INITIAL STATEMENT OF REASONS

HEARING DATE: September 26, 2016

SUBJECT MATTER OF PROPOSED REGULATIONS:

Examination of Boxer Applicants

SECTIONS AFFECTED: Amend Title 4 California Code of Regulations as follows:

- Amend Sections 280 (Physical Examinations and Safety)

SPECIFIC PURPOSE

Following is a description of each proposed amendment and the factual basis for the action.

1. Add section 280 (c) - (g): Per Business and Professions Code section 18711, on or after January 1, 2008, all professional athletes licensed under this chapter 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. The medical examinations detect physical conditions that could place an athlete or contestant at risk for serious injury or permanent or temporary impairment of any bodily function. The proposed amendments provide that these tests or examinations shall include, but not be limited to, a Neurological Examination, a Magnetic Resonance Imaging (MRI), a Electrocardiogram (EKG), a Physical Examination, an Eye Examination, and blood tests for Human Immunodeficiency Virus (HIV) Antibody, Hepatitis B Surface Antigen, Hepatitis C Virus and Tuberculosis. The specifics for each test and factual basis for the action:

1. Neurological Examination must be performed by a licensed physician that specializes in neurology or neurosurgery. This examination is valid for 12 months.

   **Factual Basis:** This is a requirement specified in Business and Professions Code section 18711. This examination is crucial to detect neurological abnormalities and is required every 12 months, or sooner if needed by the commission.

2. Magnetic Resonance Imaging (MRI) using standard brain protocol to include Gradient Echo Imaging (GRE) or Susceptibility Weighted Imaging (SWI), shall be interpreted by a licensed neurologist, neurosurgeon, or neuroradiologist, every 36 months.

   **Factual Basis:** The MRI has superior sensitivity to computed tomography (CT) for identification of hemorrhagic axonal injury, small contusions, and small extra-
axial collections.

Susceptibility-weighted MRI imaging (SWI) is very sensitive for the detection of blood products and, in particular, micro bleeds.¹

Clinical practitioners with training and expertise in Neurology, Neurosurgery, and/or Neuroradiology are generally most familiar and skilled in evaluation and clinical interpretation of brain imaging.

3. Electrocardiogram (EKG) must be performed by a licensed physician. This medical test is only required once, or at the discretion of the licensed examining physician.

**Factual Basis:** EKG (electrocardiogram) is a diagnostic test of electrical activity in the heart. An initial test establishes presence or absence of potentially dangerous abnormality (ex. hypertrophic cardiomyopathy) that might warrant further evaluation or result in prohibition from licensed participation due to concerns for sudden cardiac death.²

One EKG also establishes a "baseline" with which comparisons can be made at a later date (at the discretion of the examining physician).

There is little value in routine screening in individuals without symptoms and the possibility of “false positives” may lead to unnecessary testing that also carries risk.³

4. Physical Examination must be performed by a licensed physician and is valid for 12 months.

**Factual Basis:** Pre-participation physical examinations provide for assessment and detection of underlying medical problems that may limit competition or place an individual at increased risk as a result of participation. In addition, an evaluation for any physical deficiencies involving musculoskeletal or neurological dysfunction as a result of injury (or otherwise) placing the athlete at increased risk can be made.

The overwhelming majority of organized youth, high school, collegiate, and professional sports organizations and/or governing bodies require a Pre-Participation Examination (PPE) prior to each season and/or at the time of any graduation to the next level of participation. In the absence of traditional calendar-based “season” to inform timing of PPE, a yearly examination is required (every 12 months).

---


5. Eye Examination must be performed by a licensed ophthalmologist and must meet the requirements set forth in Section 282, Article 6 of the California Code of Regulations. This examination is valid for 12 months.

**Factual Basis:** A higher bar is required for recognizing trauma, its implications and the remedies needed for visual rehabilitation. Ophthalmologists are more highly trained in disease and pathology recognition than Optometrists, and specifically trained to manage and treat trauma, diseases and their complications, including surgery, if required. Only someone with this level of training and experience can be given the responsibility of assuring the health of our athlete's eyes; just as a physician's assistant cannot substitute for a medical doctor.

Obtaining an eye examination is already a requirement for licensure in California Code of Regulations section 282, Article 6. The purpose of adding this again here is for clarity of having all medical requirements in one section.

