revenue due from events and athletes; (4) Inspectors may not perform necessary health and safety regulatory functions at events; and, (5) The Pension Fund is still not administered properly. Simultaneously, the DCA conducted an internal audit of the Commission, the findings of which are contained in a report published in March 2013, “*California State Athletic Commission Operational and Administrative Control Audit*” which also found numerous deficiencies in Commission operations, particularly those related to event regulation and revenue reconciling for events.

PRIOR SUNSET REVIEWS: CHANGES AND IMPROVEMENTS

As noted above, the Commission was last reviewed in 2011 by this Committee. During the previous sunset review, this Committee raised 8 issues. Below are actions which the Commission took over the past 2 years to address many of the issues and recommendations made, as well as significant changes to the Commission’s functions. The vast majority of the key improvements to the Commission’s administrative activities, procedures and operations were implemented in a very short period of time under the leadership of the current EO who was hired in November 2012. For those which were not addressed and which may still be of concern to this Committee, they are addressed and more fully discussed under “Current Sunset Review Issues.”

In December 2012, the Commission submitted its required sunset report to this Committee. In this report, the Commission described actions it has taken since its prior review to address the recommendations made by this Committee. According to the Commission, the following are some of the more important programmatic and operational changes, enhancements and other important policy decisions or regulatory changes made:

- **Payments have been made to eligible boxers from the Pension Fund.** The issue of lack of appropriate effort by the Commission to track down eligible former boxers, in addition to lack of pension payments over a number of years, was raised in every audit and oversight review of the Commission. This Committee made various recommendations about furthering the outreach efforts of the Commission, echoed by the recent BSA report. While more work still needs to be done, the Commission in the past five months made three payouts to fighters who attributed their awareness of eligibility to recent outreach activity:
 - Payment to a homeless former boxer who fought 140 lifetime rounds, who had only a few days left on an annual allotment of days at an area homeless shelter.
 - Payment to another homeless former boxer who fought 384 lifetime rounds.
 - The Commission’s first ever early retirement for medical purposes to a 45-year old former boxer suffering from the degenerative brain disease chronic traumatic encephalopathy, the symptoms of which include memory loss, confusion, depression and emotional outbursts
- **Updated Strategic Plan.** The Commission completed a Strategic Plan for 2013-2015 and has already met some of the goals outlined within the plan.

- **Recent improvements to cashiering and cash-handling procedures.** The Commission has long faced criticism about the way payment is handled, including cash payments which could go missing or be placed in insecure locations like unlocked file drawers or safes with no key. Beginning in November 2012, the Commission no longer accepts cash as a method of payment and staff has been expressly forbidden from handling cash on the Commission's behalf. Concerns have also been raised over the years by the Committee, DCA and BSA about cashiering duties. Cashiering manuals and standard operating procedures have been created and provided to staff. To ensure accountability and compliance with proper protocols, the Commission recently separated several duties related to cashiering within the office that were previously all handled by one individual so that now all mail is opened by someone other than the cashier to ensure all checks are restrictively endorsed before handled by the cashier. Checks are now required to be secured in an approved secure container in accordance with state policy, and the Commission's cashier is now required to make deposits on a timely basis. The cashier is also now required to obtain a second review once the Report of Collections is completed to ensure all funds are properly accounted for and reported in the correct account.
- **Creation of Administrative Manual.** The Commission now, for the first time ever, has standard operating procedures compiled in an administrative manual for athletic inspector field staff to use and refer to.
- **Training is happening and completion is recorded.** This Committee directed the Commission that the quality of officials is critical to protecting the health and safety of athletes and as such, the Commission needed to immediately create standards and evaluation procedures for all staff, licensees, officials and field representatives. The Committee recommended that the Commission work with its robust network of athletes and officials to provide guidance on this process and work with the ABC to determine best practices and ensure compliance with any uniform standards.

After years of repeatedly failing to meet statutory requirements for training, the Commission is now holding inspector trainings and focusing training on many of the deficiencies identified in prior reviews and audits of the Commission. The Commission is also working with the ABC to utilize existing training infrastructure and staff. The Commission has also implemented policies requiring officials working title fights to have completed ABC or other approved training courses and has begun to make some staff assignments based on the preparedness and education of an official, further promoting the importance of training and continuing education to protect fighters. The Commission recently began maintaining a record of officials who have taken the appropriate training courses and ensures that competent officials are assigned to events by consulting these records, as well as refrains from assigning staff who have not completed required and necessary training. The Commission is also in the process of working with the ABC to receive approval of a referee training course, as well as working with the national association to ensure the availability of more approved trainers eligible to work in California. The Commission also recognizes the value of officials and is looking at ways to utilize qualified individuals to better train new and existing officials and is also working with the ABC to make further training improvements.

- **Better systems for assigning staff.** This Committee was concerned about a lack of clear, comprehensive standards for credentialing, hiring, training, or evaluating staff, licensees and

officials, findings which were also outlined in the 2003 DCA audit and recommended that the Commission implement standards and proper evaluation as the basis for assignments. The Commission made some slight improvements in the past but it remained unclear if the Commission was able to demonstrate standards for who should be allowed to oversee events, and whether all licensed officials had been properly trained, or are able to pass basic proficiency exams. The Commission is now using a website geared toward effective athletic event management and making assignments based on established criteria, such as participation in required training. The Arbiter Sports website assists the Commission by quickly locating the nearest inspectors to each event which greatly contributes to reductions in staff travel costs, an issue which has plagued the Commission.

- **Issuing Federal IDs prior to events.** The Commission has been criticized for problems associated with issuance of Federal IDs, including the recent DCA audit which examined a random sampling of boxers' files and Federal IDs missing in 27 of 28 files. While the Commission historically provided Federal IDs at events, adding to the event workload and dedicated time of staff, it recently implemented a policy to issue IDs prior to events so that fighters participate with a federal number and athletic inspector work at events can be streamlined. The Commission has recently partnered with DCA's DOI to also issue IDs at DOI field offices throughout the state.
- **Event files have improved and reporting timelines enhanced.** The Commission recently obtained laptops for use in the field at events and has worked to reduce paperwork processing in the field. Lead inspectors utilize an internal "Who's Who" document that ensures necessary items are in place before a fighter is cleared to participate and events are authorized to take place. Prior to a fighter participating in an event, the EO and lead inspectors assigned to an event now check all possible suspension lists multiple times to ensure fighter safety and that athletes are not suspended in another jurisdiction that the individual did not report to the Commission. Previously, the Commission struggled to reconcile its information with the national suspension database, resulting in confusion and potential fighter harm. The Commission is also now making timely reports of event outcomes, including medical suspensions, to necessary national databases. Now, the EO signs off on all fight results which are submitted to both fightfax and mixedmartialarts.com within 48 hours of completion of the event.

CURRENT SUNSET REVIEW ISSUES

The following are unresolved issues pertaining to this Commission, or areas of concern for the Committee to consider, along with background information concerning the particular issue. There are also recommendations the Committee staff have made regarding particular issues or problem areas which need to be addressed. The Commission and other interested parties, including the professions, have been provided with this Background Paper and can respond to the issues presented and the recommendations of staff.

COMMISSION ADMINISTRATION ISSUES

ISSUE #1: (OUTDATED TECHNOLOGY SYSTEMS AND THE IMPLEMENTATION OF BreEZe.) The Commission historically has had woefully outdated systems and still uses paper for many procedures at events. The Commission is also included in the *last* phase of the rollout for the DCA's new computer system, the BreEZe Project.

Background: The DCA is in the process of establishing a new integrated licensing and enforcement system, BreEZe, which would also allow for licensure and renewal to be submitted via the internet. BreEZe will replace the existing outdated legacy systems and multiple "work around" systems with an integrated solution based on updated technology. The goal is for BreEZe to provide *all* the DCA organizations with a solution for all applicant tracking, licensing, renewal, enforcement, monitoring, cashiering, and data management capabilities. In addition to meeting these core DCA business requirements, BreEZe will improve the DCA's service to the public and connect all license types for an individual licensee. BreEZe will be web-enabled, allowing licensees to complete applications, renewals, and process payments through the Internet. The public will also be able to file complaints, access complaint status, and check licensee information. The BreEZe solution will be maintained at a three-tier State Data Center in alignment with current State IT policy.

