



ally authorize a medical device retailer to dispense, furnish, transfer, or sell a dangerous device to a licensed chiropractor. [A. Health]

**AB 2294 (Margolin).** The Chiropractic Act provides that a license to practice chiropractic does not authorize the practice of medicine, surgery, osteopathy, dentistry, or optometry, nor the use of any drug or medicine now or hereafter included in materia medica. As amended April 20, this bill would also provide that a license to practice chiropractic does not authorize the treatment of infectious disease. This bill would provide for the submission of the Act to the electors and that the Act shall become effective only when approved by the electors. [A. Floor]

## RECENT MEETINGS

At its January 7 meeting, BCE discussed requiring licensees to successfully complete the National Board exam, thus eliminating the Clinical Competency practical exam and the physiotherapy exam; the Board also discussed implementing an ethics and jurisprudence examination on California laws and regulations. CCA Executive Director Gary Cuneo asked for clarification on whether an applicant would still take BCE's exam after failing part of the National Board exam. Board member Louis E. Newman explained that the regulation governing an applicant's choice between using the National Board examination or taking BCE's written exam is out of date, and that the Board is considering issuing a policy statement on adding Part III of the National Board examination until the regulation can be formally changed. Dr. Jim Badge of the National Board of Chiropractic Examiners reported that 42 states require Part III of the National Board exam before licensure, and 93% of all students nationally take Part III and pass it prior to graduation. BCE directed its staff to determine what changes could be legally made without regulation and legislation, ascertain what changes might require regulation and legislation, and coordinate this information with a validation study that is currently under way (see below). Executive Director Vivian Davis reported that such a change would not be likely until 1995, and stated that the Board should inform students and chiropractic colleges of any change at least one year prior to the change.

Also at its January meeting, the Board attempted to elect new officers. After several unsuccessful attempts, the Board agreed that the current officers will retain their offices until new members are added to the Board or until there are enough votes for a new election of officers.

At BCE's February 18 meeting, Executive Director Davis reported that Coop-

erative Personnel Services (CPS) has undertaken the initial steps in BCE's examination validation study; CPS is sending contact letters to those members of the profession indicating an interest in identifying the skills and tasks inherent in the practice of chiropractic.

Also at BCE's February meeting, DAG Joel Primes explained that any meeting of three or more Board members is considered a Board action and is required to be conducted in public, pursuant to the Bagley-Keene Open Meeting Act; closed sessions are limited to specific exemptions provided by the Act.

At its April 8 meeting, the Board discussed possible regulations defining appropriate subjects for continuing education (CE) approval. DAG Joel Primes indicated that section 356, Title 16 of the CCR, appears to be quite broad in addressing this issue; Primes suggested that the Board amend the regulation if it wants to emphasize or de-emphasize certain subject matters. The Board also discussed adopting certain criteria for speakers at the CE seminars.

## FUTURE MEETINGS

September 9 in Sacramento.

October 15 in Los Angeles.

## CALIFORNIA HORSE RACING BOARD

*Acting Executive Secretary:*  
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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.

## MAJOR PROJECTS

**DOJ's Clenbuterol Investigation Prompts CHRB to Fire Executive Secretary.** At its February 26 meeting, CHRB reviewed the long-awaited report from the state Department of Justice (DOJ) regarding its investigation of the Board's dismissal of four cases involving positive tests for the illegal drug clenbuterol. [13:1 CRLR 128; 12:4 CRLR 219] Under CHRB policy, a trainer is notified of a positive test result and may select an independent lab to test the split sample. However, CHRB Executive Secretary Dennis Hutcheson dismissed three positive clenbuterol cases before the second sample could be tested; the Board subsequently dismissed a fourth positive clenbuterol case. Hutcheson then had all four split samples tested; all four came back positive. According to Hutcheson, he dismissed the cases primarily because he had doubts about the Board's testing lab; however, he failed to inform CHRB about his concerns prior to dismissing any of the positive test results.

Among other things, DOJ's report strongly criticized Hutcheson for violating "his responsibilities to the Board" by failing to follow Board policy regarding the testing procedure. After reviewing DOJ's findings, the Sacramento County District Attorney declined to file criminal charges against Hutcheson, finding that "the available evidence does not show that he acted with the necessary criminal intent." However, the DA also stated that DOJ's investigation "clearly shows that Mr. Hutcheson's conduct was in violation of stated CHRB policies and regulations in the area of drug-testing procedures.... There is a valid question concerning why Hutcheson took the action he did, but this



is an administrative matter for the Board to resolve, not a criminal matter for the courts."

At the February meeting, the Board first addressed ways of enforcing section 1859.5, which provides that a finding by a CHRB steward that a test sample from a horse participating in any race contains a prohibited drug substance determined to be a stimulant, depressant, local anesthetic or narcotic substance, whether natural or synthetic or a metabolite or analog thereof, requires disqualification of the horse from the race in which it participated and forfeiture of any purse, award, prize or record for such race, and the horse is deemed unplaced in that race; disqualification must occur regardless of culpability for the condition of the horse. Following discussion, the Board agreed to refer the matter to an administrative law judge (ALJ) who will receive all relevant evidence at a public hearing.

Next, the Board considered whether it would take administrative action against Hutcheson for his role in dismissing the positive drug cases. Commissioner Rosemary Ferraro commented that Hutcheson's actions both jeopardized the Board's ability to appropriately discipline the parties involved, and denied the parties involved the right to defend themselves pursuant to normal Board policy. Accordingly, Ferraro moved that Hutcheson be removed from the position of Executive Secretary; the motion passed on a 4-1 vote, with CHRB Chair Ralph Scurfield opposed. Following the Board's action, Hutcheson left the meeting, leaving Roy Minami to assume the position of Acting Executive Secretary.

