

TITLE 4. CALIFORNIA STATE ATHLETIC COMMISSION

NOTICE OF PROPOSED REGULATORY ACTION CONCERNING EXAMINATION OF BOXER APPLICANTS AND NEUROLOGICAL ASSESSMENT

NOTICE IS HEREBY GIVEN that the California Athletic Commission (commission) is proposing to take the action described in the Informative Digest. Any person interested may submit statements or arguments relevant to the action proposed in writing. Written comments, including those sent by mail, facsimile, or email to the addresses listed under Contact Person in this Notice, must be received by the commission, at its office, not later than 5:00 pm on **Monday, March 8, 2021**.

PUBLIC HEARING

The commission has not scheduled a public hearing on this proposed action. However, the commission will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days prior to the close of the written comment period. A hearing may be requested by making such request in writing addressed to the individuals listed under "Contact Persons" in this Notice.

The commission, upon its own motion or at the request of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as Contact Person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections 18611 of the Business and Professions Code, and to implement, interpret or make specific Sections 18640, 18642, 18661 and 18711 of said Code, the commission is considering changes to Division 2 of Title 4 of the California Code of Regulations as follows:

INFORMATIVE DIGEST

A. Informative Digest

Adopt subdivision (c) - (h) of Section 280. Per Business and Professions Code (BPC) Section 18711, on or after January 1, 2008, licensed professional athletes are required by the commission to complete medical examinations, to be determined by the commission through regulations, as a condition of initial licensure and license renewal.

These proposed medical examinations are designed to detect physical conditions that could place an athlete or contestant at risk for serious injury or permanent or temporary impairment of any bodily function. These tests or examinations include a neurological

examination, a magnetic resonance imaging (MRI) scan, an electrocardiogram (EKG), a physical examination, an eye examination, and blood tests for the Human Immunodeficiency Virus (HIV) antibody, Hepatitis B Surface antigen, and Hepatitis C virus.

Adopt subdivision (i) of Section 280. State law requires the Commission to administer the Neurological Examination Account, which the Legislature established in 1986 to pay for athletes' neurological examinations; however, according to the Bureau of State Audits, the Commission has not effectively managed this account. The State Auditor report 2012-117 stated the Commission has not used the neurological account to pay for any neurological examinations since at least 1998. This proposal would provide the necessary regulations to properly administer the account in accordance with the law.

B. Policy Statement Overview/Anticipated Benefits of Proposal

Existing law at Section 18611 of the Business and Professions Code authorizes the commission to adopt, amend, or repeal, in accordance with the Administrative Procedure Act, rules and regulations as may be necessary to enable it to carry out the laws relating to boxing and the martial arts.

BPC Section 18711 (a)(1)(B) requires "*On and after January 1, 2008, all professional athletes licensed under this chapter shall be required by the commission to complete a medical examination process, which shall include the completion of specific medical examinations, **to be determined by the commission through regulations**, as a condition of initial licensure and license renewal. This medical examination process may include examinations required under current law and any additional medical examinations determined to be medically necessary. In adopting the medical examination process, the commission shall consider the health and safety of contestants, the medical necessity of any examinations required, and the financial aspects of requiring those medical examinations.*" The proposed changes will carry out the intent of Section 18711 (a)(1)(B), by establishing necessary regulations concerning medical examinations required for licensure.

In addition, BPC Section 18711 (a) requires "*as a condition of licensure and as a part of the application process, the examination by a licensed physician and surgeon who specializes in neurology and neurosurgery of each applicant for a license as a professional athlete or contestant licensed under this chapter or, if for the renewal of a license, this examination every year, in addition to any other medical examinations.*"

Furthermore, BPC Section 18711 (c) states "*The cost of the examinations required by this section shall be paid from assessments on any one or more of the following: promoters of professional matches, managers, and professional athletes or other contestants licensed under this chapter. The rate and manner of assessment shall be set by the commission, and may cover all costs associated with the requirements of this section. This assessment shall be imposed on all contests approved by the commission under this chapter. As of July 1, 1994, all moneys received by the commission pursuant*

to this section shall be deposited in and credited to the State Athletic Commission Neurological Examination Account which is hereby created in the General Fund. The administrative costs associated with managing and distributing the State Athletic Commission Neurological Examination Account shall be limited to no more than 20 percent of the prior year's contributions."

The proposed regulations will clarify the intent of BPC Section 18711 (c) and will set the assessment at one quarter of one percent of gross ticket sales per event, and will require the Commission to re-examine the amount of the assessment when the Neurological Account balance falls below \$100,000. The threshold of \$100,000 is proposed because it will allow the commission to cover the costs of examinations for approximately one year, which is also the maximum timeframe to promulgate regulations to amend the assessment amount.