In November of 2009, the DCA received approval of the BreEZe Feasibility Study Report (FSR), which thoroughly documented the existing technical shortcomings at the DCA, and how the BreEZe solution would support the achievement of the DCA's various business objectives. The January 2010 Governor's Budget and subsequent Budget Act included funding to support the BreEZe Project based on the project cost estimates presented in the FSR.

According to the DCA, staff from all of the DCA's boards and bureaus have participated in development and testing of BreEZe and continue to do so. To date, there is no current, viable information system for the Commission, nor does it appear one will be available anytime in the near future, that encompasses all licensees, including information which is the basis for licensure and ability to participate in events and captures particulars about officials. The DCA reported at numerous Commission meetings that executive management staff was working at the Commission to create new systems, yet the only result appears to be a Microsoft Access database for licensing information that does not have any web-interface, and still relies on data entry of information from paper forms, resulting in the possibility that key information about licensees is overlooked and that records are not complete. Even the recent DCA internal audit reported that the Commission relies mostly on paper files, does not have an adequate system to monitor operations and because of their unique needs will be

one of the last recipients of BreEZe technology. Up until very recently, it was not unheard of for licensees to provide materials at events proving that they are in fact licensed, such as carrying a receipt for renewal to show staff that they have met licensure criteria.

In addition to the lack of available systems, there is still some concern about how flawed files from a handwritten and paper based record system will be reconciled to be a part of a new, functional system when that is ultimately available. It is also unclear whether the old laptops currently used by Commission staff at events will be supported by the DCA information technology staff and systems, as well as connect to the new BreEZe system. Additionally, transmittal of key licensee information, event results, and up-to-date performance specifics to national databases, for the purpose of matchmaking in this state and others, can be negatively impacted by the lack of technology available to the Commission and lack of sound records it is able to keep. The Commission may be limited by its ability to achieve information technology efficiencies, also recommended by the BSA in its recent report, by issues within the DCA Office of Information Systems and a focus on implementing BreEZe, which will not be available to the Commission for a number of years.

Staff Recommendation: *The Commission should provide an update of anticipated timelines, existing impediments and the current status of BreEZe, as well as any intermediate efforts underway intended to improve the Commission's information tracking systems, as well as any efforts the DCA is taking to assist the Commission in improving on its current paper based record system and outdated technology systems.*

ISSUE #2: (PROBLEMS RELATED TO ATHLETIC INSPECTORS.) Policies and procedures related to athletic inspector training, assignments and pay are not consistent with the Commission's health and safety mandate. The Commission has consistently struggled to define standards for training, hiring and assigning inspectors and only very recently began implementing procedures to properly utilize athletic inspectors, but now faces significant challenges in its ability to staff events as necessary.

Background: Athletic inspectors are key players in the Commission's ability to safely oversee events. The Commission reported during its previous Sunset Review that it had made improvements in its operations through "optimum utilization of resources" and was managing business with a small staff and safely overseeing events through its use of athletic inspectors. Multiple audits and reports have found that is *not* the case and the Commission still struggles with hiring, assigning and evaluating inspectors. Many of the Commission's recent budgetary challenges are directly related to overpayment to its athletic inspectors.

These part-time officials are assigned to oversee various aspects of events held throughout the state and uphold the laws and rules governing these events. Inspectors are based in Northern and Southern California and have historically not been assigned based on objective evaluations of performance or proximity to events but rather in an inconsistent, unreliable manner. For example, inspectors from Northern California have been assigned to work at events in Southern California and vice versa, which has historically created a perception of unequal treatment, potential favoritism by Commission leadership staff, and most importantly, greatly increased Commission expenditures due to excessive travel costs. (According to budget documents as far back as 2009, the Commission overspent its Fiscal Year 2008-09 budget by about \$150,000, which even then, staff reported could stem from the Commission's improper assignments of field representatives.) Some full-time Commission staff and employees of other state agencies also serve as part-time inspectors, an issue which will be discussed

further as part of the Commission's budget and spending. In September 2010, the Commission's staff recommended, and the Board voted, to seek legislation to cap the number of licensed officials based on unspecified economic conditions. The action appeared to be an attempt to get around implementing proper standards and proper evaluation as the basis for assignments and was another example of the Commission not taking necessary steps to ensure quality within its inspector field, which in turn leads to quality in its oversight of events. The Commission also faced scrutiny for its use of volunteer staff in 2012 due to budget challenges in but it is unclear what qualifications those individuals had to serve, how they were used, whether they were trained and it is further unclear whether the Commission had the authority to even use volunteers.

Staff Recommendation: *The Commission should explain how it hires, assigns and evaluates inspectors. The Commission should explain how it determines the number of necessary athletic inspectors assigned to an event to ensure fighter health and safety. The Commission should discuss its criteria for determining how many inspectors should be assigned to an event and how the inspectors' performance is evaluated.*

ISSUE #3: (PROBLEMS WITH PERCEPTION ARISE BY POTENTIALLY UNAUTHORIZED ACTIONS BY THE COMMISSION'S STAFF.) How does the Commission address activities by staff that may not be appropriate?

Background: As previously stated, the Commission uses field representatives such as inspectors, physicians, judges and referees to monitor and regulate bouts throughout the state. It is not clear what efforts the Commission takes to ensure proper and professional behavior of all staff, including part-time officials, nor is it clear what recourse the Commission has when staff acts unprofessionally or inappropriately. For example, in June 2011, a Commission athletic inspector issued what appears to be a personal letter of recommendation on Commission letterhead that was not approved or endorsed by the Commission or executive staff. While an incident like this may not directly impact the Commission and its role, the Commission has a responsibility to maintain impartiality and promote fairness in the sports it oversees, which may be difficult by perceptions of potential undue influence and access to Commission staff.

Internal Commission information, memos and policies are also regularly made public through the media and websites dedicated to boxing and MMA which may undermine the Commission's role and work it is undertaking. While transparency and open access to information are a hallmark of an independent board like the Commission, and timely dissemination to stakeholders is an important part of the Commission's work, some of the material that is publicly available does not appear to be intended for public distribution and may violate privacy laws by identifying individuals by name.

The recent DCA audit also found that the Department's nepotism policy may have been violated, with no forms on record documenting familial relationships between known family members serving as athletic inspectors. That report noted that "nepotism could affect or adversely influence assignments, upward mobility of other employees and the safety of events, morale and the fair and impartial supervision and evaluation of athletic inspectors."

The Athletic inspector's staff may have also acted unprofessionally at an event in 2012 by challenging a member of the public to a fight.

Staff Recommendation: *The Commission should explain what policies it has in place to ensure that field staff is not attempting to act on the Commission's behalf. It would be helpful for the Committee to understand what recourse the Commission and executive management at the Commission have in dealing with potential acts of wrongdoing. The Commission should outline efforts it is taking to properly document familial relationships amongst its staff and whether nepotism has led to problems or complaints. The Commission should inform the Committee of any efforts it is taking to include a code of professional conduct in its training.*

ISSUE #4: (COMPLIANCE WITH LAWS GOVERNING OPEN MEETINGS, GIFT REQUIREMENTS AND CONFLICTS OF INTEREST.) The Commission has struggled with requirements for proper notice and posting of meetings, as well as the availability of agendas and meeting materials. The Commission has also gone back and forth over the past four years on the issue of accepting gifts and whether tickets to events the Commission oversees should be considered gifts. There has also been a problem with Commission members filing conflict of interest reports to the Fair Political Practices Commission (FPPC).

Background: The conduct of the Commission's meetings have been called into question on occasion. In June 2012, the Commission held a meeting to discuss "delegating authority to the Chair and Vice Chair to act on behalf of the Commission with regard to the budget." It is not clear if proper notice for that meeting was posted, nor is it clear if the meeting met the legal criteria to be held as "special" or "emergency" meeting. Because the Commission did not properly provide notice of that meeting, it had to hold a follow up meeting to ensure actions could be taken. The Commission also has faced challenges providing meeting agendas to meetings attendees and Commission members have expressed concern in the past at their own lack of preparedness for meetings because they were not provided the rather lengthy meeting packets in enough time to review the materials.