In a March 15 *Sacramento Bee* article on the clenbuterol scandal, CHRB Commissioner Rosemary Ferraro was quoted as saying that "[e]verybody knows we tried to cover up the matter. They think the game is getting more and more crooked and they're staying away from the races. I can't blame them. I am ashamed to tell people I'm a member of the Board." In response to Ferraro's candid admissions, new Board member James Watson, who was appointed to CHRB just last December, called for Ferraro's resignation. In a March 31 letter to fellow CHRB members, Watson opined that "it is terribly damaging for a member [of the Board] to state publicly that she is ashamed to be a member." Ferraro, however, is seen by many as the driving force behind the Board's decision to have the events fully investigated and to ensure that appropriate actions were taken to restore some of CHRB's credibility with the industry and the public.

At CHRB's March 26 meeting, Deputy

Attorney General Cathy Christian reported that the Office of Administrative Hearings had agreed to provide an ALJ to conduct a hearing on the possible disqualification of the horses involved in the positive clenbuterol cases; a hearing was scheduled for April 19. However, at CHRB's April 22 meeting, Christian reported that the Attorney General's Office and counsel for the affected trainers and owners had agreed to bifurcate the matter; the first issue to be resolved is whether the disqualification requirement applies, given the fact that the Board's split sample procedure was not followed. Christian noted that the April 19 hearing had been postponed so that the parties could attempt to agree upon undisputed facts which can be presented to the ALJ.

In a related matter, Sacramento County Superior Court Judge James Ford ruled on April 1 that CHRB's drug testing results constitute public records subject to disclosure under the Public Records Act; prior to the ruling, CHRB hardly ever released test results if a second lab did not confirm the initial finding. The lawsuit was filed last December by former CHRB Commissioner Harvey Furgatch, to compel the Board to identify the owners, trainers, and horses involved in the clenbuterol scandal, which Furgatch terms "clenbuterolgate." Following the court's action, CHRB Commissioner Stefan Manolakas commented that the Board would "fully comply with the ruling."

**CHRB Begins Search for New Executive Secretary.** Following the Board's termination of Executive Secretary Dennis Hutcheson for events stemming from the clenbuterol scandal (*see above*), the Board began the search for a new Executive Secretary. At its March 26 meeting, the Board approved a proposed process for recruiting and selecting its new Executive Secretary. Under the process, the Board would send out job announcements; a two-member committee would review all resumes and narrow the applicants down to between four and eight; the finalists would be interviewed by the full Board in public session; and the Board would then make its decision. CHRB Chair Ralph Scurfield announced that the selection committee would consist of Commissioners Donald Valpredo and Stefan Manolakas.

At CHRB's April 22 meeting, staff reported that the job announcement was released on April 5 and that the deadline for submitting applications was April 30; as of April 21, the Board had received fourteen applications. Following discussion, the Board agreed to extend the deadline for application submission to May 30.

**CHRB Continues to Discuss Alternative Forms of Gambling at Tracks.** At CHRB's March 26 meeting, Brian Sweeney of the California Horsemen's Benevolent and Protective Association (CHBPA) announced that his organization had initiated a lawsuit against the California State Lottery (CSL) in Los Angeles County Superior Court, claiming that allowing CSL's Keno game to be offered at racetracks is unconstitutional and will result in the economic hardship for the thoroughbred industry. [13:1 CRLR 128-29; 12:4 CRLR 220] Sweeney also reported that the CHBPA has decided to commission a study on alternative forms of gambling and their effects on horse racing.

Also at the March 26 meeting, Chuck Beilin of the Santa Clara County Fair Association reported that his facility was willing to engage in a thirty-day experiment during which Keno would be offered. At the conclusion of the thirty-day period, the facility would determine whether the racing industry was detrimentally affected; if the horsemen do not want Keno to continue, the facility would cease offering it. The Board asked Beilin to develop a specific proposal regarding the conduct of the experiment, which the Board would review prior to endorsing the experiment. At CHRB's April 22 meeting, Beilin presented the Board with the requested information. Following discussion, CHRB agreed to allow the test to proceed.

**Thoroughbred and Appaloosa Horses Competing in Quarter Horse Racing.** On January 1, CHRB published notice of its intent to adopt new section 1743, Title 4 of the CCR, to establish conditions for the entry of thoroughbred and Appaloosa horses in quarter horse races at quarter horse, mixed breed, and fair meetings. CHRB originally adopted section 1743 in 1991; however, that provision contained a sunset clause, requiring it to be readopted. On February 26, CHRB held a public hearing on the proposal; following the hearing, the Board adopted section 1743. On March 30, the action was approved by the Office of Administrative Law (OAL).

**Inspection in the Restricted Area of the Enclosure.** On February 5, CHRB published notice of its intent to adopt new section 1929.5, Title 4 of the CCR, which would require any person found in a restricted area of the enclosure to surrender for testing or examination any substance or device which could be assumed to be intended for use on or for administration to a horse, upon the demand of the official veterinarian, the board of stewards, or a CHRB investigator. On March 26, the



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Board held a public hearing on the proposed section; following the hearing, CHRHB unanimously approved the proposed section, which awaits review and approval by OAL.

**Stable Name Registration.** On March 5, CHRHB published notice of its intent to amend section 1786, Title 4 of the CCR, which would provide that a stable name registration that has expired and has remained unregistered for at least three consecutive years shall be considered abandoned; an expired stable name registration which is not yet considered abandoned may be transferred to a new owner if the previous owner gives written notice to CHRHB and to the stewards. On April 22, the Board held a public hearing on the proposed amendment; following the hearing, CHRHB unanimously adopted the revision. At this writing, the Board is preparing the rulemaking file for submission to OAL.

**Presence of Excluded Persons Within the Enclosure.** On March 5, CHRHB published notice of its intent to amend section 1986, Title 4 of the CCR, to provide that the Board may hold a hearing and determine that the presence within the public inclosure of a person who has been prohibited from participating in pari-mutuel wagering and from being present within any racing inclosure is not against the best interests of horse racing. On April 22, the Board conducted a public hearing on the proposal; following the hearing, the Board adopted the amendment. At this writing, CHRHB is preparing the rulemaking file for submission to OAL.

