



On January 30, the First District denied Big Creek's petition for rehearing. On March 25, the California Supreme Court denied Big Creek's petition for review and petition for depublication of the First District's decision.

San Francisco Superior Court Judge Stuart Pollak heard oral argument in *Sierra Club and Redwood Coast Watershed Alliance v. California State Board of Forestry*, No. 951041 (San Francisco Superior Court), in March. In this case, two environmental groups are challenging the adequacy of the Board's recently-adopted regulations which purport to define and implement the FPA's express statutory goal—the regulation of timbercutting so as to yield "maximum sustained production (MSP) of high-quality timber products." This lawsuit is an offshoot of *Redwood Coast Watershed Alliance v. Board of Forestry*, No. 960626 (San Francisco Superior Court), RCWA's earlier litigation which successfully challenged the Board's 18-year failure to adopt any such rules. [15:1 CRLR 156; 14:4 CRLR 183–84] While that litigation was pending, the Board spent two years developing and adopting a package of MSP rules which were finally approved by OAL in January 1994 and are the subject of the challenge. [14:2&3 CRLR 195; 14:1 CRLR 1515; 13:4 CRLR 184] At this writing, Judge Pollak has not yet issued his ruling.

On April 17, the U.S. Supreme Court heard oral argument in the federal government's appeal of the D.C. Circuit Court of Appeals' decision in *Sweet Home Chapter of Communities for a Great Oregon v. Babbitt*, 17 F.3d 1463 (Mar. 11, 1994), in which the appellate court ruled that significant habitat degradation is not within the meaning of the term "harm" as used in and prohibited by the federal Endangered Species Act. [14:4 CRLR 184; 14:2&3 CRLR 198–99] The D.C. Circuit's decision conflicts directly with the Ninth Circuit's decision in *Palilla v. Hawaii Dep't of Land and Natural Resources*, 852 F.2d 1106 (9th Cir. 1988), thus prompting the Supreme Court to review the issue. At this writing, the high court has not yet released its decision.

■ FUTURE MEETINGS

June 6–7 in Redding.
July 11–12 in Oxnard.
August 8–9 in Sacramento.
September 12–13 in Tahoe City.
October 2–4 in Sutter Creek.
November 6–8 in San Diego.



INDEPENDENTS

BOARD OF CHIROPRACTIC EXAMINERS

Executive Director:
Vivian R. Davis
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In 1922, California voters approved an initiative which created the Board of Chiropractic Examiners (BCE). Today, the Board's enabling legislation is codified at Business and Professions Code section 1000 *et seq.*; BCE's regulations are located in Division 4, Title 16 of the California Code of Regulations (CCR). The Board licenses chiropractors and enforces professional standards. It also approves chiropractic schools, colleges, and continuing education courses.

The Board consists of seven members—five chiropractors and two public members.

■ MAJOR PROJECTS

Animal Chiropractic Therapy. At BCE's January 19 meeting, BCE member Lloyd Boland, DC, reported that he, along with BCE Executive Director Vivian Davis and Deputy Attorney General Joel Primes, met with representatives of the Board of Examiners in Veterinary Medicine (BEVM) on January 5 to discuss animal chiropractic therapy, including the unlicensed practice of chiropractic treatment on animals by individuals licensed as neither chiropractors nor veterinarians. According to Dr. Boland, BEVM and BCE agreed to work together on defining the scope of alternative veterinary care as it pertains to animal chiropractic therapy. [15:1 CRLR 97]

At its March 30 meeting, BCE reviewed draft regulatory language provided by BEVM regarding animal chiropractic therapy. Specifically, the language provides that animal chiropractic and other forms of musculoskeletal manipulation (MSM) are systems of application of mechanical forces applied manually through the hands or through any mechanical device to treat or alleviate impaired or altered function of related components of the musculoskeletal system of nonhuman animals; under the draft regulation, chiropractic and other forms of MSM in nonhuman animals are considered to be alternative therapies in the practice of veterinary medicine. BEVM's draft language also provides that chiro-

practic and other forms of MSM may only be performed by a licensed veterinarian, or by a licensed chiropractor upon referral from a licensed veterinarian, if specified conditions are met.