The Commission has also gone back and forth since 2009 on the issue of Commission members accepting tickets to events for family and friends. In July 2009, the DCA Legal Counsel prepared a memorandum which expressed concern that Commission members had for years been accepting passes and tickets to events for family members and friends without reporting those as gifts to the FPPC. The issue of gifts and acceptance of tickets becomes even more significant due to the rules for record keeping and reconciling by promoters and the Commission of complimentary tickets. Specifically, complimentary tickets must be printed with a face-value dollar amount and have the words "Complimentary – Not to be sold" stamped on the ticket. The Commission adopted a no-gift policy in late 2009 based on the DCA legal recommendation and issues of perceived conflicts of interest that arise from the acceptance of free passes, and included in its 2010 Board Member Administration Manual that "a gift of any kind to commission members from licensees or applicants for licensure is not permitted." The policy did not prevent the Commission members from receiving complimentary tickets to attend events in an official capacity or for information gathering purposes. The Commission discussed changing this policy many times, and voted in 2012 to allow members to accept gifts in the form of passes, so long as the total dollar amount was not beyond the maximum allowed annually for FPPC purposes. It would be helpful for the Committee to understand the Commission's current policies and practices related to gifts.

The BSA also raised the issue of the Commission's conflict of interest policy. The report identified multiple Commission members who did not submit their statements of economic interest upon leaving office, as required by law and also acknowledged significant miscommunication between the DCA and the Commission staff about the filing of this important information. The BSA recommended that the

Commission notify DCA when employees or officers assume leave to ensure proper disclosure of potential conflicts of interest and also recommended that the DCA improve its policies and procedures in order to maintain compliance with the FPPC rules.

Staff Recommendation: *The Commission should explain how it complies with open meetings requirements in California, including impediments to ensuring proper notice of meetings and what direction the DCA provides the Commission with regards to conducting meetings? It would be helpful for the Committee to learn about any Commission policies restricting representatives and staff from engaging in activity that could be construed as being in conflict with the Commission's public protection role, such as betting on events regulated by the Commission. The Commission should inform the Committee of its current rules relating to, and stance on, the acceptance of complimentary passes and tickets for family and friends. The Commission should inform the Committee as to who is subject to the FPPC reporting requirements and whether those requirements should be expanded to others working for the Commission.*

ISSUE #5: (PAYMENT TO NATIONAL DATABASE.) States rely on information contained in national databases about fighter eligibility to participate in bouts. The Commission was found to be behind in payments for its required dues to the national MMA database.

Background: The Commission relies on information about fighter health and safety and bout results contained in national databases yet has never paid into the national MMA database, nor reported California results appropriately until very recently. In late 2012, the Commission was notified that it was far behind in payments to ensure its participation in the national database for MMA. The national database, run by Mixed Martial Arts, LLC under the auspices of the ABC, ensures that fighters issued a medical suspension in one state are not authorized to fight in another state and potentially harm their health and welfare until they have served the term of their suspension. While the new EO raised this issue at a Commission meeting and received approval from members to explore payment to ensure use of the database, it would be helpful for the Committee to know the status of those discussions, as well as have confirmation that important fighter health information is being reported to, as well as accessed from, the database.

Staff Recommendation: *The Commission should explain the status of its payments to utilize the mixedmartialarts.com database. The Commission should clarify whether a fee on promoters for MMA events will pay for this.*

ISSUE #6: (EVENTS HELD ON TRIBAL LAND.) What is the Commission's role in events held within the state of California on tribal lands?

Background: Issues have arisen in the past concerning safety problems and potentially dangerous bouts taking place on federal tribal land. Events on tribal land are not considered to be events held in California that require Commission oversight but rather the Commission may regulate these events at the request of the tribal council or promoter holding an event on tribal land. The Commission oversees these events upon request from the promoter or tribal council, the authority for which is confirmed through a contract to provide services that the DCA legal counsel keeps on file. For each of the events the Commission oversees on tribal lands, it takes in a flat rate of \$4200; \$3000 to the Commission's Administrative Support Fund, \$600 to the Pension Fund and \$600 to the Neuro Fund. According to the Commission, when it regulates an event on tribal lands, the same medical, health and safety standards exist as they would for any other event the Commission regulates. There are the same

requirements for a promoter to have insurance, the same requirements for the presence of a physician and the same requirements for availability of an ambulance. Results from events held on tribal land are posted to national databases.

It is not clear what role the Commission plays for events that take place on tribal lands which the Commission does not regulate and how it reconciles results from these events.

Staff Recommendation: *The Commission should explain to the Committee how it works to promote important health and safety standards for all events in the state, including those which are held on tribal lands and not directly overseen by the Commission. The Commission should provide an estimate of how many of these events it regulates and how many take place with no oversight.*

COMMISSION BUDGET ISSUES

ISSUE #7: (THE COMMISSION WAS VIRTUALLY INSOLVENT AND NO ONE KNEW.)
The Commission had a fund balance of only \$23,000 dollars in June 2012 and yet those responsible for oversight of the Commission's budget were unaware of the impending problem, including the Commission members.

Background: In June 2012, the DCA budget staff reported to Commission members that it faced a deficit of nearly \$700,000 by the end of FY 2013. In a letter to the Commission's then-EO, the Director of the DCA stated that "without the ability to pay for even basic services, the Commission will have no choice but to cease operation immediately and cancel or postpone indefinitely all Commission regulated events." There was widespread shock on behalf of the staff and the Commission members about the budget situation and it is unclear how a public entity operating within the structure of a Department under a state agency umbrella could have continued to spend money without any oversight or checks. It is also unclear if the Commission's budget problems are related to insufficient revenue collection, excessive spending or a combination of both.

The Commission used to receive regular budget reports from the DCA staff during the tenure of interim EOs, including a DCA retired annuitant and former EO of other boards. In 2012, the DCA again offered to assign staff to assist the Commission with resolving its budgetary problems during a Commission meeting; however it is unclear when the DCA stopped providing assistance related to budget development and approval. It would be helpful for the Committee to better understand how budgets are created by semi-autonomous boards at the DCA and what role the DCA budget staff play in advising boards when they are not doing proper accounting.

It is unclear how both the Commission staff and the members were so unprepared for budget insolvency, considering the discussion at numerous Commission meetings since 2010 about the budget, and specific discussions about how athletic inspectors are and should be paid. At multiple meetings, the then EO sought clarity on how to properly pay inspectors, and ultimately requested a legal opinion from the DCA counsel to determine if the Commission was paying field staff properly and what rules applied to payments of full-time state employees working with the Commission on a part-time basis. The legal opinion was also presented at a Commission meeting and it was outlined to members that the DCA believed the Commission needed to pay overtime and reimburse travel costs to those athletic inspectors who were also employed in the state civil service. Yet, the BSA audit and examination by Committee Staff of Commission meeting minutes showed that Commission members

were never directly informed about *problems* with spending and did not fully understand how critical problems were.

In response, the BSA acknowledged that the Commission members have a responsibility to oversee the Commission's financial condition. The BSA report also highlighted current efforts underway which may help the Commission become solvent, including a new August 2012 legal opinion from the DCA that reverses the prior legal opinion and clarifies that in fact the Commission cannot pay overtime to athletic inspectors who have a primary job with the State in a different capacity and that inspectors' travel time to and from events is likely not compensable. While the Commission and EO now communicate regularly, often multiple times per day, it would be helpful for the Committee to understand how a situation like what the Commission faced last year ultimately occurred.

Staff Recommendation: *The Commission should update the Committee on steps it is taking to ensure proper oversight of its budget and proper communication.*

ISSUE #8: (LACK OF STAFFING.) The Commission is now operating according to a solvency plan that may not be feasible for it to do its job.