**Registration of California-Bred Horses.** On March 5, CHRHB published notice of its intent to amend section 1811, Title 4 of the CCR, which would change the recognized agency for registering California-bred quarter horses from the Pacific Coast Quarter Horse Association to the Pacific Coast Quarter Horse Racing Association. CHRHB was scheduled to hold a public hearing on the proposal on April; however, the hearing has been rescheduled to May 28.

**Application for License.** On April 9, CHRHB published notice of its intent to amend section 1483, Title 4 of the CCR, to clarify and identify the forms an applicant for an occupational license must submit to CHRHB, and list the forms upon which an applicant for an occupational license must submit fingerprints to CHRHB. At this writing, the Board is scheduled to conduct a public hearing on the proposed amendment on May 28.

**Application Information to be Confidential.** On April 9, CHRHB published notice of its intent to amend section 1497,

Title 4 of the CCR, also concerning license applications. As amended, section 1497 would provide that information required by CHRHB in conjunction with such applications may be subject to the provisions of the Public Records Act. However, certain personal information which the Board considers confidential (an applicant's social security number, home address, telephone number, and personal financial information) would be exempt from disclosure. At this writing, CHRHB is scheduled to conduct a public hearing on the proposed amendment on May 28.

**Occupational Licenses and Fees.** CHRHB withdrew its previous set of proposed amendments to section 1481, Title 4 of the CCR, after adopting the revisions in October 1992. [13:1 CRLR 131] On April 9, CHRHB republished notice of its intent to amend section 1481 to add the occupational license classifications of associate steward and paymaster of purses. In addition, the license classes of satellite facility supervisor and assistant satellite facility supervisor would be deleted and replaced with simulcast facility supervisor and assistant simulcast facility supervisor. The amendments would also set the fee for licensees who wish to take advantage of reciprocal licensing. At this writing, CHRHB is scheduled to hold a public hearing on the proposal on May 28.

**Sterile Equipment.** On April 9, CHRHB published notice of its intent to amend section 1856, Title 4 of the CCR, to clarify that when administering medication to a horse, veterinarians must use new, single-use disposable hypodermic needles. The proposed amendment would also delete the requirement of boiling or autoclaving the needles. At this writing, CHRHB is scheduled to hold a public hearing on these amendments on May 28.

**Drug Regulations Withdrawn.** On April 9, CHRHB published notice of its intent to amend sections 1859 and 1859.5, Title 4 of the CCR, to expand CHRHB's prohibited drug classifications to include bronchodilators, non-approved diuretics, and any drug substance whose pharmacologic action is capable of affecting a horse's racing performance. The Board was scheduled to hold a public hearing on these proposed amendments on May 28; however, on May 3, CHRHB announced that it has withdrawn the notice of proposed changes.

**Criteria for Filing Financial Complaints.** On May 14, CHRHB published notice of its intent to amend section 1876, Title 4 of the CCR, which provides that a financial complaint may be made against a licensee regardless of the age or origin of the debt. Section 1876 also provides that there is no

limit to the number of times a complainant may bring an action against a licensee for the same debt; as a result, the processing of financial complaints has become a burden for the stewards and the Board's investigators. CHRHB's proposed amendments to section 1876 would set new parameters for filing financial complaints by providing that the Board will consider only those financial complaints which involve services, supplies, or fees which are directly related to the licensee's California racetrack operations. Also, the debt or cause for action must have originated in California within one year of the date of the complaint. If a civil court judgment accompanies the complaint, it must have been issued within one year of the date of the complaint. Also, actions initiated by a complainant against the same accused within a 24-month period will not be considered. CHRHB is scheduled to hold a public hearing on these proposed amendments on July 29.

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

• **Simulcast Wagering Regulations.** In November 1992, CHRHB conducted a public hearing on proposed amendments to sections 2056-2061 and the adoption of new section 2062, to reflect the current practice of simulcast wagering by the horse racing industry. Among other things, the proposed amendments would rearrange definitions into alphabetical order, add definitions normally used in the simulcast wagering industry but not currently defined in the regulations, and further define existing terms; establish the means by which racing associations and fairs must satisfy the Board's requirements relevant to the simulcasting of their racing program; streamline the application and approval process for simulcast organizations; and eliminate specific equipment requirements to bring the regulations up-to-date with current industry standards. Following the hearing, the Board unanimously adopted the proposed changes, although various CHRHB commissioners and staff acknowledged that the regulations still need some refinement. [13:1 CRLR 129]

On February 8, OAL disapproved the Board's rulemaking package on the basis that it did not comply with the clarity, consistency, and necessity standards contained in Government Code section 11349.1, failed to comply with the procedural requirements of the Administrative Procedure Act, and did not contain an adequate summary and response to public comments. The Board has 120 days in



which to correct these deficiencies and resubmit the regulatory changes to OAL.

• **Track Safety Standards.** SB 944 (Maddy) (Chapter 424, Statutes of 1991) required CHRHB to establish standards by January 1, 1993 governing "the uniformity and content of the track base and racing surface, inner and outer rails, gates and gaps, turf, access and egress to the track, lighting for night racing, equipment for horse and rider, drainage, communication, veterinary, medical and ambulance service, and other track facilities in order to improve the safety of horses, riders, and workers in the racing inclosure." In December 1992, CHRHB published notice of its intent to adopt new sections 1471, 1472, 1473, and 1474, Title 4 of the CCR, which would implement SB 944 by establishing the Board's track safety standards. [13:1 CRLR 129]

The Board's Medication Committee held a public hearing on the proposed amendments on January 29, and the Board was scheduled to adopt them on February 26; however, the Board postponed the hearing. At this writing, the Board is scheduled to review the amendments at its July meeting.

