



that CCA has petitioned BCE to adopt the proposed rule, and that the membership of Friesen and Boland in CCA requires them to recuse themselves. They also contend that public member John Bovée, who was appointed in June 1993, has not had enough time to review and understand these issues, and allege that Bovée has "close ties to the CCA." These chiropractors forwarded their concerns regarding the alleged conflicts of interest to the Fair Political Practices Commission (FPPC) for consideration. Accordingly, BCE refrained from taking any action on the formal adoption of section 317(y) until its January meeting, in order to give the FPPC sufficient time to address the chiropractors' concerns. Further, the Board noted that if the section on infectious diseases is formally adopted, it will become section 317(x), since no section 317(x) currently exists (*see above*).

Rulemaking Update. The following is a status update on other BCE rulemaking proposals detailed in recent issues of the *Reporter*:

• **BCE Examination of Chiropractors with Mental/Physical Illness.** In November 1992, BCE proposed amendments to section 315, Title 16 of the CCR, which would authorize it to require an examination of a chiropractor when it suspects that a mental or physical illness is affecting the safety of the chiropractor's practice. BCE must renounce this rulemaking proposal since it did not forward the action to OAL within one year of the original notice, as required by Government Code section 11346.4.

• **Exam Appeal Process Regulation.** The Board's proposed adoption of section 353, Title 16 of the CCR, which would implement an appeals process for those applicants who fail BCE's practical examination [13:4 CRLR 189], must also be renounced due to lapse of the one-year period in Government Code section 11346.4.

• **Diversion Program Regulation.** BCE's proposed adoption of section 315.1, Title 16 of the CCR, which would create a voluntary diversion program for substance-abusing chiropractors, will also need to be renounced, as the one-year deadline expired on November 13. [13: CRLR 190]

LEGISLATION

AB 667 (Boland). The Pharmacy Law regulates the use, sale, and furnishing of dangerous drugs and devices. Existing law prohibits a person from furnishing any dangerous device, except upon the prescription of a physician, dentist, podiatrist, or veterinarian. However, this prohibition does not apply to the furnishing of

any dangerous device by a manufacturer or wholesaler or pharmacy to each other or to a physician, dentist, podiatrist, or veterinarian, or physical therapist acting within the scope of his or her license under sales and purchase records that correctly give the date, the names and addresses of the supplier and the buyer, the device, and its quantity. As amended March 29, this bill would provide that the prohibition does **not** apply to the furnishing of any **dangerous** device by a manufacturer or wholesaler or pharmacy to a chiropractor acting within the scope of his/her license.

Existing law authorizes a medical device retailer to dispense, furnish, transfer, or sell a dangerous device only to another medical device retailer, a pharmacy, a licensed physician and surgeon, a licensed health care facility, a licensed physical therapist, or a patient or his or her personal representative. This bill would additionally 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 May 25, this bill would also provide that a license to practice chiropractic does not authorize the treatment of infectious disease, nor the substitution of chiropractic for immunization. This bill would provide for the submission of these amendments to the voters; they shall become effective only when approved by the electors. [A. Inactive File]

RECENT MEETINGS

At its October 14 meeting in Los Angeles, the Board reviewed draft amendments to section 317.1, Title 16 of the CCR, regarding chiropractic referral services. [13:4 CRLR 190] Among other things, the draft amendments would provide that a nonrefundable application fee of \$500 for the first 500 members, and an additional \$50 fee for one to fifty additional members, must be submitted with the referral service application; during times when the service uses an answering machine, the recording must not give out any referral information, but must either request that the caller call back at a later time or request information from the caller so a person can return his/her call; the referral service must refer the caller to the next chiropractor on the list in such a manner so that each member receives an equal percentage of referrals on a monthly

basis; each advertisement for a referral service shall disclose that members have paid a subscription fee, or indicate that the service is a "for profit" business; referral service members must pay an annual fee of \$100 to BCE for each service they belong to; referral services must disclose to member chiropractors the need to register with BCE as a referral service member; and referral services must provide BCE with monthly updates identifying chiropractors who have been added to or removed from the service. The Board took no action with regard to the draft language; at this writing, the proposal has not been published in the *California Regulatory Notice Register*.