Background: During its last Sunset Review, the Commission reported that it had made significant improvements in hiring key staff and filling vacancies, an issue that was raised during prior Sunset Reviews and audits. However, the recent budgetary situation of the Commission, coupled with the solvency plan implemented to avoid issues such as those discussed above, have left the Commission woefully understaffed. The Commission previously hired Assistant Executive Officers, for example, with backgrounds in board administration and familiarity with the DCA who were able to help guide some of the internal office operations for the Commission. It is not clear how the Commission will respond to and implement recommendations contained in multiple audits and from this Committee, while also pursuing a legislative agenda, meeting its statutory requirements and most significantly overseeing the health of fighters participating in events throughout the state.

As indicated, the athletic inspector's staff are a critical component of the Commission's ability to oversee safe events. Inspectors facilitate key aspects of an event, including all of the pre-bout activities like weigh-ins and proper hand wrapping and ensuring only authorized individuals are in locker rooms. Inspectors also must be present in order for fighters to get paid after a fight. If too few athletic inspectors are assigned to an event, key fighter safety protections may be overlooked. The Commission reported that under the original solvency plan, it was very difficult to adequately regulate and oversee events with only *three inspectors* assigned to each event. The Commission believes the ideal number of athletic inspectors assigned to an event is five to six, an estimate also supported by the recent DCA audit. According to the Commission, five to six inspectors allows for two inspectors per locker room, a ringside inspector, and a lead inspector. The Commission is now typically working with four inspectors per event by making internal shifts such as requiring a referee who is present but not in the ring overseeing a bout to assist with the ringside inspections, a practice common in other states. The EO or the Chief AI may also serve as the lead inspector for an event when they are in attendance, further reducing the need to assign additional athletic inspectors.

The Commission has also streamlined procedures in the field to reduce the amount of time and staff resources necessary to conduct business and requires EO approval for a lead inspector to work more than five hours at a weigh-in and more than nine hours at an event. While the Commission's spending authority has appropriately been decreased, it would be helpful for the Committee to understand

whether some additional modifications may be necessary and spending authority increased to hire staff who will be key to making the Commission successful. The Commission recently began posting notices in gyms throughout the state about athletic inspector staff opportunities as a means of ensuring quality staff, but also achieving cost savings by not employing state employees.

Staff Recommendation: *The Commission should explain whether it can effectively protect fighters and oversee events with its current spending authority and other staffing needs it has to improve operations and promote fighter safety.*

ISSUE #9: (INABILITY TO FORECAST COSTS AND REVENUES GENERATED FROM EVENTS.) The Commission has consistently struggled to properly evaluate the cost of overseeing an event, including staff pay, and make decisions related to event management based on anticipated revenue.

Background: The Commission has come under scrutiny for years regarding challenges in properly evaluating what it costs to oversee an event and how much revenue an event brings in. It remains unclear how much revenue an event generates and what the actual cost to the Commission is for managing events. The Commission has never conducted a comprehensive analysis of revenue and expenditures and it is becoming increasingly clear that the Commission lacks the necessary resources and compensation to safely monitor events. Additionally, it appears that the Commission was consistently making faulty revenue projections that were not supported by data or trend analysis. The Commission was also making large overpayments to the athletic inspector's staff that it did not anticipate nor account for in its projections.

In its Sunset Report, the Commission stated that it recently implemented a new revenue and expenditure tracking and projection methodology. All events are categorized into six different classifications based on the amount of projected revenue. Event costs are projected based on the number of athletic inspectors assigned. Each month the EO reconciles the actual event revenues and expenses with our projections. Additionally, the Commission developed a revenue forecasting methodology that accurately predicted total event revenue for each of the prior two fiscal years. The Commission plans to use the new forecasting model to help predict our revenue for the current fiscal year and is tracking those figures according to this new system to ensure that expenditures remain less than revenues.

The Commission may not be able to adequately predict revenues over time in the manner that other licensing boards do, given the fluid nature of the Commission licensing revenues and fluctuations in the sports that may dictate when events do or do not take place. However, the Commission is facing such a dire budget situation that it may be necessary for the Commission to seek fee increases for the licensing categories it does have, as well as collect up-front monies from promoters to cover initial costs of event oversight. The Commission also needs to establish standards to determine, in general, how much it costs to put on certain events based on certain criteria; for example, the burden on the Commission of overseeing a large scale event will be different than what is required to manage a small event or an event held on tribal land where the Commission may play a limited role. It is not clear how many events the Commission holds, the monies collected from events and whether the Commission does in fact obtain all of the revenue it is due.

This issue was highlighted in the recent BSA which stated that the Commission did not begin to consistently track revenues and expenditures associated with each event that it regulates until January

2013, leaving the Commission at a disadvantage in trying to assess how events it regulates affect its financial condition. BSA recommended that the Commission develop procedures and written guidelines to ensure that it tracks information related to all events and associated revenues and expenditures.

Staff Recommendation: *The Commission needs to explain how it will effectively oversee events and determine the necessary expenditures it needs to make to ensure fighter safety and proper management of bouts.*

PROTECTION OF ATHLETES

ISSUE #10: (DOES CALIFORNIA NEED A FIGHTERS BILL OF RIGHTS?) Legislative attempts to further protect MMA fighters in contracts with promoters have not been successful. Is it necessary to specify fighters' rights in statute to ensure fighter health, safety and welfare or are there actions the Commission can take administratively to ensure fighters are aware of available resources, protections and responsibilities of promoters? Are there uniform standards and practices supported by ABC that the Commission can implement?

Background: The Commission exists to promote and protect the health and safety of fighters it licenses and others who engage in sports the Commission oversees. This includes professional fighters who enter into contracts with promoters, as well as amateur fighters. The bulk of the State Act and provisions in the rules and regulations governing Commission operations are in place to achieve fighter health and safety goals, as well as promote fairness in the contracts of professional athletes. The Commission has also undertaken efforts in the past to create an awareness amongst fighters about dangers of dehydration and other medical conditions, precautions for concussion injuries and certain rights a fighter has in California. Specifically, the Commission staff drafted a pamphlet three years ago that was to be made available to professional boxers so that the Commission was directly providing important information to athletes. The back of the pamphlet included the following bill of rights, as adopted by the ABC:

The Professional Boxers' "Bill of Rights"

1. You have the right to be treated in a professional manner and to be fully informed about all aspects of your sport.
2. You have the right to have all terms of any contract with a promoter or manager in writing.
3. You have the right to have all contracts read and explained to you, either by the local Commission representative or anyone of your choosing (including an attorney).
4. Before any bout, you have a right to know your opponent's name, their record, the weight class of the bout, the number of rounds of the bout, and the amount of your purse, including any travel or training expenses. To check on any boxer's record, including your own, contact Fight Fax at (856) 396-0533.
5. You have a right to review, obtain and keep copies of any of your contracts.
6. You have a right to directly receive any and all payments from a bout as set forth in your bout agreement.
7. You have the right to receive a written post-bout accounting from either the promoter or your manager or both which shows how the total amount of your purse was distributed. If you have any deductions taken from your purse you have the right to ask for a written accounting of what the deductions were, and why they were deducted from your purse.

8. You have a right to have a doctor at ringside at all times as well as emergency medical personnel and/or an ambulance present at the location at all times.
9. You have a right to have medical insurance covering any injuries resulting from a bout and to know the name of the insurance company and the amount of coverage being provided.
10. You have the right to hire individuals of your choice to serve as your managers, trainers, or seconds. You are not required to hire any individual in order to obtain a bout.
11. You have a right to know why your ranking with any sanctioning body has changed and the reasons for this change. This may be done in writing to the organization and requesting why your ranking has been changed. The organization must respond to you, in writing, within seven days.
12. You have a right to appeal any and all suspensions and to be informed about exactly why you were suspended and the length of your suspension. To check if you are on the National Suspension List, go to www.fightfax.com and click on Suspensions (a fee applies).
13. You have a right to contact your local Commission or the Association of Boxing Commissions to report any violations, ask any questions or seek any advice.