• **Application For License to Conduct a Horse Racing Meeting.** Also to implement SB 944 (see above), CHRHB published notice in December 1992 of its intent to amend section 1433, Title 4 of the CCR, which describes the information which must be submitted with an application to hold a live horse racing meeting. Among other things, the amendments would have required applicants to submit information regarding the track's compliance with the track safety standards in regulatory sections 1471-74 (see above). [13:1 CRLR 129]

On January 29, the Board conducted a public hearing on the proposed amendments; following the hearing, the Board adopted most of the changes but deleted the provisions requiring licensure applicants to disclose whether they comply with the track safety standards. On April 2, the Board released the revised language for an additional fifteen-day public comment period. At this writing, the proposed changes await review and approval by OAL.

• **Required Equipment in Thoroughbred Racing.** On January 29, CHRHB conducted a public hearing on its proposed amendments to section 1685, Title 4 of the CCR, which set standards for equipment a jockey may use in thoroughbred horse racing. [13:1 CRLR 130] Following the hearing, CHRHB adopted the changes, which were approved by OAL on April 15.

• **Use of Whips in Thoroughbred Racing.** On January 29, CHRHB conducted a

public hearing on its proposed amendments to section 1688, Title 4 of the CCR, regarding the acceptable use of the whip in thoroughbred horse racing. As amended, section 1688 would provide that in all races where a jockey will not ride with a whip, an announcement shall be made over the public address system of that fact. Although the use of a whip is not required, any jockey who uses a whip during a race shall be prohibited from whipping a horse in specified circumstances. [13:1 CRLR 130] Following the hearing, the Board adopted the proposed amendments, subject to minor modifications; on February 25, the Board released the revised language for an additional fifteen-day public comment period. At this writing, OAL is reviewing the proposed changes.

• **Harness Racing Whips.** On February 9, OAL approved CHRHB's proposed amendments to section 1733, Title 4 of the CCR, which provide that whips used in harness racing shall not exceed three feet, nine inches plus a snapper not longer than six inches. [13:1 CRLR 130]

• **Harness Racing Whipping.** On February 9, OAL approved CHRHB's proposed amendments to section 1734, Title 4 of the CCR, which provide that no harness driver shall whip any horse so as to cause visible injury. [13:1 CRLR 130]

• **Veterinary Practices and Treatments Regulation.** At this writing, the Board's proposed amendments to section 1840, Title 4 of the CCR, which would provide that only an animal health technician (AHT) who holds a valid unexpired AHT certification issued by the Board of Examiners of Veterinary Medicine (BEVM) may, under the direct supervision of a California-licensed veterinarian who has a license from BEVM, administer veterinary treatment or medication to any horse within the racing inclosure, await adoption by CHRHB and review and approval by OAL. [13:1 CRLR 130]

• **Designated Races in Which Suspended Jockeys or Drivers May Participate.** On March 8, OAL approved CHRHB's proposed adoption of section 1766, Title 4 of the CCR, which codifies the Board's designated races program for suspended jockeys and drivers. [13:1 CRLR 130]

• **Conduct Detrimental to Horse Racing.** On February 22, OAL approved CHRHB's proposed amendments to section 1902, Title 4 of the CCR, which provide that conduct considered detrimental to horse racing includes indictment or arrest for a crime which is punishable by imprisonment in a federal prison, if it is the subject to widespread publicity and if there is probable cause to believe the li-

censee committed the offense charged. [13:1 CRLR 131]

• **Parimutuel Tickets.** On January 27, OAL approved CHRHB's proposed amendments to section 1951, Title 4 of the CCR, which provide that a racing association shall cash all valid, unmutated, winning parimutuel tickets when such tickets are presented for payment during the course of the meeting where sold, and for a period of 120 days after the last day of the meeting. [13:1 CRLR 131]

• **Conflict of Interest Code.** At this writing, CHRHB's proposed amendments to section 2000, Title 4 of the CCR—which would update its conflict of interest code with title changes for certain designated positions, add new designated positions, and remove racing officials who are not required by the Fair Political Practices Commission (FPPC) to complete economic interest statements—have been approved by FPPC and are being prepared for submission to OAL. [13:1 CRLR 131]

• **Farrier Qualifications.** At this writing, CHRHB's proposed adoption of new section 1500.7, Title 4 of the CCR, which would set forth the conditions under which an applicant may be considered qualified to be licensed as a farrier by the Board, awaits adoption by the Board and review and approval by OAL. [13:1 CRLR 131]

• **Occupational Licensure Requirements.** On January 5, OAL approved CHRHB's proposed amendments to section 1489, Title 4 of the CCR, which enable the Board to deny a license application if the applicant has been convicted in another jurisdiction of an offense which, if committed in California, would be punishable as a felony. [13:1 CRLR 131]

• **Fingerprint Requirements.** On January 5, OAL approved CHRHB's proposed amendments to section 1483, Title 4 of the CCR, which increase the minimum number of sets of fingerprints an applicant for an original license must submit to CHRHB from one to two. [13:1 CRLR 131]

• **Temporary License Regulation.** On January 7, OAL approved CHRHB's proposed amendments to section 1488, Title 4 of the CCR, which provide for the issuance of temporary occupational licenses by CHRHB and set forth the conditions under which such licenses may become permanent. [13:1 CRLR 131]

## LEGISLATION

**AB 991 (Tucker).** Existing law permits CHRHB, by regulation, to authorize the entering of thoroughbred and Appaloosa horses in quarter horse races at a distance not exceeding five furlongs at quarter horse meetings, mixed breed



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meetings, and fair meetings. Existing law requires that minor breeds of horses make up more than one-half of the number of horses in the race. As introduced March 1, this bill would permit any association planning to conduct quarter horse racing to apply to the Board, and would require the Board to grant authority to conduct thoroughbred racing as part of a night racing program, if specified conditions are met. [A. GO]