At its October 14 and December 9 meetings, BCE discussed draft amendments to section 349, Title 16 of the CCR, which would interpret section 6(d) of the Chiropractic Act. The proposed amendments would provide that prior to being scheduled for the practical portion of the California Board examination, an applicant must show proof of either National Board of Chiropractic Examiners status or successful completion of the written portion of the California licensure examination; the amendments would also provide that National Board status means successful completion of Parts I, II, III, and physiotherapy. The Board is expected to continue its discussion of this proposal at a future meeting.

FUTURE MEETINGS

May 5 in Sacramento.
July 7 in San Diego.
September 8 in Sacramento.
October 13 in Los Angeles.
December 15 in Sacramento.

CALIFORNIA HORSE RACING BOARD

Executive Secretary:
Roy Wood
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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.

On October 21, Governor Wilson appointed Robert Tourtelot to CHRB to replace departing Board member William Lansdale; Tourtelot is a partner in the Los Angeles law firm of Tourtelot and Butler. At its November 18 meeting, the Board passed a resolution of commendation honoring Lansdale for his eight years of service as a CHRB member.

MAJOR PROJECTS

CHRB Selects New Executive Secretary. On October 18, CHRB held a special meeting to interview candidates for the position of Executive Secretary. Since May 28, Roy Minami had served as Interim Executive Secretary; Minami was appointed to the position after CHRB dismissed former Executive Secretary Dennis Hutcheson on February 26. [13:4 CRLR 190; 13:2&3 CRLR 200] Prior to the special meeting, CHRB's Selection Committee had reduced the number of candidates from 77 to four; at the special meeting, CHRB interviewed three of the applicants. Each candidate was asked to respond to questions concerning his/her perspectives on the efficient and economic operation of the Board's equine drug testing policy; the prevalence of illicit drugs in the horse racing industry and the public's perception of the problem; the boundaries of industry regulation; and the expansion of simulcast wagering.

At a regular meeting of the Board on October 29, Commissioner Stefan Manolakas thanked all of the candidates and moved to extend the position of Executive Secretary to Roy Wood; Wood, who came through the racing ranks as a breeder and trainer, most recently served as Director of Racing for the Texas Racing Commission, and was previously a state racing steward in Louisiana. CHRB unanimously approved the motion to offer the position to Wood, subject to a background check; Wood was subsequently approved for the position and began his new job on January 1. Minami will continue to serve as CHRB Assistant Executive Secretary.

CHRB Establishes Bylaws Committee. At the Board's October 29 meeting, CHRB Chair Ralph Scurfield reported on the implementation of SB 118 (Maddy) (Chapter 575, Statutes of 1993), which—among other things—amends the Horse Racing Law to require that CHRB approve the bylaws of all horsemen's associations, as well as any changes to the bylaws. [13:4 CRLR 197] Scurfield reported that CHRB staff had requested the horsemen's organizations to send copies of their bylaws to the Board for review; in addition to Scurfield, Commissioners Robert Tourtelot and George Nicholaw will serve on the Bylaws Committee.

At CHRB's November 18 meeting, Commissioner Tourtelot reported that the Bylaws Committee is also reviewing section 2040, Title 4 of the CCR, which states that CHRB recognizes the necessity of horse owners and trainers to negotiate and to covenant with the racing associations as to the conditions for each race meeting, the distribution of commissions and purses not governed by statutory distribution formulae, and other matters relating to welfare, benefits and prerogatives of the parties to the agreement. Section 2040 requires CHRB, in order to fulfill its duties to the public in authorizing the conduct of an uninterrupted, orderly race meeting during the licensed term of such meetings, to acknowledge horsemen's organizations which represent horse owners and trainers of thoroughbred racehorses, standardbred (harness) racehorses, quarter horse racehorses, appaloosa racehorses, and Arabian racehorses; for each breed of racehorse, CHRB must acknowledge only one horsemen's organization as the organization empowered exclusively to contract with racing associations for the conduct of a race meeting. Under section 2040(b), an alternate organization may seek to represent the horse owners and trainers of a particular breed. If that organization submits a petition signed by at least 30% of the licensed horse owners and trainers of

that breed, CHRB must conduct a plebiscite among the licensed horse owners and trainers of racehorses of that breed, and then—based on the plebiscite—determine the one organization to be acknowledged as representing the horse owners and trainers of that breed. Tourtelot reported that the Committee has decided to propose a rule change to provide that a petition must be signed by 10% rather than 30% of the licensed horse owners and trainers of any one breed. Once a successful petition for a plebiscite has been submitted, the Committee believes that the percentage needed to replace the existing organization with a new organization should be 50% plus one vote. The Committee also plans to amend section 2040 to provide that the petition must be submitted to CHRB within six months from the time it is initiated.