Many other states provide information like that above directly to fighters as part of their licensing application packet or include fighters rights in materials provided to fighters at events. It would be helpful for the Committee to better understand the Commission's current practices related to dissemination of this important information to boxers and MMA fighters. It would also be helpful for the Committee to learn of any uniform standards and practices adopted by the ABC and encouraged to be used by Commissions throughout the nation, as well as any Federal legislative efforts to include this in the Federal Act.

Last year, AB 2100 (Alejo) attempted to create a MMA fighter's bill of rights in statute. According to an analysis prepared by the Assembly Committee on Arts, Entertainment, Sports, Tourism and Internet Media, the measure was introduced to ensure protection of the MMA athletes in California and prevent mistreatment of these individuals. The Author asserted that the bill would ban certain exploitative contracting practices that violate athletes' freedom to work and their ability to support their families. The Author stated that many California MMA fighters have retired after suffering multiple concussions, bone fractures, muscle tears, nerve damage and spine injuries, which threaten their ability to earn a living and support their families as they grow older. The bill would have required that the Commission, in consultation with the ABC, establish and enforce a professional code of conduct and that persons seeking payment as promoters must make specified disclosures to the Commission prior to being compensated.

Staff Recommendation: *The Commission should provide an update on information it provides to boxers and MMA fighters about certain protections they are eligible for in their professional relationship with promoters, as well as other basic rights they have as fighters in this state. The Commission should discuss whether it believes a statutory provision is necessary. The Commission should discuss outreach efforts of this nature it plans to take. The Committee may wish to require the Commission to include MMA fighters in the Pension Fund to provide additional opportunities for the individuals that choose a professional career in the sport.*

ISSUE #11: (PREGNANCY TESTS.) Should the Commission require pregnancy tests for female athletes prior to licensure?

Background: The Commission and consumer advocates have been concerned for many years about the Commission's lack of pregnancy testing for female athletes and as such the Commission has made several attempts to mandate pregnancy tests, none of which have been successful. As an alternative to a testing requirement, in 2001, the Commission developed a notice that was provided to all female boxers before each bout. The Commission wanted to at the very least inform female boxers of the dangers associated with boxing if pregnant and to potentially prevent female boxers from fighting while pregnant. The notice, "What Can Happen If I Fight When I am Pregnant?" included possible medical effects of fighting while pregnant and recommended pre-fight testing.

The Commission sponsored AB 972 (Runner, 2005) which mandated pregnancy testing for female fighters. The Commission stated that pregnancy testing was a basic protection for female athletes and a key initiative to promote women's health, as a pregnant fighter engaging in a bout could damage her own body as well as her unborn child. At the time, the Commission also asserted that "all major boxing commissions in the United States require pregnancy testing," many of which have found on "multiple occasions that female boxing applicants tested positive on pregnancy tests."

The Commission's efforts faced resistance from the ACLU related to privacy concerns, as well as the American College of Obstetrics and Gynecology which stated at the time that its "guidelines about activity during pregnancy do not directly address professional athletes and, in general, physicians advise women to not use pregnancy as a time to undertake an ambitious new exercise regimen; however, women that have been previously very active are encouraged to continue with modifications as the women find necessary." It would be helpful for the Committee to receive an update on the status of the Commission's efforts to require pregnancy testing as well as any new data related to testing.

Staff Recommendation: *The Commission should report on its efforts to require pregnancy testing. The Commission should explain whether female athletes voluntarily take pregnancy tests prior to fights. The Committee may wish to pursue requiring pregnancy tests for female athletes as a female athlete safety measure.*

ISSUE #12: (CONCERNS ABOUT EXTREME MEASURES FIGHTERS UNDERGO TO MAKE WEIGHT.) What happens to a fighter who does not weigh-in with the expected number or within the range agreed to before a bout? What is the status of the Commission's weight study?

Background: Recent reports in the media and concern raised by the Commission members and staff about the drastic efforts fighters take to meet weight requirements led the Commission to conduct a weight study for the MMA athletes. In a 2010 *LA Times* article, significant and dangerous weight loss efforts were reported, often resulting in dehydration and other health effects. The practice of losing a large amount of weight in a short period of time prior to a weigh-in, then gaining weight back in the 24 hours leading up to a fight can affect the outcome of a fight. According to information provided by the Commission, studies have shown that drastic weight deviations can hinder a fighter's performance and be dangerous to a fighter's health and increase the potential risk of injury. The *LA Times* highlighted one athlete's 17 pound loss in 19 hours leading up to a fight.

Under the study, the Commission conducted official weigh-ins the day before the event, and then asked fighters to voluntarily weigh in again the next day, recording the weights to see the amount of deviation from the day before. The Commission is studying adopting random and official two-day weigh-ins and is considering drafting regulations defining the percentage deviation amount allowed in a better effort to promote fighter safety, following the lead of states like Ohio which have been using the two-day weigh in method for several years.

Staff Recommendation: *The Commission should provide an update on its weight study and regulatory change efforts. The Commission should identify any advancement in tests or methods to determine when a fighter is at risk for other injuries due to weight loss efforts.*

ISSUE #13: (USE OF PERFORMANCE ENHANCING SUBSTANCES.) The Commission, as well as other states, is in the process of evaluating the potential approved usage of substances which are currently banned. Are there instances where substances should be used without penalty to the athlete?

Background: According to the Commission, recent trends indicate an inclination toward performance enhancing drugs that decrease the needed rest time between training sessions. Primarily, the Commission sees testosterone as the main drug of choice for MMA athletes because it allows for an increased recovery time between training sessions leading up to the fight and a rise in testosterone replacement therapy.

The Commission currently prohibits fighters from using performance enhancing substances but recently sought to adopt an exemption from the ban for legitimate therapeutic purposes, such as steroid treatments for fighters suffering from asthma. The Commission's previous proposed regulatory change, modeled on World Anti-Doping Agency (WADA) standards, was denied approval by the DCA, but the Commission's Advisory Committee on Medical Safety Standards is again discussing the issue. According to the Commission, the therapeutic use exemption is more complicated when reviewed from various viewpoints and that some athletes take testosterone or other performance enhancing drugs early in their career, which in turn destroys their body's ability to naturally produce a normal level of testosterone. This early abuse then creates a situation where the fighter is reliant on artificial substances, taken according to a physician's recommendation and under their orders, in order to maintain normal body levels of the hormone. The Advisory Committee is examining what methods, if any, the Commission should use to grant an exemption from the ban on performance enhancing drugs for a specific therapeutic use. According to the Commission, some regulators feel that if an athlete cheated in their past, the individual should have to live with the decision while others see the conversation as one about second chances where a mistake in an athlete's past should not adversely impact their ability to make a living or participate in the sport in the present. The Advisory Committee is also reviewing natural physiological reasons for an athlete to test positive for a hormone such as hypogonadism, where no past abuse existed but a hormone is needed for a normal quality of life. The Commission is also looking at adopting recommendations of the ABC and in the process of reviewing WADA standards. Similarly, the Nevada State Athletic Commission recently met to discuss drug testing protocols including those for usage of testosterone replacement therapy and the Ultimate Fighting Championship (UFC), a national MMA promoter said it will be testing athletes who are on the treatment throughout their training camps to ensure their testosterone levels remain at legal limits.

Staff Recommendation: *The Commission should provide an update on its Advisory Committee work and explain what efforts it is taking toward uniform standards with other states on this issue.*

LICENSING ISSUES

ISSUE #14: (PROFESSIONAL TRAINERS LICENSE.) The State Act includes a statutory provision requiring that a professional boxer only spar for training purposes with an individual possessing a sparring permit and statute requires gyms to track sparring and report it to the Commission. This requirement has not historically been followed and may be impossible for the Commission to enforce given its current resources. Should the Commission create a separate licensing category for Professional Trainers?

Background: Current law requires the Commission to oversee a licensed fighter, as well as the individuals that train with that fighter. The Commission states that the requirement for approval of and reporting from a sparring partner is unique to California and is not feasible. The Commission believes that resources may better be utilized by monitoring licensed professional trainers under a new licensing category. The Professional Trainer would be licensed by the Commission, pay a fee recommended to be above the fee paid for licensure as a second and would have to sign off on the application of any professional fighter debuting. This additional accountability measure would allow the Commission to evaluate possible poor performance of the fighter and take action against not only the fighter but also the Professional Trainer associated with that fighter.