After reviewing BEVM's draft language, Boland and Davis made several amendments, including the insertion of language stating that alternate therapies are not taught in veterinary college, and may require additional training, education, or consultation with a health professional trained in those areas. BCE's amendments also state that chiropractic and other forms of MSM may only be performed by a California licensed veterinarian acting in consultation with a licensed health professional trained in the alternative therapy, and require the chiropractor to maintain complete and accurate chiropractic records of the patient's treatment and provide the veterinarian with a duplicate copy of those records.

Also on March 30, BCE considered amending its own scope of practice regulation, which currently provides that a duly licensed chiropractor may manipulate and adjust the spinal column and other joints of the human body; specifically, the Board discussed deleting the word "human" from this provision, to enable chiropractors to consult with veterinarians, as noted above, and subsequently treat animals. Following discussion, BCE agreed to postpone action on this proposal until further action is taken by BEVM.

At BCE's May 4 meeting, BCE member Michael Martello, DC, reported that BEVM objected to BCE's suggestion that a veterinarian should practice manipulation of animals only in consultation with a chiropractor; according to Martello, BEVM contends that there are not enough alternative health care professionals interested in veterinary health care to make consultation or supervision practical. BCE agreed to table further action on this matter until BEVM publishes formal notice of its intent to adopt regulatory language on this subject.

BCE Considers New Rulemaking Proposals. At its recent meetings, BCE discussed several rulemaking proposals, including the following:

• **Reciprocity Requirements.** At its January 19 meeting, BCE agreed to pursue amendments to section 323, Title 16 of the CCR, to require license reciprocity candidates to show documentation of five years of chiropractic experience. [15:1 CRLR 158]



• **Unprofessional Conduct.** At its March 30 meeting, BCE agreed to pursue amendments to section 317, Title 16 of the CCR. Among other things, section 317 currently provides that, when a licensee has been convicted of a felony or of any offense, whether a felony or misdemeanor, involving moral turpitude, dishonesty, or corruption, BCE may order the license to be suspended or revoked, or may decline to issue a license when the time for appeal has elapsed, or when the judgment of conviction has been affirmed on appeal. BCE will pursue amendments to section 317 to provide that under such circumstances the Board may order the license to be suspended or revoked, or may decline to issue a license upon the entering of a conviction or judgment in a criminal matter.

• **Specialty Certification.** At its May 4 meeting, BCE agreed to pursue new regulatory language regarding the advertising of a specialty, subspecialty, or certification by chiropractors. Among other things, the proposed language would provide that a specialty or subspecialty area of chiropractic means a distinct and well-defined field of chiropractic practice; it includes special concern with diagnostic and therapeutic modalities of patients' health problems, or may concern health problems according to age, sex, organ system, body region, or the interaction between patients and their environment. Under the draft regulatory proposal, specialty boards must be approved by BCE in order for their certificants to advertise the specialty or certification; BCE may withdraw its approval of a specialty board if it finds that the specialty board fails to meet or maintain the criteria set forth in BCE's regulations.

• **Conduct on Licensee Premises.** At its May 4 meeting, BCE agreed to pursue regulatory amendments to section 316, Title 16 of the CCR, regarding responsibility for conduct on the premises of a licensee. Specifically, BCE may pursue changes which provide that a chiropractor's commission of any act of sexual abuse, sexual misconduct, or sexual relations with a patient, client, customer, or employee is unprofessional conduct which is substantially related to the qualifications, functions, or duties of a chiropractic license. The changes would also provide that this provision does not apply to sexual contact between a licensed chiropractor and his/her spouse or person in an equivalent domestic relationship when that chiropractor provides professional treatment.

• **Cost Recovery.** At its May 4 meeting, BCE agreed to pursue new section 317.5, Title 16 of the CCR, which would—among

other things—provide that in any order in resolution of a disciplinary proceeding before BCE, the Board may request the administrative law judge to direct a licensee found to have violated the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

• **Continuing Education Faculty Disclosures.** At its May 4 meeting, BCE agreed to pursue changes to section 357, Title 16 of the CCR, regarding approval of continuing education (CE) seminars. Specifically, BCE's proposed changes would provide that an approved CE sponsor shall have a policy requiring disclosure of the existence of any significant financial or other relationship a faculty member or the sponsor has with the manufacturer(s) of any commercial product(s) discussed in an educational presentation; all approved CE activities must conform to this policy. Also, CE faculty or sponsor relationships with commercial supporters must be disclosed to participants prior to educational activities in brief statements in conference materials such as brochures, syllabi, exhibits, and also in post-meeting publications.