Tourtelot also reported that the Committee intends to first review the bylaws of the thoroughbred horsemen's association, the California Horsemen's Benevolent and Protective Association (CHBPA), but noted that it will review those of the other horsemen's organizations as well. He added that the intent of SB 118 does not require CHRB to rewrite the bylaws of any organization, but to review and approve them to ensure that they are fair and equitable with respect to the representation of owners and trainers on the board of directors of the organization. Tourtelot said that on reviewing CHBPA's bylaws, the Committee found them to be inequitable with respect to the board of directors; according to the Committee, the ratio on CHBPA's board, which consists of eighteen members, should be no less than twelve licensed owners and six licensed trainers. The Committee further believes that CHBPA's board of directors should include at least four directors from southern California and four directors from northern California; among other things, the Committee also recommended that CHBPA comply with its existing regulations which provide for an election of three directors each year and schedule an election for 1994.

At the Board's December 16 meeting, Tourtelot reiterated the recommendations made by the Committee at CHRB's November meeting, and added several more. For example, Tourtelot said that the bylaws should require that notice be given to members when the nomination of CHBPA directors is on the Association's agenda for a meeting; CHBPA should add language stating that no CHBPA funds may be spent to campaign by or for any candidate for the CHBPA Board of Directors; and the bylaws should be changed to require a new election of the entire board of



directors starting after January 1, 1994. The Committee also made suggestions on conflict of interest provisions, the notice requirement for special meetings, the number of CHBPA board members required for a quorum, the availability of minutes for CHBPA member viewing, and the filing of financial reports with CHR. Commissioner Tourtelot pointed out that Bylaws Committee recommendations are merely suggestions to CHBPA of what CHR believes the Association's bylaws should provide in order to achieve an equitable representation of owners and trainers on CHBPA's board of directors. Tourtelot noted that if the changes are made, CHR should approve the bylaws as consistent with SB 118; if CHBPA decides not to make the changes and CHR does not approve the bylaws, Tourtelot stated that CHBPA stands a chance of being disenfranchised by CHR and will not be recognized as the acknowledged organization representing thoroughbred horsemen. CHBPA representative Robert Forgnone commented that CHBPA had not received any prior indication of the specific proposals that the Bylaws Committee was considering and thus was not prepared to respond to the recommendations; he noted that CHBPA needs to research and discuss several issues, and asked that CHR schedule a formal hearing to allow CHBPA an opportunity to address the recommendations. Board Chair Scurfield explained that CHR was not yet taking action on these issues; at this writing, they are scheduled to be discussed at the Bylaws Committee's January meeting and reported to the full Board at its January meeting.

CHR Reviews CHBPA's Political Activities. At CHR's October 29 meeting, Rod Blonien, representing certain members of CHBPA, addressed CHR concerning the CHBPA board of directors' recent authorization of the expenditure of approximately \$400,000 for political activities at the State Capitol during the next fourteen months. Blonien expressed concern about the large amount of funds authorized and the purposes for which they will be used (which allegedly include an attempt to repeal SB 118 (Maddy) (*see above*) and support for people who oppose Senator Maddy). He commented that some CHBPA members do not share the philosophies of the current CHBPA board, and thus object to the use of these funds for political purposes; Blonien requested that CHR take some sort of action with regard to what Blonien characterized as the inappropriate expenditure of funds by CHBPA. Deputy Attorney General Cathy Christian remarked that although the

Board has the authority to review the matter, it could not take action at that time since the matter was not on the agenda; the Board agreed to put the issue on its November agenda. Although the Board was unable to take immediate action at the October meeting, Chair Scurfield requested that CHBPA refrain from spending "an inordinate amount of money" for political purposes before action could be taken at the next CHR meeting. CHBPA Chief Operating Officer Brian Sweeney agreed that—subject to the approval of the CHBPA Board—CHBPA would neither spend nor commit any more money *pro rata* than it spent during last year for the same efforts, until the next CHR meeting.