Staff Recommendation: *The Commission should provide additional information to the Committee about this option, including the existence of a similar licensing category in other states and whether this is a practice endorsed by the ABC. The Committee may consider adding a Professional Trainer licensing category provided more details are made available.*

ENFORCEMENT

ISSUE #15: (COLLECTION OF FINES.) Is the Commission collecting enough money to deter problematic behavior by its licensees? Should the Commission increase its fines to the statutory \$5000 limit or are there other options?

Background: The Commission's cite and fine ability allows for punishment to licensees for violations of the law that while significant, may not be serious enough to warrant license suspension. Fines are used as a penalty and are usually accompanied by a suspension or order to correct conduct. They are commonly issued against fighters for using prohibited substances and conduct that brings discredit to combative sports or the Commission. The Commission's current fines may not be deterring certain activity and may not be strong enough to make any kind of impact to professional fighters receiving high salaries. The Commission has also struggled to establish consistency in its citation and fine program, sometimes assigning small fines to certain fighters for some violations and large fines to others for similar violations.

The Commission is currently exploring seeking increased authority to collect fines so that it can more effectively discipline its licensees, specifically by basing the amount of a fine on a percentage of the fighter's purse. Some athletes receive over six figures to participate in bouts, and paying a \$2000 fine for use of an illegal substance does not make a dent in their earnings, thus potentially perpetuating use of the banned drugs without any noticeable penalty. The Commission believes that having this option will provide a greater level of deterrence for highly paid athletes. Other states like Nevada take a 3-40 percent of a fighter's purse for the event where the violation occurs.

Staff Recommendation: *The Committee should authorize the Commission in statute to adjust its fine collection abilities so that it may collect a percentage of a fighter’s purse for certain substance abuse violations. The Commission should explain how it will ensure consistency in its fines and enforcement and punitive efforts.*

ISSUE #16: (DRUG TESTING INCONSISTENCIES.) The Commission has faced many problems in its drug testing timing, procedures and results reporting.

Background: All licensed fighters are required to submit to random drug testing by the Commission and regular drug testing if prior results showed evidence of a prohibited substance. In the event an athlete is found to have a banned substance in their system, the individual is not permitted to participate in a California regulated combat sport again until their suspension period has ended and the fine is paid. The individual also has to appear before the Commission and provide evidence of rehabilitation and fitness for licensure.

As reported in a recent *LA Times* article, there are currently no uniform standards for drug testing and drug testing procedures throughout the U.S. The story found that there are discrepancies in the licensing of fighters related to drug tests and that some fighters are granted licenses in one state or jurisdiction but denied licensure in another.

The Commission also faced intense scrutiny during an appeal of results by a fighter, based on allegations that Commission staff failed to protect the specimen and had paperwork showing a drug test on one day and a label on the specimen for another date. While the results and suspension of the fighter were upheld, the perception associated with problems performing drug testing, even on an inconsistent basis, reflects poorly on the Commission and its ability to promote safety and ensure fair bouts.

Staff Recommendation: *The Commission should provide an update on its current drug testing policy. The Commission should inform the Committee of any uniform standards for drug testing of professional athletes or conversations about implementing uniform standards across the nation.*

REGULATION OF AMATEUR SPORTS

Current law allows the Commission to delegate its authority to oversee amateur sports to a qualified nonprofit organization if the Commission determines that the nonprofit “meets or exceeds the safety and fairness standards of the Commission.” If authority over regulation of an amateur sport is delegated to a qualified nonprofit organization, the Commission must conduct an annual review. The Commission has the “sole direction, management, control of, and jurisdiction over all professional and amateur boxing, professional and amateur kickboxing, all forms and combinations of forms of full contact martial arts contests, including mixed martial arts, and matches or exhibitions conducted, held, or given within this state”. Thus, under current law, the Commission’s delegated authority for amateur regulation would also have oversight of the same sports as the Commission.

California is unique in requiring that a delegated authority have nonprofit status. According to information provided by the National Conference of State Legislatures (NCSL), many other states similarly delegate regulatory authority for amateur sports but do not always require the organization to have nonprofit status. Some, like Oklahoma, require that an authority other than the state commission

be a nationally recognized amateur sanctioning body. Many sanctioning outfits are actually for-profit organizations but often have national or international authority over a particular sport.

The Commission has delegated its regulatory oversight responsibilities of amateur boxing and MMA to two different nonprofit organizations; USA Boxing, Inc. and the California Amateur Mixed Martial Arts Organization (CAMO).

The Commission reports that it recently devised a protocol for oversight of USA Boxing which requires extensive review of USA Boxing reports provided to the Commission and regular appearances by each of the four Local Boxing Clubs at Commission meetings. The Commission utilizes the AG's Office as its liaison to USA Boxing.

In 2009, the Commission delegated its authority for amateur MMA to CAMO. During the previous Sunset Review, the Commission stated that it was monitoring this new delegation of authority for regulation of MMA events and working closely with CAMO through regular reports received by the Commission on CAMO's actions, fee structure and standards.

ISSUE #17: (PROBLEMS WITH USA BOXING.) This organization continues to come under scrutiny in its ability to promote the safety and protection of amateur boxers.

Background: The Commission currently delegates its authority for regulation of amateur boxing to USA Boxing, Inc. a nonprofit organization that is a branch of the U.S. Olympic Committee. In California, USA Boxing has four local boxing committees (LBCs).

- California Border Association serving San Diego and Imperial Counties.
- Central California Association serving Mariposa, Madera, Fresno, Kings, Tulare, Inyo, Mono, Kern, San Benito, San Luis Obispo, Merced, San Joaquin, Calaveras, Monterey, Stanislaus and Tuolumne Counties.
- Northern California Association serving portions of the state located north of Monterey, including parts of San Benito, Merced, Stanislaus, San Joaquin, Calaveras, Tuolumne and Mono Counties.
- Southern California Association serving Ventura, Los Angeles, San Bernardino, Orange, Riverside and Santa Barbara counties.

There have been several issues with USA Boxing that raise some concern regarding the oversight of amateur boxing. In 2009, the Commission suspended USA Boxing's authorization to regulate amateur boxing for three weeks in response to media reports of improprieties including underage alcohol consumption and gambling at USA Boxing sanctioned events and concern for the health and safety of amateur athletes. That delegation was reinstated after the Commission staff negotiated stricter requirements regarding safety, background checks, uniformity, reporting and record keeping, and included promises for USA Boxing to be more responsive to the Commission. The Commission voted to place USA Boxing on probation until June 2010.

USA Boxing has either been on the agenda or the Commission members and staff has requested that a USA Boxing item be placed on the agenda for many of the meetings held during the past four years. Last month, the Commission informed USA Boxing that it would be randomly sending the Commission inspectors to USA Boxing sanctioned events to ensure safety at those events.

It remains unclear how the Commission would appropriately oversee amateur boxing given the serious concerns in the past raised about its ability to manage USA Boxing and provide appropriate oversight. In recent action to delegate authority for amateur MMA oversight, the Commission cited limited resources as a primary reason for looking to a nonprofit entity for regulation. Commission staff and resources remain quite limited and are a barrier to effective oversight and regulation by the Commission of the sports that it has delegated its authority to regulate. But it is entirely possible that the Commission could once again suspend USA Boxing's authority, leaving a void in California's amateur boxing regulation all together and significantly harming the many young people taking part in this sport.

Staff Recommendation: *Regulations and statute governing the Commission's policies need to be updated to ensure that it has the ability to oversee amateur boxing in the event that USA Boxing is suspended again or removed completely from the authority to administer amateur events. The Commission should receive regular reports from USA Boxing in writing and at meetings. The Commission should move forward with its plans to randomly inspect USA Boxing sanctioned events.*

ISSUE #18: (DELEGATION OF AUTHORITY TO CAMO.) The Commission delegated its authority for regulation of amateur MMA to a nonprofit organization that oversees these events but is not subject to open meeting requirements or rules governing accountability, lacks a track record of oversight or licensing duties and is managed by former promoters. The Commission seemed dedicated to conducting frequent reviews of CAMO, but due to operational difficulties, has lacked the ability to provide this oversight and appropriately decide who should act as its defacto authority for amateur MMA.