At this writing, BCE has not yet published formal notice of the above-described rulemaking proposals in the *California Regulatory Notice Register*.

Rulemaking Update. The following is a status update on BCE rulemaking proposals discussed in detail in previous issues of the *Reporter*:

• **Referral Service Regulations.** At its January 19, February 23, March 30, and May 4 meetings, BCE discussed its proposed changes to section 317.1, Title 16 of the CCR, dealing with the regulation and registration of chiropractic referral services. Referral services offer a centralized phone number which patients can call for referrals to local chiropractors. In July 1994, BCE published notice of its intent to amend section 317.1 to enable BCE to ensure that patients are referred only to licensed chiropractors who are not currently on probation with the Board; audit and, if necessary, take action against services which are in violation of any laws or regulations; ensure that referrals are fairly distributed among participating practitioners; and increase the referral service registration fee for the purpose of financing referral service monitoring. [15:1 CRLR 157; 14:4 CRLR 185; 14:2&3 CRLR 200]

However, for the past several months, BCE has struggled with the language of the proposed amendments; among other things, some of the difficulty stems from BCE's need to ensure that section 317.1

does not conflict with Business and Professions Code section 650.3, which provides that it is not unlawful for a person licensed pursuant to the Chiropractic Act, or any other person, to participate in or operate a group advertising and referral service for chiropractors if all of the following conditions are met:

—patient referrals by the service are the result of patient-initiated responses to service advertising;

—the service advertises, if at all, in conformity with section 651, and the service does not employ a solicitor;

—the service does not impose a fee on the member chiropractors that is dependent upon the number of referrals or amount of professional fees paid by the patient to the chiropractor;

—participating chiropractors charge no more than their usual and customary fees to any patient referred;

—the service registers with BCE, providing its name and address;

—the service files with BCE a copy of the standard form contract that regulates its relationship with member chiropractors, which contract shall be confidential and not open to public inspection; and

—if more than 50% of its referrals are made to one individual, association, partnership, corporation, or group of three or more chiropractors, the service discloses that fact in all public communications, including but not limited to communication by means of television, radio, motion picture, newspaper, book, or list or directory of healing arts practitioners.

At its May 4 meeting, BCE agreed to pursue new amendments to section 317.1. Among other things, the revised rulemaking proposal would provide that generally, no more than 20% of the calls received by a referral service may be referred to any one participating doctor per month, although it is understood that in a particular month there may be some exceptions to this requirement; advertisements for a referral service must be listed in a phone directory for each area in which participating chiropractors practice; each licensee is subject to administrative action for failure of the referral service to comply with California law; each individual component group or society which is part of a larger organization must register separately as a referral service; the referral service may not be located in a chiropractor's office or residence; the service telephone number must give access to the public during at least eight hours of the business day; each advertisement for a referral service must disclose that the service is paid for by participating chiropractors; and individual chiropractic offices may not be



listed on referral service advertisements. At this writing, BCE is expected to publish formal notice of the new amendments to section 317.1 in June.

• **Preceptor Program Standards.** At its December 1994 meeting, BCE adopted new section 313.1, Title 16 of the CCR, regarding preceptor programs—off-campus educational programs that allow chiropractic students to gain practical training and experience. The term “preceptor” refers to the participating chiropractor; the student is the “preceptee.” The Board has attempted to adopt section 313.1 on several prior occasions. [15:1 CRLR 157; 14:4 CRLR 185; 13:4 CRLR 189-90]

Proposed section 313.1 contains specific regulations governing the operation of preceptor programs. For example, section 313.1 would require BCE to approve all preceptor programs, and provide that the program shall include office management as well as clinical training; it can last a maximum of twelve months with no more than 35 average weekly hours; monthly progress reports concerning the preceptee's performance are required; malpractice insurance must be included for the preceptee during the program; the preceptor must currently be a state-licensed chiropractor with at least five years' experience, and not have been subject to any disciplinary action under the Chiropractic Initiative Act or other regulation, and cannot have been convicted of a felony or misdemeanor related to the practice of chiropractic; a preceptor must provide direct supervision of the preceptee, and must identify him/her as a preceptee to patients; a patient's written consent must be secured before being treated by a preceptee; the preceptor must ensure that the preceptee practices in accordance with all applicable statutes and regulations, and must ensure the filing of monthly progress reports with the appropriate college; a preceptor may supervise only two preceptees at a time, and must have a permit for on-the-job training in X-ray equipment; a preceptee shall satisfactorily complete the program, may not represent him/herself as a chiropractor, and may not administer treatment without the appropriate supervision; and the preceptee must verify the procurement of the signed consent form, comply with all applicable laws, and report to the college any termination, delay or, interruption in the program.