**AB 1003 (Brulte).** Under existing law, of the total amount handled by satellite wagering facilities, 0.1% is required to be distributed to the Equine Research Laboratory at the UC Davis School of Veterinary Medicine. As amended April 15, this bill would instead require 93% of 0.1% to be distributed to the Equine Research Laboratory, and 7% of 0.1% to be distributed to the Equine Research Center at the California State Polytechnic University, Pomona. [A. W&M]

**AB 1209 (Tucker),** as introduced March 2, would require every veterinarian who treats a horse within a racing inclosure to report to the official veterinarian in a manner prescribed by him/her, in writing and on a form prescribed by the Board, the name of the horse treated, the name of the trainer of the horse, the time of treatment, any medication administered to the horse, and any other information requested by the official veterinarian. [S. GO]

**AB 362 (Tucker).** Under existing law, there are two versions of Business and Professions Code section 19533; however, because of conflicts between the two sections, that version of section 19533 last enacted prevails over that version of section 19533 enacted earlier. As introduced February 9, this bill would repeal the version of section 19533 enacted earlier. [S. GO]

**AB 1936 (Costa).** Under existing law, racing associations in California may authorize out-of-state betting systems to accept wagers on horse races conducted by those associations, as prescribed; racing associations which authorize a betting system located outside this state to accept wagers on a race must distribute certain sums as license fees, purses, and commissions. As introduced March 5, this bill would revise the distribution of the amount remaining after payment of the license fee by requiring 5% to be deposited with the official registering agency for thoroughbreds for distribution as breeder awards, owner premiums, and Stallion Awards, and requiring the remaining amount to be distributed 50% to the association conducting the race as commissions, and 50% to the horsemen as purses. [A. GO]

**AB 1559 (Tucker).** Existing law permits any racing association in California to authorize betting systems located out-

side of this state to accept wagers on a race or races conducted by that association and to transmit live audiovisual signals of the race or races and their results to those betting systems. As introduced March 4, this bill would permit any racing association in this state, with CHRHB's approval, to accept out-of-state wagers on a race or races conducted by that association and to transmit live audiovisual signals of the race or races to locations out of state. [S. GO]

**AB 1562 (Tucker).** Existing law requires each licensed racing association that conducts fourteen or less weeks of racing to designate three racing days, and each licensed racing association that conducts more than fourteen weeks of racing to designate five racing days during any one meeting, to be conducted as charity days. Existing law excepts from this requirement the California Exposition and State Fair or a county or district agricultural association fair. As introduced March 4, this bill would, in addition, except from this requirement a licensed racing association that conducts three weeks of racing or less. [S. GO]

**AB 864 (Quackenbush).** Existing law provides that when both a fair and a thoroughbred association are licensed by CHRHB to conduct live racing meetings within the northern zone on at least ten days during the same calendar period, signals of both racing programs are required to be accepted at each live racing meeting within the northern zone and at all satellite wagering facilities eligible to receive these programs. As amended April 12, this bill would delete the ten-day limitation, and instead require the signals of both racing programs to be accepted at each live racing meeting within the northern zone and at all satellite wagering facilities eligible to receive these programs when a fair and thoroughbred association are licensed by the Board to conduct live racing meetings within the northern zone during the same calendar period. [S. GO]

**AB 274 (Hoge),** as amended April 13, would declare that the intent of the Horse Racing Law is to allow parimutuel wagering on the outcome of competitions of skill involving horses, horse races, or any portion of a race or races. The bill would, for the purposes of that law, define the term "horse races" as including competitions of skill involving horses, and the term "parimutuel wagering" as including wagering on the outcome of competitions of skill involving horses, horse races, or any portion of a race or races. [A. Floor]

**AB 1762 (Tucker).** Existing law provides that no application for a horse owner's license or for a license to conduct

a race meeting shall be granted unless the applicant's liability for workers' compensation is secured in accordance with law. As introduced March 4, this bill would provide that no person shall be licensed as a trainer, owner, trainer-driver, or in any other capacity in which that person acts as the employer of other licensees at a race meeting, unless his/her liability for workers' compensation coverage has been secured in accordance with law. The bill would also prohibit CHRHB from issuing or renewing any license until the applicant has certain documents on file with the Board relating to workers' compensation coverage. The bill would also prohibit an association conducting a racing meeting from permitting the entry of any horse for a race unless the entry form is accompanied by a valid certificate of workers' compensation insurance. [S. GO]

**AB 731 (Cortese).** Under the existing Horse Racing Law, the term "inclosure" means all areas of a racing association's grounds to which admission can be obtained only by payment of an admission fee or upon presentation of authorized credentials; existing law defines the term "inclosure public" as the areas to which the public is admitted upon payment of admission fees but excluding restricted areas such as the jockey room, the racing strip, the receiving barn, and the stable area. As amended May 5, this bill would instead define the term "inclosure" as all areas of a racing association's or satellite wagering facility's grounds to which persons are specifically admitted for the purpose of parimutuel wagering on horse races or conducting horse racing activities. The bill would also define the term "inclosure public" as the areas to which the general public is admitted, but excluding restricted areas such as the jockey room, the racing strip, the receiving barn, and the stable area. [S. GO]

**AB 364 (Tucker).** Existing law permits CHRHB to authorize an association conducting a racing meeting in this state to accept wagers on the results of out-of-state feature races having a gross purse of at least \$100,000 during the period the association is conducting the racing meeting on days when live races are being run if, among other things, the wagering is offered only within 36 hours of the running of the out-of-state feature race. As amended May 3, this bill would, instead, permit those wagers to be accepted within seven days of the running of the out-of-state feature race.

