

**California State Athletic Commission  
Department of Consumer Affairs**

**INITIAL STATEMENT OF REASONS**

**HEARING DATE:** August 11, 2014

**SUBJECT MATTER OF PROPOSED REGULATIONS:**

Neurological Examination Account - Physical Examination and Safety

**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.

Add Section 280 (c) "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 one hundred and seventy five dollars (\$175) 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 examinations required by section 18711 or for any other purpose related to the neurological health of combat sports athletes and authorized by the California State Athletic Commission Boxing Act."

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.

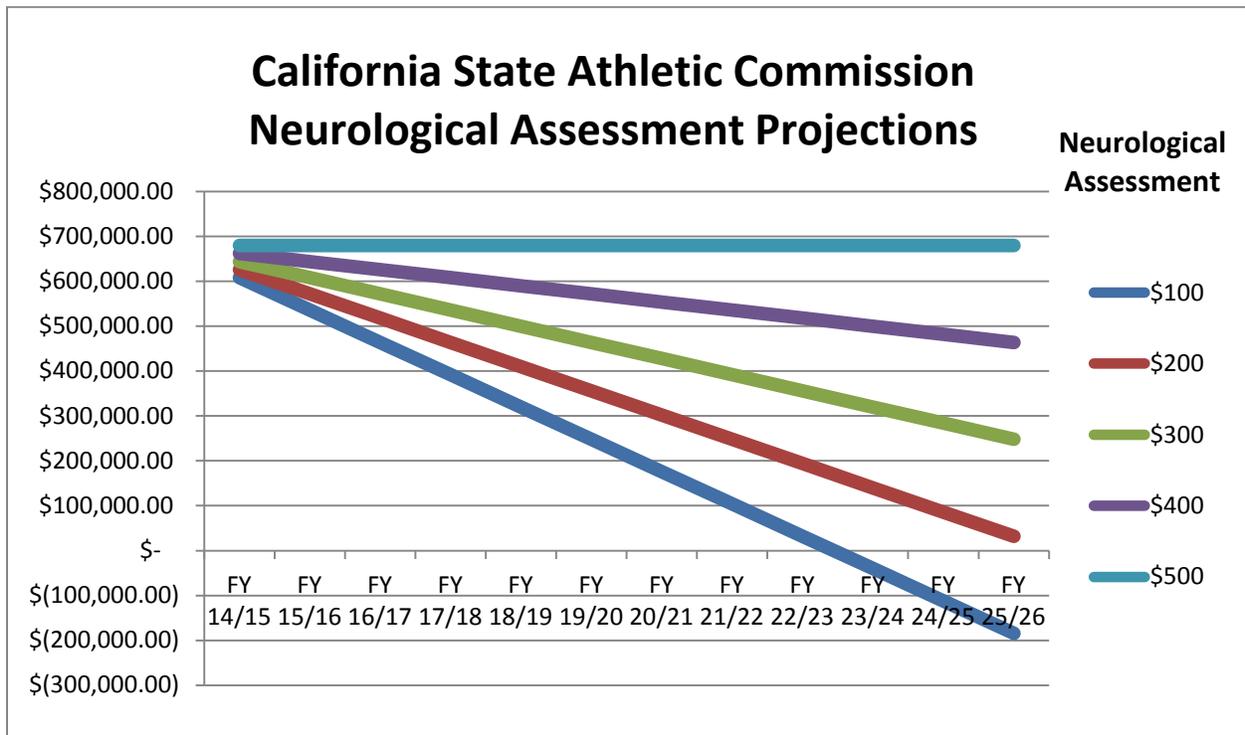
The specific purpose of this amendment to Section 280 is to establish the necessary and specific regulations and establish a neurological assessment fee and carry out the Legislative intent of BPC 18711. This regulatory proposal establishes a flat neurological assessment fee of \$175 paid by promoters on a per event basis. According to a recent analysis conducted by Commission staff, a \$175 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 \$175 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 \$175 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 chart below summarizes what the Neurological Examination Account balance would be based on a range of Neurological Assessment Fees from \$100 to \$500 per professional event and average annual expenditures of \$90,000.



The chart above shows the effect to the Neurological Examination Account balance over the next ten (10) years, starting with Fiscal Year 2014-15. The Commission estimates average annual expenditures of \$90,000 per year, with a high of \$120,000 and a low \$60,000. The chart above assumes 180 events each year based on historical information. As a result, if the neurological assessment was \$500, the Neurological Examination Account balance would stay approximately the same for the next ten years, at approximately \$700,000. Any neurological assessment less than \$500 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 \$700,000, 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 \$300 - \$500 per event, the fund would still have more than \$250,000 at the end of a ten year period. Conversely, if the Commission set the neurological assessment fee at \$100 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 \$100 and \$300 per event. After careful consideration and debate, the Commission decided a \$175 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:**

- CSAC Memorandum "Neurological Assessment".
- Data prepared by CSAC detailing projections for the Neurological Examination Account.
- Neurological Fund Agenda Item from February 6th, 2012 CSAC Commission Meeting, Agenda Item 12(a-c)
- CSAC Report to the Legislature concerning the State Athletic Commission Neurological Examination Account dated July 20, 2012
- Bureau of State Audits Report 2012-117

### **FISCAL IMPACT ANALYSIS**

Currently, the Commission charges promoters a neurological assessment of \$.01 cent per exempt tickets and tickets sold at each event. This proposal would require promoters to pay a flat fee of \$175 per sanctioned event in California.

### **ECONOMIC IMPACT ANALYSIS/ASSESSMENT**

The Commission does not expect a significant economic impact to Promoters as most area already paying the costs associated with the Neurological Examination that is required 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. 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 these 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 \$175 per event instead of a 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 regulations 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 boxers than the proposed regulations.