At this writing, the rulemaking file awaits review and approval by the Office of Administrative Law (OAL).

• **Practical Exam Prerequisites.** Also in December 1994, BCE adopted amendments to section 349, Title 16 of the CCR, which interpret section 1000-6(d) of the Business and Professions Code regarding

prerequisites for taking the practical portion of the California chiropractic examination, and which provide that, effective January 1, 1996, prior to being scheduled for the practical portion of the California Board examination, an applicant must show proof of either National Board status or successful completion of the entire written portion of the California licensure examination. The amendments would also clarify that the term “National Board status” means successful completion of Parts I, II, III, and physiotherapy on the national exam. [15:1 CRLR 157; 14:4 CRLR 186; 14:2&3 CRLR 200] According to BCE, requiring candidates to pass the national or state written examination before taking the California practical examination would allow the Board to establish the candidates' academic competence in ten areas of knowledge which are foundational to the practice of chiropractic before they appear before BCE's practical exam commissioners.

At this writing, the proposed changes await review and approval by OAL.

■ LEGISLATION

SB 682 (Peace). Existing law requires the Medical Board of California, the State Bar, and BCE to each designate employees to investigate and report to the Bureau of Fraudulent Claims of the Department of Insurance any possible fraudulent activities relating to motor vehicle or disability insurance by licensees of the boards or the Bar. As introduced February 22, this bill would require, in addition, those entities to investigate and report any possible fraudulent activities relating to workers' compensation. [A. Ins]

ACR 31 (Gallegos), as amended May 8, would acknowledge the significant contributions made by the chiropractic profession to the health and welfare of Californians, and commemorate 1995 as the centennial anniversary of the founding of the chiropractic profession. [S. RIs]

■ RECENT MEETINGS

At its January 19 meeting, BCE elected chiropractors Lloyd Boland to serve as Chair, Michael Martello to serve as Vice-Chair, and Sharon Ufberg to serve as Secretary.

At its February 23 meeting, BCE discussed its priorities in the investigation of misconduct cases. Executive Director Vivian Davis reported that she had discussed the matter with a representative of the Department of Consumer Affairs' Division of Investigation, and that BCE's top priority is the investigation of cases involving patient injury or endangerment, sexual misconduct, and substance abuse.

■ FUTURE MEETINGS

July 27 in Los Angeles.
August 31 in Sacramento.
October 12 in San Diego.
December 7 in Sacramento.

CALIFORNIA HORSE RACING BOARD

Executive Secretary:

Roy Wood

(916) 263-6000

Toll-Free Hotline:

800-805-7223

The California Horse Racing Board (CHRB) is an independent regulatory board consisting of seven members. The Board is established pursuant to the Horse Racing Law, Business and Professions Code section 19400 *et seq.* Its regulations appear in Division 4, Title 4 of the California Code of Regulations (CCR).

The Board has jurisdiction and power to supervise all things and people having to do with horse racing upon which wagering takes place. The Board licenses horse racing tracks and allocates racing dates. It also has regulatory power over wagering and horse care. The purpose of the Board is to allow parimutuel wagering on horse races while assuring protection of the public, encouraging agriculture and the breeding of horses in this state, generating public revenue, providing for maximum expansion of horse racing opportunities in the public interest, and providing for uniformity of regulation for each type of horse racing. (In parimutuel betting, all the bets for a race are pooled and paid out on that race based on the horses' finishing position, absent the state's percentage and the track's percentage.)

Each Board member serves a four-year term and receives no compensation other than expenses incurred for Board activities. If an individual, his/her spouse, or dependent holds a financial interest or management position in a horse racing track, he/she cannot qualify for Board membership. An individual is also excluded if he/she has an interest in a business which conducts parimutuel horse racing or a management or concession contract with any business entity which conducts parimutuel horse racing. Horse owners and breeders are not barred from Board membership. In fact, the legislature has declared that Board representation by these groups is in the public interest.