At CHR's November 18 meeting, Blonien repeated his concerns on behalf of CHBPA members who do not support the political activities of CHBPA's current board of directors. He argued that he and other dissatisfied CHBPA members are required to belong to CHBPA in order to retain their licenses and earn a livelihood, and state law requires them to pay a portion of their winning purses to CHBPA. According to Blonien and the Pacific Legal Foundation, when the CHBPA board uses those compelled funds to state a political opinion which differs from those of some CHBPA members, the first amendment rights of those members are being violated. Blonien requested that CHR limit CHBPA's political expenditures to \$50,000 annually and restrict it to hiring only one lobbyist to represent CHBPA on issues that are strictly related to providing services to thoroughbred horsemen.

CHBPA representative Tom Ready responded that the purpose of the organization is to benefit thoroughbred horsemen, and CHBPA's political activities are necessary to fulfill that purpose; Ready also noted that CHBPA had filed a complaint for declaratory relief against its "dissident" members. However, Commissioner Tourtelot stated that Article 6, Section 1 of CHBPA's Articles of Incorporation provides that "no substantial part of activities of this corporation shall consist of carrying on propaganda or otherwise attempting to influence legislation." Tourtelot noted that CHBPA's budget of \$400,000 for political activities is approximately 25% of its nonpension funds, and commented that he considers the figure to be substantial.

Deputy Attorney General Cathy Christian opined that Business and Professions Code sections 19420 and 19440 give CHR authority over CHBPA, and that the Horse Racing Law provides for CHR approval of actions taken by CHBPA, in-

cluding the approval of CHBPA's bylaws, a project which is now under way as mandated by SB 118 (*see above*). Christian stated that the declaratory relief action filed by CHBPA against some of its members will allow a court to determine the relevant issues. In the interim, CHR unanimously ordered CHBPA to cease any further expenditures relative to political contributions or lobbying of any nature, until further ordered by CHR or by the court. At this writing, CHR's order prohibiting CHBPA from making these expenditures remains in effect.

Track Safety Standards. On October 1, CHR republished notice of its intent to adopt new sections 1471-1475, Title 4 of the CCR, to implement Business and Professions Code section 19446, which requires CHR to establish safety standards governing the uniformity and content of track facilities in California. [13:4 CRLR 194; 13:2&3 CRLR 203] On November 18, CHR held a public hearing on the proposed regulatory action. Track Safety Subcommittee member Richard Fontana reported that several legislators expressed concern about the proposed language of section 1471(c), which would provide that the track safety standards shall not require the removal or replacement of, or any substantial modification to, any rail or other object installed at a racing association, fair, or CHR-approved training facility prior to the effective date of section 1471, if in CHR's judgment "substantial compliance" with the safety requirements of the regulations can be attained by the racing association or fair pursuant to alternate methodologies or technology proposed and implemented by such racing association or fair; according to some critics, the use of the term "substantial compliance" would allow associations to come into less than absolute compliance with the standards.

Following discussion, CHR agreed to delete the word "substantial" from section 1471(c), and directed staff to release the modified language for an additional fifteen-day public comment period. As amended, section 1471(c) would provide that the track safety standards shall not require the removal or replacement of, or any substantial modification to, any rail or other object installed at a racing association, fair, or CHR-approved training facility prior to the effective date of section 1471, if in CHR's judgment there is a showing by the racing association or fair that compliance with the safety standards of the regulations can be attained by alternate methodologies, technologies, programs, practices, means, devices, or processes proposed and implemented by such



racing association or fair, which will provide equal or superior safety for racing participants. CHRB also modified proposed section 1471(d) to provide that, upon the effective date of the track safety standards, a racing association, fair, or CHRB-approved training facility may request, in writing, no less than 90 calendar days prior to the date upon which the racing meeting is to commence, that CHRB make a determination, based on the factors set forth in section 1471(c), that any rail or other object installed prior to the effective date of section 1471 is exempt from the track safety standards; the original language required such a request be made no less than 180 calendar days prior to the date upon which the racing meeting is to commence.

At its December 16 meeting, CHRB adopted the modified rulemaking package; at this writing, the rulemaking file is being reviewed by the Office of Administrative Law (OAL).