Existing law permits CHRHB to authorize any licensed association or satellite wagering facility to accept wagers on races conducted in this state comprising



the program of racing generally known as the Breeders' Cup and feature races conducted in this state having a gross purse of \$50,000 or more, if, among other things, wagering is offered only within 36 hours of the commencement of the racing program with the Breeders' Cup program or with the feature race. This bill would permit those wagers to be accepted within seven days of the commencement of the racing program with the Breeders' Cup program or with the feature race.

Existing law provides that from the amount deducted for quarter horse purses, a sum equal to 25% is required to be paid as owners' premiums for California-bred quarter horses winning or placing at the meeting. This bill would require those amounts to be distributed as breeder premiums and owners' and stallion awards.

Existing law provides that an amount equal to 10% of specified deposits shall be deducted to compensate the Pacific Coast Quarter Horse Racing Association for its administrative costs. This bill would instead specify that an amount up to, but not to exceed, 10% of those deposits shall be deducted for that purpose.

Under existing law, in determining the purse earned in any qualifying race that is a stakes race, the amount earned is required to be based solely on the added money, with no consideration given to other sources of the purse, such as nomination, entry, or starting fees, bonuses, and sponsor contributions, or any combination thereof. This bill would permit other sources of the purse to be considered in determining the purse earned in any qualifying race that is a stakes race. [S. Floor]

**SB 518 (Maddy).** The Horse Racing Law requires one sample of blood, urine, saliva, or other test samples required by CHR B to be taken from horses entered in any race to be sent to the official racing laboratory approved and designated by the board, and the remaining sample to be sent to an independent laboratory participating in the Association of Racing Commissioners International Quality Assurance Program. As introduced March 1, this bill would authorize the construction of an Equine Drug Testing Laboratory at UC Davis, as part of the California Veterinary Diagnostic Laboratory System; state the Legislature's intent that the board contract with the Regents of the University of California to provide equine drug testing; and require that one-third of the test samples taken, as required by the Board, be sent to the California Veterinary Diagnostic Laboratory System for testing. [S. Appr]

**SB 29 (Maddy).** Existing law provides for the distribution to the horsemen as purses of a portion of the total amount

wagered on horse races. As amended March 24, this bill would require that an amount equal to 25% of the total advertised purse be distributed as a bonus payment for California-bred horses, as described. [A. GO]

**SB 1045 (Maddy).** Under existing law, racing associations in this state may authorize out-of-state betting systems to accept wagers on horse races conducted by these associations, as prescribed. Existing law requires a racing association that authorizes a betting system located outside this state to accept wagers on a race to pay a license fee equal to 10% of the total amount received by the association from the out-of-state betting system, unless the out-of-state betting system is a parimutuel betting system in which case the association is required to pay a license fee equal to 10% of the total amount received by the association or one-half of 1% of the handle, whichever is greater. As introduced March 5, this bill would reduce the state license fee to 8% of the total amount received by the association from the out-of-state betting system, without regard to whether the out-of-state betting system is a parimutuel betting system. The bill would also require, with respect to thoroughbred racing only, that 3% of the amount remaining after payment of the state license fee be deposited with the official registering agency for distribution to the horsemen. [S. Floor]

**SB 847 (Presley).** Existing law provides that an association licensed to conduct a racing meeting in the southern zone may operate a satellite wagering facility at a location approved by CHR B if the location is eligible to be used as a satellite wagering facility during any of specified periods. As amended April 27, this bill would expressly authorize an association licensed to conduct a racing meeting in Riverside County to operate a satellite wagering facility at a location approved by the Board under those conditions. [S. Floor]

**SB 1138 (Kelley).** Existing law provides for the distribution of a certain percentage of the parimutuel pool for on-track and off-track wagering resulting from thoroughbred racing as breeder awards, owner premiums, and stallion awards. Existing law defines the term "qualifying race" for the purposes of determining the amounts of owner premiums and stallion awards. As introduced March 5, this bill would define the term "qualifying race," in the case of owner premiums, as all nonclaiming races in this state and certain claiming races conducted in this state if the nonclaiming races and claiming races have a purse of \$10,000 or

more. In the case of stallion awards, this bill would define the term "qualifying race" as all nonclaiming races in this state, certain claiming races conducted in this state, and all graded stakes races conducted within the United States if the nonclaiming, claiming, graded stakes races have a purse of \$10,000 or more.

Existing law provides that after certain deductions, the official registering agency shall for computational purposes distribute annually the balance of the deposits made for breeder awards, owner premiums, and stallion awards in the following manner: 55% for breeder awards; 20% for owner premiums; 20% for stallion awards; and 5% to the California-bred race fund. This bill would provide for 5% for owner premiums instead of 20%, and 20% for the California-bred race fund instead of 5%. [A. GO]

**SB 584 (Maddy).** Existing law provides, with respect to harness, quarter horse, and mixed breed meetings, that 1% of the total amount handled by each satellite wagering facility shall be distributed to a specifically described organization for promotion of the program at satellite wagering facilities. As amended May 18, this bill would instead provide, with respect to quarter horse racing meetings and quarter horse races at fairs and mixed breed meetings, that 1% of the total amount handled by each satellite wagering facility shall be distributed to a specifically described organization for the promotion of quarter horse racing. This bill would also require, during the 1993 and 1994 racing years, that an amount not to exceed \$100,000 be dedicated by that organization to the development of an economic impact study of the California quarter horse racing industry. [A. GO]

**SB 549 (Hughes).** The Gaming Registration Act regulates the operation of gaming clubs, and prohibits any person, as defined, from owning or operating a gaming club without first obtaining a valid registration from the Attorney General. "Person" includes an officer or director, as specified. As amended April 12, this bill would provide, notwithstanding any other provision of law, that a racing association licensed by CHR B, as specified, which has a class of securities registered under the Securities Exchange Act of 1934, may operate a gaming club if the officers, directors, and beneficial owners of more than 10% of the shares of stock of the racing association are registered with the Attorney General and no person owning 5% or more of the shares of stock of the racing association is determined by the attorney general to be unfit to own an interest in a gaming club. This bill would



provide for reimbursement of the Attorney General for the actual costs of investigating and processing applications for registration, and would prohibit the denial of an applicant's registration by reason of its, or any affiliate's, ownership or operation of a business that conducts parimutuel wagering in accordance with the laws of the state in which that wagering is conducted. [A. GO]

**SB 118 (Maddy).** Under existing law, for racing meetings other than thoroughbred meetings, if no contract has been signed between the association conducting the racing meeting and the organization representing the horsemen by the time the racing meeting commences, CHRB is required, within fifteen days after the commencement of the racing meeting, to determine the amounts payable to the horsemen's organization for administrative expenses and services, and provide for the direct payment of those amounts. As amended March 29, this bill would instead require CHRB to make that determination within twenty days after the commencement of the racing meeting.