Background: At its June 2007 meeting, the Commission discussed creation of a committee to review MMA regulations and provide clarification for new rulemaking. Dating back to the Commission's February 2008 meeting, comments made during public testimony regularly raised the issue of amateur MMA regulation in the state. Organizations began to attend Commission meetings and speak during public testimony about their interest in serving on the Commission's behalf as the oversight authority for amateur MMA. At its April 2009 meeting, the Commission planned a subsequent amateur MMA committee meeting to gather information from interested parties regarding regulation of amateur MMA events in California. It was determined that regulating amateur MMA would begin with addressing the steady rise in underground, dangerous events being held despite a lack of clear legal authority for events to take place. In May 2009, the Commission held an informational meeting attended by promoters, fighters, trainers and other interested parties. The results of the informational meeting were reported to the Commission at its regular June 2009 meeting. At that time, it was recommended that the Commission should expand its regulation of amateur competitions and athletes to include MMA. The Commission cited limited resources in its decision to delegate oversight responsibilities to a separate, nonprofit organization to regulate events.

Another committee meeting was held in August 2009, at which three applicants for delegation of authority to regulate amateur MMA presented their proposals. The meeting was attended by the applicants as well as promoters of professional MMA events. There was no consensus on safety standards for amateur MMA. The promoters advocated for the use of headgear at the amateur level, but the applicants felt it was unnecessary and even dangerous for the fighters to wear headgear. Days after the meeting in August 2009, the Commission met as a whole and voted to delegate its regulatory authority to the California Amateur Mixed Martial Arts Organization (CAMO), Inc.

It does not appear that the Commission ever adopted regulations to clearly outline the difference between professional regulations and amateur regulations prior to delegating its authority. Additionally, the Commission struggled with a definition of what constitutes “full contact” and should therefore be regulated. Commission members and staff expressed interest in a California-specific program that could better respond to the needs of the state’s amateur MMA community while still operating according to the nonprofit requirement outlined in the law. While CAMO presented substantial regulations and clear standards for the components necessary to oversee amateur MMA, there is some concern that the Commission was not yet in a position in its own process and according to its own procedures in 2009 to assist in the creation of the CAMO program. The Commission also worked with a small group of stakeholders to create a new model for regulation which may have omitted the input of many passionate athletes and organizers.

CAMO established a fee structure for licensing that exceeds any of the fees collected by the Commission. Many groups determined to be under CAMO’s regulatory authority still balk at the fee structure, citing that high fees are cost prohibitive to conduct events. BSA also reported that the Commission may have opportunities to generate revenue by regulating amateur MMA rather than delegating its authority to CAMO.

Staff Recommendation: *The Commission should fully explain how it would handle regulating amateur MMA in California, considering that it had to delegate its authority originally in 2009 because it lacked the staff and resources to regulate this growing field of athletes and events. The Commission should identify efforts in other states related to amateur MMA and how it would adopt uniform standards for regulation, including how it would dedicate the necessary resources to this endeavor given its significant operational and budgetary challenges.*

BOXERS PENSION FUND AND NEUROLOGICAL EXAMINATION FUND

ISSUE #19: (PROFESSIONAL BOXERS PENSION FUND STILL POORLY ADMINISTERED?) Created in 1982, to provide benefits to former boxers, the Professional Boxers Pension Fund (Fund) may not be appropriately designed and administered to meet the needs of these athletes.

Background: The Commission administers the Fund, which has been the subject of much criticism since its inception in 1982. Previous sunset reviews expressed concerns about the fund’s operations and in 2005, the BSA found that the fund was poorly administered and very few boxers have or would receive benefits from the fund. The Auditor noted that from 2001-2004, total benefits paid to boxers were \$36,000, while administrative costs were six times greater. Further, the Auditor also noted that, as of 2003, only 14 percent of licensed boxers were vested and their accounts were very low. On December 31, 2005, only 43 participants were eligible for retirement benefits totaling just \$430,000. BSA recommended reducing vesting requirements and increasing the gate fees used to fund the plan. According to a report issued by BSA in January 2011, these recommendations from 2005 remain unresolved. The Commission responded to BSA’s recommendation by stating that it will conduct a study on the impact of reducing vesting requirements and pursue changes in statute or regulation or an increase in gate fees.

While the Fund has recently been better managed and is now more fiscally sound, a key issue still facing the Commission with regards to the Fund is the need to ensure that athletes know they are eligible for benefits. As of August 2009, approximately 100 boxers were eligible to receive \$1.2

million in benefits. As of September 2010, 106 boxers were eligible for benefits from the fund which has grown to \$5.25 million. But as of December 2009, only 14 boxers were paid approximately \$182,000. According to a report on the pension fund for calendar year 2010, an \$8,000 payment was issued to a boxer but the check was never cashed. The solvency of the Fund may continue to be improperly judged because of the large amount of monies not collected by eligible recipients. The Commission also continues to face issues with calculation of payments to the Fund due to other deficiencies in its general operations.

The Commission states that in many cases it does not have any mechanism to contact former fighters. One key issue is the Commission's lack of viable electronic records and data in general for licensees, which could prove especially useful in outreach to athletes deserving of benefits. The Commission previously acknowledged the need to conduct a marketing plan to find fighters and increase awareness about the availability of benefits, yet no formal outreach approach has been defined or implemented. It is not clear what resources the Commission could allocate to achieve that goal, nor is it clear if staff will be able to effectively process applications for benefits. The Commission primarily uses its meetings to conduct outreach; however, that small field of attendees and regular participants does not capture a much larger sphere of eligible boxers.

Staff Recommendation: *The Commission should explain its progress in providing eligible fighters' pension payouts. The Commission should consider expanding the Fund to MMA athletes. The Commission should evaluate whether a lump sum payment is a proper benefit to a fighter or whether there may be a more appropriate use for the Fund like providing health insurance benefits or connecting fighters to coverage for medical services.*

ISSUE #20: (PROPER USE OF THE NEUROLOCAL EXAMINATION FUND.) The Neurological Fund has never been used appropriately and the Commission should consider how the Fund could be better utilized to assess chronic traumatic brain injuries

Background: The Commission's mission is to encourage the health and safety of fighters it licenses but it has consistently failed to properly spend money collected from promoters to conduct, promote or assist with neurological exams of fighters. The commission has been collecting a fee from promoters for about 20 years; however, those funds have not been used to pay for boxers' neurological exams, as required by law. Rather, the revenue has typically been used to pay the Commission's staff salaries and other administrative costs.

Years ago, after a boxer was denied a license under BPC § 18711, which requires that as a condition of licensure in California a boxer who wants to fight within the state must undergo a neurological examination, he and his manager sued Commission associated defendants for "breach of statutory duty and for interference with prospective economic advantage." The trial court entered judgments on jury verdicts in favor of plaintiffs (Superior Court of Los Angeles County, No. SWC107136, Ernest George Williams, Judge.) but the Court of Appeal reversed that decision. The court held that the decision of the Commission as to whether to issue the license was discretionary with the Commission, and it was thus immune from liability, officers and employees of the commission were likewise immune from liability and a doctor acting as an examiner for the commission, along with her agent, was immune from liability. The boxer was not a private patient, and he was examined by the doctor in her capacity as an examiner and an employee for the Commission. The purpose of the examination was to determine the fitness of the boxer to be licensed; it was not an examination or diagnosis that was made for the purpose of treatment. The court also held the latter defendants were not liable for interference

with prospective economic advantage. (*Opinion by Aranda, J.,* with Vogel (C. S.), P. J., and Baron, J., concurring.*)

As part of its continued efforts to evaluate impacts of participating in fights on fighters' brains, the Boxer's Neurological Examination Account (Neuro Fund) was originally established in 1986 to pay for costs associated with neurological examinations. In the early 1990s, Commission staff scheduled neuro exams and directly paid the physicians who conducted them using its appropriation from the account. This practice ceased in the late 1990s, but the Commission continued to collect the assessment from promoters for this purpose and placed the funds in the account for future disbursement.