6. The following required blood tests shall be taken within 30 days of the date of application and are valid for 6 months:

(A) Human Immunodeficiency Virus (HIV) Antibody
(B) Hepatitis B Surface Antigen (HBsAg)
(C) Hepatitis C Virus (HCV)
(D) Tuberculosis: Purified protein derivative test (PPD) or Quantifreon TB test.

**Factual Basis:** Combat sports frequently result in mutual exposure to blood during competition and as such, Blood Borne Pathogens such as Hepatitis B, Hepatitis C, and HIV are spread through sexual contact, exposure to blood and blood products, contamination of open wounds or mucous membranes by infected blood and as such may be transmitted during an event. 4 5

Transmission risk varies based on the “infectiveness” of the viral organism. No specific data is available specific to combat sports, but data from accidental needle stick exposure to Blood Borne Pathogens indicates Hepatitis B more easily transmitted than Hepatitis C, both of which are more easily transmitted than HIV. There are reported cases of HIV and Hepatitis transmission from bloody fights 6 7 and combat sports respectively. 8

2. Add Section 280 (h) to read: "In accordance with section 18711 of the Business and Professions Code, the commission shall collect from each promoter of professional matches licensed under the State Athletic Commission Act two hundred and fifty dollars ($250) per event sanctioned by the commission until the State Athletic Commission

---

Neurological Examination Account balance falls below one hundred thousand dollars ($100,000). At that point, the amount of the assessment shall be re-examined by the commission. The manner in which the assessment is collected shall be at the discretion of the commission and shall be deposited in and credited to the State Athletic Commission Neurological Examination Account and shall be used to pay for the costs of neurological examinations required by section 18711”.

State law requires the California State Athletic Commission (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. The Commission did not properly administer the Neurological Examination Account due to a lack of regulations. This proposal would provide the necessary regulations to properly administer the account in accordance with the law.

As stated in the Bureau of State Audit Report (BSA) 2012-117:

"The commission has also failed to adequately administer its Neurological Examination Account (neurological account), which the Legislature established in 1986 to pay for neurological examinations that might detect physical conditions that could place athletes at risk for serious or permanent injury. Although the fund balance in the neurological account reached $712,000 as of June 30, 2012, the commission has not used the account to pay for examinations since at least 1998, stating that it could not do so because of the excessive cost of the examinations. Instead, it has used the neurological account only to pay for state operations, such as a portion of the salary and benefits of the staff person who is responsible for verifying the accuracy of the neurological assessment calculation. The commission is considering requesting legislation that would change its responsibilities related to paying for these examinations. However, until the Legislature makes such a change, the commission is failing to use the funds to fulfill the intent of the law."

It is clear that the intent of Section 18711 of the Business and Professions Code (BPC) is to provide the most up-to-date and thorough neurological care for combatant sports athletes licensed in our state. Pursuant to BPC Section 18711, the Commission shall require, 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. The law requires athletes to receive these examinations in order to detect physical conditions that could place them at risk for serious injury. The Legislature established the Neurological Examination Account on January 1, 1986 with the intended purpose of paying for these neurological examinations, which could represent a considerable cost to athletes.

The specific purpose of this amendment to Section 280 is to establish the necessary and specific regulations and establish a neurological assessment fee and carry out the Legislative intent of BPC 18711. This regulatory proposal establishes a flat neurological assessment fee of $250 paid by promoters on a per event basis. According to a recent analysis conducted by Commission staff, a $250 flat fee per event would be sufficient to adequately fund the Neurological Examination Account and pay for professional athlete
neurological examinations as required by BPC 18711. In addition, this regulatory proposal would limit the expenditures from the Neurological Examination Account to pay for the costs of neurological 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.

FACTUAL BASIS/RATIONALE:

In order to implement the Legislative intent of BPC Section 18711, this regulatory proposal will set the neurological assessment fee at $250 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 Neurological Examinations required as a condition of licensure for approximately one year, which is also the average timeframe to promulgate regulations to amend the assessment amount.

This proposal is based on estimated costs of approximately $90,000 per year to pay for athlete neurological testing. The Commission estimates the annual revenue the Neurological Examination Account would receive by multiplying the neurological assessment fee of $250 by the number of estimated professional events held each year in California. The commission estimates the annual expenditures of $90,000 by using an estimate provided by a southern California doctor's office that historically performed the majority of neurological assessments for California professional athletes.