Existing law requires any horsemen's association to be incorporated under the laws of the state of California in order to receive a distribution pursuant to the Horse Racing Law. This bill would require the board of directors of any horsemen's organization to include no more than 40% licensed trainers; the remaining positions must be held by licensed owners with specified qualifications. The bill would require any horsemen's organization whose board does not meet these requirements to hold an election to bring the board into compliance. [S. Floor]

**SB 770 (Maddy).** Existing law requires every thoroughbred association conducting a racing meeting to pay daily license fees based on its daily conventional and exotic parimutuel handle. Meetings with a total parimutuel handle of \$250 million or more are required to pay higher fees than those with less than that amount. As amended April 27, this bill would delete the higher fees for meetings with a total parimutuel handle of \$250 million or more, thereby requiring all meetings to pay the same license fee rate, regardless of the amount of the handle. [S. Appr]

**SCA 29 (Maddy).** Existing provisions of the California Constitution permit certain kinds of gaming in this state, including wagering on the results of horse racing, bingo for charitable purposes, and the operation of a state lottery. Existing provisions of the California Constitution require the legislature to prohibit casinos of the type currently operating in Nevada and New Jersey. As introduced April 19, this

measure would create the California Gaming and Horseracing Commission, and would authorize the Commission to regulate all forms of legal gaming in this state, subject to legislative control. The measure would also create an enforcement division within the Commission, and permit the legislature to impose fees on all types of gaming regulated by the Commission to support the activities of the enforcement division. This measure would abolish the California State Lottery Commission and CHRB, and transfer their powers and duties to the California Gaming and Horseracing Commission.

This measure would exclude from the meaning of "gaming" merchant promotional contests and drawings conducted incidentally to bona fide business operations under specified conditions, and certain types of machines that award additional play. The measure would authorize the legislature to permit cities and counties to authorize raffles by nonprofit, tax exempt organizations. The measure would prohibit the conduct of a state lottery game by the use of any mechanical, electromechanical, or electronic device.

The measure would require the California Gaming and Horseracing Commission to adopt regulations providing for the recording and reporting of financial transactions by commercial establishments offering social gaming permitted by the legislature. The measure would also define "casino" for the purpose of the prohibition against casinos. [S. GO]

**AB 747 (Speier).** Existing law prohibits the administration of a substance to a horse after it has been entered in a horse race, unless CHRB has by regulation specifically authorized the use of the substance. As amended April 15, this bill would require the Board's Secretary to report a positive test sample for medication to CHRB within 24 hours of his/her receipt of the information regarding the positive test sample. The bill would also require the Secretary to report to the Board a decision to dismiss a complaint alleging illegal equine medication prior to dismissing the complaint. [A. Floor]

**AB 363 (Tucker).** Existing law prohibits a person licensed to conduct a racing meeting from paying or distributing to, or on behalf of, any horse owner, any agent, or person or organization representing any horse owner or owners, purses, or any other type of consideration to, or for, the benefit of horsemen, other than that expressly provided in the Horse Racing Law. As amended March 29, this bill would permit a licensed racing association and the horsemen's organization that represents horsemen participating in a racing

meeting to enter into an agreement for the supplementing of purses due to the activities of a gaming club conducted during a racing meeting on the association's property. [S. GO]

**AB 1418 (Tucker).** Under existing law, all revenue distributed to the state as license fees from on-track and satellite wagering is required to be deposited in the Fair and Exposition Fund and is continuously appropriated to the Department of Food and Agriculture for various regulatory and general governmental purposes. As amended April 12, this bill would permit CHRB to authorize a racing association or fair to conduct parimutuel wagering on games or contests involving competition between horses. This bill would also permit a racing association or fair that conducted a licensed racing meeting during 1992 or any racing association or fair licensed by the Board during any subsequent year to conduct interactive television wagering under specified conditions. [A. W&M]

**AB 1764 (Tucker).** Under existing law, CHRB may authorize an association that conducts a racing meeting in this state to accept wagers on the results of out-of-state feature races and out-of-state harness or quarter horse feature races or stake races or other designated races under prescribed conditions. As introduced March 4, this bill would define "out-of-state" for purposes of these provisions to mean anywhere outside this state within or outside the United States. [A. Floor]

## RECENT MEETINGS

At its January 29 meeting, the Board unanimously agreed to delegate the establishment of official CHRB positions on pending legislation to the Board Chair or, in his/her absence, to the Board's Vice-Chair.

At its February 26 meeting, the Board unanimously agreed to extend the Board's primary drug testing contract with Truesdail Laboratories for one year from July 1, 1993 through June 30, 1994. The Board also agreed to extend the Board's complementary drug testing contract with Iowa State University for one year from July 1, 1993 through June 30, 1994.

At its March 26 meeting, CHRB agreed to allow jockeys to exclude the weight of flack jackets when weighing in and when weighing out; require that an announcement regarding which jockeys are or are not wearing flack jackets be made over the loudspeakers prior to the commencement of a race; and require that a jockey who elects to wear a flack jacket must do so for the entire racing program.