The benefits of this regulatory proposal include allowing the Commission to further fulfill its primary mandate of public protection. The Commission assumes 140 events each year based on historical information. As a result, if the neurological assessment was one quarter of one percent, the Neurological Examination Account balance would slowly decrease over the next five years to approximately \$140,000 by FY 25/26. Because the Neurological Examination Account currently has a significant fund balance of approximately \$580,000, the Commission believes it should charge an assessment that will begin to draw down the fund balance slowly and prudently over time. The Commission will re-evaluate the fee amount and adjust if necessary to ensure the lowest possible burden on promoters while ensuring a stable funding source for the Neurological Examination Account. The regulatory action will also ensure that applicants are healthy and thoroughly evaluated prior to licensure.

C. Consistency and Compatibility with Existing State Regulations

The Commission has conducted an evaluation for any other regulations on this area and has concluded that these are the only regulations concerning medical examinations and examination assessments. Therefore, the proposed regulations are neither inconsistent nor incompatible with any other existing state regulations.

D. Document Incorporated by Reference: **None**

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: The commission estimates costs of providing neurological testing at 140 events to be \$67,000 per year as follows:

- Neurological Testing Contract - \$23,000
- Athletic Inspectors - \$39,000
- Travel - \$5,000
- Total Costs - \$67,000

The commission has a current appropriation of \$56,000 per year for neurological

examinations with provisional budget bill language to augment this amount during the current year. As a result, in the event actual expenditures exceed the commission's expenditure authority of \$56,000, the commission will be required to request additional appropriation, as specified.

Based on the projected gross revenues per event, the commission estimates revenues of \$250 per event. The commission further indicates approximately 140 events are held in the state annually, which would result in revenues of \$35,000 per year.

Nondiscretionary Costs/Savings to Local Agencies: **None**

Local Mandate: **None**

Cost to Any Local Agency or School District for Which Government Code Sections 17500 - 17630 Require Reimbursement: **None**

Significant, statewide adverse economic impact directly affecting businesses and small business: The Commission has made an initial determination that the proposed action *will not* directly affect businesses statewide, including small business, and the ability of California businesses to compete with businesses in other states.

Cost Impact on Representative Private Person or Business:

The regulations will not have a significant adverse economic impact on promoters that promote professional boxing and mixed martial arts events in California.

This proposal would assess one quarter of one percent of the total gross revenue per event held in California. An average promoter will hold approximately four to five events per year in California. Under this proposal, promoters will pay on average \$250, per event, to the Neurological Examination Account. There are approximately 140 events held in the state, annually, which would result in revenues of \$35,000 per year.

Business Reporting Requirements:

The regulatory action does not require businesses to file a report with the commission.

EFFECT ON HOUSING COSTS: None.

EFFECT ON SMALL BUSINESS

The Commission has initially determined that this regulatory proposal would not affect small business. This determination is because this proposal does not impose additional requirements from the status quo as all examinations in this proposal are consistent with current licensing requirements.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

The commission concludes that this proposal will affect the State of California business environment as follows:

- Unlikely to eliminate any jobs
- Unlikely to create jobs
- Unlikely to create new businesses
- Unlikely to eliminate any existing businesses
- Unlikely to expand current business

Benefits of the Proposed Action: This regulation package would provide the necessary regulations to properly administer the Neurological Examination Account in accordance with the law. The Neurological Examination Account will pay for the costs of examinations required by BPC Section 18711 or for any other purpose related to the neurological health of combat sports athletes and authorized by the State Athletic Commission Act. The proposed regulation will benefit the health and welfare of California residents by ensuring that all licensed combatants are provided the most up-to-date and thorough neurologic care. The proposed regulation is not expected to impact worker safety or the state's environment.

CONSIDERATION OF ALTERNATIVES

The Commission must determine that no reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND INFORMATION / RULEMAKING FILE

The commission has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, any document incorporated by reference and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the California State Athletic Commission at 2005 Evergreen Street, Suite 2010, Sacramento, California 95815.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments, the commission may, upon its own motion or at the request of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal, with the modifications clearly indicated, will be available for review and written comment for 15 days prior to its adoption from the person designated in this Notice as the contact person and will be mailed to those persons who submit written oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Sophia Cornejo
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Sacramento, CA 95815
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Website Access: Materials regarding this proposal can be found at:
https://www.dca.ca.gov/csac/stats_regs/prop_regs.shtml