Certificates of Registration. On December 3, CHRB published notice of its intent to amend section 1633, Title 4 of the CCR, which would clarify when, why, and by whom a certificate of registration of a horse may be removed from the racing secretary's office. As amended, section 1633 would provide that a certificate of registration filed with the racing secretary to establish eligibility to enter a race shall be released only to the trainer of record; the owner(s) named in the certificate; at the request of the owner(s) or his/her authorized agent, to a person designated by the owner(s) in writing; or, if unclaimed at the end of the meeting, to the Board. Under no circumstances shall any person remove and hold a certificate of registration to prevent a horse from racing or to remove a legal owner's name without authorization. At this writing, the Board is scheduled to hold a public hearing on the proposed amendment on January 28.

Safety Helmet Requirements. On December 3, CHRB published notice of its intent to amend section 1689, Title 4 of the CCR, regarding the safety helmet requirement for persons riding horses on the racetrack and within the inclosure of the track. As amended, section 1689 would require all persons, including owners and trainers, to wear a properly fastened safety helmet when mounted on a racehorse or mounted in or on a sulky when on the racetrack; owners and trainers would not be required to wear a safety helmet if mounted on a pony horse. At this writing, CHRB is scheduled to hold a public hearing on the proposed amendments on January 28.

Name Change. On December 3, CHRB published notice of its intent to

amend section 1456, Title 4 of the CCR, which currently provides—among other things—that credentials issued by the National Association of State Racing Commissioners (NASRC) to its members, past members, and staff shall be honored by racing associations for admission into the public inclosure when presented therefor by such persons; CHRB's amendments would reflect NASRC's name change to the Association of Racing Commissioners International, Inc. At this writing, the Board is scheduled to hold a public hearing on the proposed change on January 28.

Appeals. On December 3, CHRB published notice of its intent to amend section 1761, Title 4 of the CCR, to clarify that appeals to the Board from the decisions of stewards must be received by a CHRB employee at any of the Board's offices, and to clarify that the CHRB Chair sustains, dismisses, or issues stay orders. At this writing, the Board is scheduled to hold a public hearing on the proposed change on January 28.

Parimutuel Wagering Prohibitions. On December 3, CHRB published notice of its intent to amend section 1969, Title 4 of the CCR, which prohibits parimutuel wagering by certain persons on duty at a race meeting or in a satellite wagering facility. Currently, the section refers to the satellite facility supervisor and assistant satellite supervisor as persons who are prohibited from wagering while on duty at a satellite wagering facility; the Board's proposed changes would replace the term "satellite" with "simulcast." At this writing, CHRB is scheduled to hold a public hearing on the proposed change on January 28.

On December 10, CHRB published notice of its intent to amend section 1980, Title 4 of the CCR, which currently provides that certain persons are prohibited from participating in parimutuel wagering and from being present within any racing inclosure during a recognized race meeting; among other things, the Board's amendments would delete the word "racing" from the term "racing inclosure," since the term "inclosure" is now specifically defined in Business and Professions Code section 19410. At this writing, the Board is scheduled to hold a public hearing on the proposed change on January 28.

Also on December 10, CHRB published notice of its intent to amend section 1981, Title 4 of the CCR, which provides that racing associations shall exclude and eject from their inclosures persons who are prohibited from participating in parimutuel wagering and from being present within any racing inclosure during a recognized race meeting, and that no associ-

ation shall knowingly issue any admission ticket or credential to such persons, and any admission ticket or credential is void if held by such person. CHRB's amendments would specify that simulcast wagering facilities and fairs, in addition to racing associations, have the responsibility to exclude and eject from their inclosures persons who are prohibited from participating in parimutuel wagering and from being present within any inclosure. At this writing, the Board is scheduled to hold a public hearing on the proposed changes on January 28.

Farrier's License. On December 3, CHRB published notice of its intent to adopt section 1504, Title 4 of the CCR, which would set forth the criteria for obtaining a farrier's occupational license. Among other things, section 1504 would provide that an applicant for an original or renewal license as a practicing farrier must pass a written examination and a practical examination prescribed by CHRB and administered by its agents. The Board's proposal is similar to its 1992 proposal to adopt section 1500.7, Title 4 of the CCR; however, the Board failed to adopt section 1500.7 and forward it to OAL for review and approval within one year of the notice publication, as required by the Administrative Procedure Act. [13:2&3 CRLR 203; 13:1 CRLR 131] At this writing, CHRB is scheduled to hold a public hearing on the proposed adoption of section 1504 on January 28.