The Commission estimates average annual expenditures of $90,000 per year, with a high of $120,000 and a low $60,000. The Commission assumes 180 events each year based on historical information. As a result, if the neurological assessment was $550, the Neurological Examination Account balance would slowly increase over the next ten years to approximately $710,000 by FY 25/26. Any neurological assessment less than $550 will cause the fund balance to decline every year for the next ten years. Because the Neurological Examination Account currently has a significant fund balance of approximately $620,000, the Commission believes it should charge an assessment that will begin to draw down the fund balance slowly and prudently over time. As a result, if the Commission charged a neurological assessment of $350 - $550 per event, the fund would still have approximately $350,000 or more at the end of a ten year period. Conversely, if the Commission set the neurological assessment fee at $150 per event, the chart projects that the Neurological Examination Account fund would be bankrupt within the next ten years. The Commission believes the chart projections for the Neurological Examination Account predict an optimal neurological assessment lies somewhere between $250 and $350 per event. After careful consideration and debate, the Commission decided a $250 neurological assessment per event would be prudent and ensure the financial stability of the Neurological Examination Account while keeping the fee as low as possible to minimize the financial impact to our promoters. The Commission will re-evaluate the fee amount and adjust if necessary to ensure the lowest possible burden on our promoters while ensuring a stable funding source for the Neurological Examination Account.
UNDERLYING DATA:


3. Data prepared by CSAC detailing projections for the Neurological Examination Account (excel spreadsheet & table).

4. Neurological Fund Agenda Item from February 6th, 2012 CSAC Commission Meeting, Agenda Item 12(a-c)

5. CSAC Report to the Legislature concerning the State Athletic Commission Neurological Examination Account dated July 20, 2012


7. February 2, 2016, CSAC Meeting Minutes

FISCAL IMPACT ANALYSIS

Athletes applying for licensure are already being directed to complete the medical examinations that are proposed (as authorized by CCR 280). The Commission does not anticipate a major fiscal impact as these examinations are already a requirement for licensure. In addition, most costs associated with these medical examinations are paid by the Promoters.

Currently, the Commission charges promoters a neurological assessment of $.01 cent per exempt ticket and per ticket sold at each event. This proposal would require promoters to pay a flat fee of $250 per sanctioned event in California.

ECONOMIC IMPACT ANALYSIS/ASSESSMENT

The Commission does not expect a significant economic impact to Promoters as most are already paying the costs associated with the Neurological Examination and other medical requirements as a condition of licensure.

This regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California because the Commission is only covering the costs associated with the Neurological Examination that is required as a condition of licensure.
• It will not create new business or eliminate existing businesses within the State of California because this proposal still requires the same medical documentation as a condition of licensure.

• It will not affect the expansion of businesses currently doing business within the State of California because this proposal still requires the same medical documentation as a condition of licensure.

• This regulatory proposal does not affect worker safety because this proposal is not relative to worker safety.

• This regulatory proposal does not affect the state’s environment because this proposal is not relevant to the state’s environment.

BUSINESS IMPACT

The regulations will not have a significant adverse economic impact on promoters that promote professional boxing and mixed martial arts events in California. Promoters currently pay for many of the medical tests necessary when a professional athlete fights in California. Among the many things promoters often pay for are the athlete neurological examinations. California requires athlete neurological examinations for professional athletes every 15 months (will change to 12 months with this proposal). Promoters and/or their athletes must pay for these exams out of their own pockets on an as needed basis. As a result of this regulation package, the Commission will now be able to pay for and/or subsidize the costs for the neurological exams through the Neurological Examination Account. The business/financial impact to our promoters should be minimal. Promoters will now pay a flat fee of $250 per event instead of paying for each required athlete neurological exam that has expired.

Finally, the Commission does not believe that there will be any significant business/fiscal impact to any one promoter; rather, the costs for providing neurological examinations will be spread out. For example, the Commission has dozens of promoters that put on approximately 180 professional events each year. No single promoter or handful of promoters will be burdened with the proposed increase to the neurological assessment fee. The Commission estimates that most promoters in California promote fewer than 10 professional events in any given year. As a result, the fiscal/business impact will not be significant to any single promotion company as most professional events have gross ticket revenues in the thousands of dollars.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

The regulatory proposal does not require the use of any new specific technologies or equipment. The Commission requires neurological examination to be performed by a physician authorized to perform such examinations. The regulatory proposal only changes the method in which the examinations are paid for. This proposal will not require new equipment or technology for the physicians providing neurological examination services.
CONSIDERATION OF ALTERNATIVES

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 requirement or other provision of law.