At CHRB's April 22 meeting, Equine Medical Director Robert Jack reported on



the Board's necropsy program, noting that the program is one of the most progressive in horse racing. Dr. Jack reported that 747 horses have been submitted to the program to date, and that the scientific community had been able to make some substantial conclusions in the thoroughbred industry because of the number of horses submitted.

## ■ FUTURE MEETINGS

August 27 in Del Mar.  
September 24 in San Mateo.  
October 29 in Monrovia.  
November 19 in Los Angeles.  
December 17 in Los Angeles.

## NEW MOTOR VEHICLE BOARD

*Executive Officer:*  
**Sam W. Jennings**  
(916) 445-1888

Pursuant to Vehicle Code section 3000 *et seq.*, the New Motor Vehicle Board (NMVB) licenses new motor vehicle dealerships and regulates dealership relocations and manufacturer terminations of franchises. It reviews disciplinary action taken against dealers by the Department of Motor Vehicles (DMV). Most licensees deal in cars or motorcycles.

NMVB is authorized to adopt regulations to implement its enabling legislation; the Board's regulations are codified in Chapter 2, Division 1, Title 13 of the California Code of Regulations (CCR). The Board also handles disputes arising out of warranty reimbursement schedules. After servicing or replacing parts in a car under warranty, a dealer is reimbursed by the manufacturer. The manufacturer sets reimbursement rates which a dealer occasionally challenges as unreasonable. Infrequently, the manufacturer's failure to compensate the dealer for tests performed on vehicles is questioned.

The Board consists of four dealer members and five public members. The Board's staff consists of an executive secretary, three legal assistants and two secretaries.

Governor Wilson recently appointed Marie Brooks, president of Ellis Brooks Chevrolet/Pontiac/Nissan, and Michael Padilla, president of Gateway Chevrolet, to the Board.

## ■ MAJOR PROJECTS

**Board Overrules Protest Regarding Franchise Termination.** On January 11, NMVB overruled the protest filed by

Toyota of Visalia (TOV) against Toyota Motor Distributors, Inc. (Toyota) concerning Toyota's proposed termination of TOV's franchise. Toyota's request for termination of the franchise was based on its belief that TOV had deceived clients and Toyota, breached Toyota's dealer agreement, mistreated and abused employees, and committed over 150 counts of consumer fraud. Additionally, Toyota contended that its dealership agreement with TOV states that Toyota may terminate the franchise if NMVB suspends TOV for seven days or longer; Toyota argued that because NMVB has suspended TOV for thirty days, Toyota is authorized under the agreement to terminate TOV's franchise. TOV denied Toyota's claims and requested that NMVB reexamine the evidence before allowing Toyota to terminate the franchise. [13:1 CRLR 132]

In overruling TOV's protest, the Board found that Toyota was permitted to terminate the franchise for the following reasons:

—evidence of adverse publicity carried by newspapers, television, and word of mouth established that the behavior of certain TOV personnel had an adverse effect on TOV's reputation and harmed the reputation of Toyota;

—Toyota proved that TOV had not transacted an adequate amount of business as compared to the business available to it;

—Toyota proved that it would be beneficial and not injurious to the public welfare for TOV's franchise to be modified or replaced or the business franchise disrupted;

—Toyota proved that TOV did not have adequate motor vehicle sales, service facilities, and qualified service personnel to reasonably provide for the needs of consumers of the motor vehicles handled by TOV, and has not been rendering adequate services to the public; and

—Toyota proved that TOV materially breached the terms of the franchise agreement in that TOV was closed for a period of seven consecutive days, TOV was adjudicated by a government agency as having engaged in misrepresentation or unfair trade practices, TOV's license to sell new motor vehicles was suspended, TOV refused to permit Toyota to inspect TOV's books and records pursuant to a written request, and TOV effectively destroyed the business relationship which existed between the parties.

## ■ LEGISLATION

**AB 699 (Bowen)**, as amended April 28, would abolish NMVB and transfer specified powers and duties to the Department of Consumer Affairs; the bill would

delete references to the Board in other provisions of existing law. [A. W&M]

**AB 431 (Moore)**. Existing law requires specified disclosures to be contained in conditional sales contracts, which are defined to include certain contracts for the sale or bailment of a motor vehicle. As amended May 5, this bill would require every conditional sales contract to contain a notice in bold type stating that after the buyer signs the contract, California law does not allow the buyer to cancel the contract because he/she changes his/her mind or later believes he/she cannot afford the vehicle.

Existing law, with certain exceptions, requires every motor vehicle dealer licensed by the Department of Motor Vehicles (DMV) to conspicuously display his/her license at his/her place of business, and also requires every such dealer who displays or offers one or more used vehicles for sale at retail to post a notice in a conspicuous place regarding the prospective purchaser's right to have the vehicle inspected at his/her own expense. This bill would require every such dealer to conspicuously display a notice in each sales office or cubicle of the place of business where sales or lease transactions are discussed with prospective purchasers or lessees, as specified, to the effect that after a buyer or lessee signs the contract, California law does not allow the buyer or lessee to cancel the contract because he/she changes his/her mind or later believes he/she cannot afford the vehicle. [A. W&M]

**AB 802 (Sher)**, as amended March 30, would prohibit a licensed vehicle dealer from advertising the amount or percentage of any down payment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge without making clear and conspicuous disclosure of specified information. The bill would require advertisements to be made in a prescribed manner. [A. Trans]

**AB 1665 (Napolitano)**, as introduced March 4, would prohibit any manufacturer, manufacturer branch, distributor, or distributor branch licensed under the Vehicle Code from preventing a dealer from selling and servicing new motor vehicles of any line-make, or parts and products related to those vehicles, at the same established place of business approved for sale and service of new motor vehicles by any other manufacturer, manufacturer branch, distributor, or distributor branch, if the established place of business is sufficient to enable competitive selling and servicing of all new motor vehicles, parts, and other products sold and serviced at