Trainer/Assistant Trainer Requirements. On December 3, CHRB published notice of its intent to adopt section 1503, Title 4 of the CCR, which would set forth the criteria for obtaining a license as a trainer or assistant trainer. Among other things, section 1503 would require a candidate for an original license as a trainer or assistant trainer to successfully complete the written, practical, and oral parts of the trainer's examination. An individual currently licensed as a trainer or assistant trainer in other racing jurisdictions, and who has held such license for a minimum of one year in good standing, would be subject to taking any or all portions of the trainer's examination as prescribed by the Board and administered by its agents. A trainer currently licensed as a trainer or assistant trainer and who wishes to change his/her license from harness to other types of flat racing, or other types of flat racing to harness, would be required to take the complete trainer's examination. At this writing, CHRB is scheduled to hold a public hearing on the proposed section on January 28.

Rulemaking Update. The following is a status update on other CHRB rulemak-



ing proposals described in detail in previous issues of the *Reporter*:

• **Simulcast Wagering Regulations.** On October 4, OAL approved CHRHB's amendments to section 2056 through 2061, Title 4 of the CCR, which conform CHRHB regulations to reflect legislative changes regarding satellite wagering and changes in simulcast technology and equipment. [13:4 CRLR 192]

• **Criteria for Filing Financial Complaints.** On October 4, OAL approved CHRHB's amendments to section 1876, Title 4 of the CCR, which establish new parameters concerning the nature and timeliness of financial complaints which may be filed with the Board. [13:4 CRLR 195; 13:2&3 CRLR 202]

• **California-Bred Breeder's Award.** On October 4, OAL approved CHRHB's amendments to section 1814, Title 4 of the CCR, which sets forth the terms, conditions, and procedures concerning the breeder award incentive program for California-bred horses; the amendments bring the section into compliance with Business and Professions Code sections 19567 and 19617.2. [13:4 CRLR 192]

• **Jockey Safety Vest Requirement.** On October 26, OAL approved CHRHB's adoption of section 1689.1, Title 4 of the CCR, which prohibits a jockey or apprentice jockey from riding in a race unless the jockey or apprentice jockey wears a safety vest. [13:4 CRLR 192]

• **Items Included in Weight.** On October 26, OAL approved CHRHB's amendment to section 1684, Title 4 of the CCR, which states that the jockey's safety vest shall not be included in the jockey's weight. [13:4 CRLR 192]

• **Payment of Fines.** At this writing, OAL is reviewing CHRHB's proposed amendments to section 1532, Title 4 of the CCR, which would change the methods by which fines imposed by stewards are paid by licensees and processed. [13:4 CRLR 192-93]

• **Permission to Carry Firearms.** At this writing, OAL is reviewing CHRHB's proposed amendments to section 1875, Title 4 of the CCR, which pertains to the authorization procedures that must be complied with in order for a person to carry firearms at any facility within CHRHB's purview of control; the amendments would provide that no licensee or employee of the racing association or its concessionaires shall possess a firearm while on the grounds of a facility within CHRHB's purview or control unless such possession has been authorized by state or federal law, and unless the documentation of such authorization is on his/her person. [13:4 CRLR 193]

• **Occupational Licensing.** At this writing, OAL is reviewing CHRHB's proposed amendments to section 1481, Title 4 of the CCR, which would add new classes of occupational licenses. [13:4 CRLR 193]

• **Trainer's Duty to Ensure Licensed Participation.** Prior to the scheduled October 29 public hearing, CHRHB withdrew its proposal to amend section 1895, Title 4 of the CCR, which currently specifies that trainers may not employ unlicensed persons and must notify CHRHB if there are personnel changes; the Board was considering deleting the requirement that trainers notify the Board if they have personnel changes. At this writing, CHRHB is not expected to pursue the proposed regulatory action.