At a Commission meeting in December 2011, staff was directed to draft regulations to establish a protocol to start paying for the neuro exams to be in compliance with the statutory requirements. Staff analyzed costs and the funding associated with the account in order to draft such regulations and found that the way the law is written, the Commission would have to pay for neuro exams as well as all medical exams required for licensure. Staff determined that this option was not feasible and even determined that paying only for neuro exams was also not possible given the current fund balance and the high cost of the exams. Staff reported that the Commission would only be able to fund neurological exams for approximately half the licensing population.

In 2012, the staff reported at a meeting that the Commission was authorized to spend \$120,000 in the current FY for *expenditures related to the account*. From that appropriation, the Commission was spending approximately \$46,000 to fund one half of a personnel year to pay staff. That position was filled with one of the Commission's full-time staff members who was paid for the other half of their salary from the Pension Fund. The Commission reported a fund balance of approximately \$741,000 by the end of FY 2012/13.

In an attempt to move toward compliance with the law, the Commission voted to establish a pilot project under which the fund would pay for exams for a limited number of fighters. The results of these exams would then be used to build a database that will assist the Commission in making policy decisions regarding the health and safety of the athletes and appropriate use of the funds. Staff reported that the pilot project would use the existing appropriation to fund computerized neuro exams of approximately 200 volunteer licensed fighters over a two-year period, to study the type and usefulness of the data collected. The database would track injuries, assist in determining when a fighter is safe to return to active participation after sustaining an injury, identify medical trends and identify individuals who may be at a greater risk.

At the same meeting, the Commission voted to reduce the assessment collected from promoters to pay for the neurological exams from 60 cents to 1 cent per ticket, and to seek legislation that would change the purpose of the fund. This action was taken on a vote of the Commission, not via the rulemaking process, which is customary when setting fees.

The Chair of this Committee sent a letter to the Commission asking that it delay taking action on the Neurological Examination Account until Sunset Review and specifically asked that the Commission reconsider the decision to reduce the assessment. The Commission responded with a thorough explanation of how and why they plan to implement the aforementioned pilot project, but they did not discuss the assessment.

BSA determined that the Commission's interpretation that the law requires the Commission to use the neurological account to pay for all medical examinations was flawed. Instead, the law requires the Commission to only pay for a neurological exam. Therefore, the Commission's failure to use the neurological assessments to pay for neurological exams, as intended, violates state law. The BSA also reports that, "by not adopting formal regulations to determine its calculation of the ticket assessment fee, the commission has failed to lawfully administer the neurological account." And that, "by not adopting the methodology in regulations, the Commission has created underground regulations; bypassed public transparency; and has precluded interested parties, such as event promoters, from providing input on the regulations that affect them."

The Commission also established a Medical Advisory Committee, for the purpose of developing an improved neurological assessment of combat sport athletes. Brain injuries and trauma sustained by fighters and other professional athletes have received renewed attention nationally due to the high profile deaths of, and struggles with brain diseases by these individuals. The Commission reported in a July 2012 letter to the Legislature that neurological care for athletes has progressed substantially in the past 5-10 years and that greater medical attention is now focused on neurological function after concussive head injuries, as well as the cumulative consequences of repeated blows to the head. The Commission asserts that standardized assessment scales have been validated, advanced neuroimaging technologies have been developed and computerized neurocognitive assessment tools are widely used for professional and sometimes for amateur athletes. Nevada recently became part of a unique program where The Lou Ruvo Center for Brain Health, in conjunction with the Cleveland Clinic, offers free physicals, including brain scans, for boxers and MMA athletes who compete in Nevada, increasing the educational data of the Nevada Commission as well as medical professionals.

Staff Recommendation: *The Commission should report to the Committee whether the Commission's office staff are still being paid out of the Neuro Fund. The Commission may wish to consider requiring promoters to pay directly for neurological exams of fighters who participate in their events, allowing the Commission to focus its spending of the Neuro Fund on proactive measures to protect fighters and prevent traumatic brain injury when possible. The Commission should report on the status of its development of a program for neurological examinations and study. The Commission should identify efforts like those recently implemented in Nevada to increase testing of athletes. This Committee should amend BPC § 18711 to clarify that the Commission is not subject to paying for all medical examinations for fighters and thus consistently out of compliance with the law.*

CONTINUED REGULATION OF FIGHTERS AND EVENTS BY THE CURRENT COMMISSION

ISSUE #21. (SHOULD THE COMMISSION BE CONTINUED?) **Should the licensing and regulation of boxers, kickboxers and mixed martial arts athletes be continued and be regulated by the current Commission membership, even though previously identified problems and deficiencies still exist?**

Background: The Commission's internal operations have been criticized in six different audits over the past six years, including three internal DCA audits and three Bureau of State Auditor (BSA) reports. Each of the audits of the Commission over the past six years showed problems with the way the Commission handled its day-to-day business, including, but not limited to, accounting, revenue collection and cash handling, poor record keeping and lack of organization, and a vastly outdated

information technology system. This Committee has also been critical of the Commission's operations and has continued to shorten the timeframe for sunset review to allow opportunities for the Commission to address issues raised by this Committee. While improvements have been made over the past five months, it is obvious that some major problems still remain unresolved and it may be difficult for the Commission to manage its internal office and day-to-day operations while properly overseeing large scale events that attract national and international attention. It should be recognized that the current membership and management have shown a commitment to improve the Commission's overall efficiency and effectiveness and are working cooperatively with the Legislature and this Committee to bring about necessary changes. However, concerns about the day-to-day functioning of this Commission remain.

Attempts have been made by the DCA to put the Commission back on track. In light of problems the Commission faced with executive management shortly after it was reconstituted as a board in 2008, the DCA began working closely with the Commission and providing resources to facilitate the Commission's day-to-day operations. In 2009, the DCA appointed a recently retired annuitant to serve as interim EO and during the following year the then-Director of the DCA regularly attended meetings and provided updates to the Commission on the role of many members of his executive leadership team in helping the Commission to find its way. During this time, with direct assistance from the DCA, the Commission's staff and members asserted that they were moving in the right direction and would begin implementing many standards, procedures and recommendations from past audits. However, the Commission did not do any of this until as recently as five months ago. I.T. systems remained outdated, the Commission nearly became insolvent, budget problems remained, no payments were made from the Pension Fund and the Neuro Fund continued to be used to pay office staff, rather than support important medical testing.

The role of the DCA in attempting to assist and guide the Commission is especially noteworthy considering the recent BSA audit recommendation that day-to-day operations be transferred to the DCA in the event the Commission continues to face problems within specified timeframe. As indicated, the DCA has been regularly involved in the Commission activities for a number of years and while it provides valuable resources and necessary staffing at times, it is not clear what higher level support and guidance pertaining to the Commission the DCA was able to facilitate and provide. Up to this point, it does not appear that these efforts have been successful in bringing about the necessary changes to the Commission.

California's professional and amateur boxers, kickboxers and mixed martial arts athletes are better served with appropriate oversight by a Commission, and the state benefits from holding these events in California. If the Commission goes away, large scale events held in communities throughout the state will not happen, taking with them the economic windfall to local businesses. Most significantly, fighting will still take place, in an underground, unregulated environment that is not conducive to protecting athletes and promoting career opportunities and abilities of many young people.

Staff Recommendation: *The Committee needs to better understand whether transferring the responsibilities of the Commission to DCA within a reasonable timeframe as recommended by the BSA, if the Commission is unable to correct the significant deficiencies, is really the best alternative considering the DCA's prior active role in trying to bring about necessary changes. The respective committees of the Senate and Assembly should work with Legislative leadership, the Administration and stakeholders to determine if possibly moving the Commission to another agency or department may better increase its chances for success and by extension, further promote the health, safety and*

support of fighters at all levels throughout California. In light of the deficiencies and problems identified by the BSA and this Committee, which must be addressed by the Commission, the staff recommends that the Commission be reviewed by the respective Committees of the Senate and Assembly once again in two years.