• **Refusal Without Prejudice.** On November 17, OAL approved CHRHB's amendment to section 1493, Title 4 of the CCR, which precludes applicants who have failed a Board certification test from reapplying for a license at any subsequent or other race meeting. [13:4 CRLR 193]

• **Record and Transcript of Steward Hearings.** On November 29, OAL approved CHRHB's amendment to section 1537, Title 4 of the CCR, which specifies the circumstances under which a verbatim record or transcript of hearings held before the stewards shall be prepared. [13:4 CRLR 193]

• **CHRHB Approval of Concessionaires.** At its October 29 meeting, CHRHB held a public hearing on its proposed amendments to section 1440, Title 4 of the CCR, which would require that any person or entity who contracts to act as a concessionaire at a racetrack submit to the Board specified forms and applications for purposes of CHRHB approval. [13:4 CRLR 193] The amendments would remove totalizer companies, simulcast service suppliers, video production companies, timing companies, and photofinish companies from the rule; such entities must be licensed under newly proposed section 1440.5 (see below). The amendments would also delete an existing licensure requirement for concessionaires, and codify the current approval procedure. Following the hearing, the Board unanimously adopted the amendments, which await review and approval by OAL.

• **CHRHB Licensing of Contractors and Subcontractors.** On October 29, CHRHB conducted a public hearing on its proposed adoption of section 1440.5, Title 4 of the CCR, which would require any entity acting as a totalizer company, simulcast service supplier, video production company, timing company, or photo finish company to procure a license from the

Board; the licensing process would require ownership disclosure and background investigations to determine a contractor's qualifications, fitness, and reputation. [13:4 CRLR 193-94] The new rule would also set forth the fees each type of entity is required to pay to CHRHB; by licensing these entities, the Board would gain a full range of disciplinary options should a contractor or subcontractor fail to perform. Following the hearing, the Board adopted the amendments, which await review and approval by OAL.

• **License Application Regulations.** At its October 29 meeting, the Board held a public hearing on its proposed amendments to section 1433, Title 4 of the CCR, which describes the appropriate applications which must be submitted by a California fair or an association making application for a license to conduct a horse racing meeting. [13:4 CRLR 193] The amendments would require a written statement from the association regarding its plans to simulcast the races of other breeds, including a list of races in a proposed simulcast program. Additionally, the association would be required to disclose the proposed post times for each race and the type of electronic device to be used on the track. At the conclusion of the hearing, CHRHB adopted the proposed amendments; at this writing, the rulemaking file is awaiting review and approval by OAL.

• **Obedience to Security Officers and Public Safety Officers.** On October 29, CHRHB held a public hearing on its amendments to section 1930, Title 4 of the CCR, which would enlarge the authority of stewards, CHRHB, and security officers of racing associations. [13:4 CRLR 193] Under the current rule, all licensees must obey an order from stewards, CHRHB, a security officer of an association, or any public safety officer of any police, fire, or law enforcement agency only if such order is given for the purpose of controlling a hazardous situation or occurrence. The amendments would strike the language pertaining to hazardous situations and occurrences, and require obedience to any order given to those listed above if the order is lawful, regardless of the circumstances. Following the hearing, the Board unanimously adopted the amendments; at this writing, the rulemaking file awaits review and approval by OAL.

• **License Subject to Conditions and Agreements.** At its October 29 meeting, the Board held a public hearing on its proposed amendments to section 1485, Title 4 of the CCR, which would require all licensees to strictly comply with any condition imposed by the Board; currently, the section allows CHRHB to place



restrictions, limits, and/or conditions on a license but does not require licensee compliance with such actions. [13:4 CRLR 194] The amendments would also delete language in the regulation which allows licensees, upon CHRB's endorsement, to request classification changes in their licenses without having to submit a new application. At the conclusion of the hearing, CHRB adopted the amendment; at this writing, the rulemaking file awaits review and approval by OAL.

• **Stewards to Make Inquiry.** On October 29, CHRB held a public hearing on its proposed amendments to section 1750, Title 4 of the CCR, which would relieve stewards of the responsibility of investigating complaints. With the proposed amendment of section 1765 (see below), CHRB's investigative staff would be exclusively responsible for investigating complaints. [13:4 CRLR 194] The amendments to section 1750 would delete the words "investigation" and "complaint," and clarify the intent of the section which specifically addresses the running of the race; the stewards will remain responsible for inquiry into objections, protests, and appeals relevant to the running of the race. After the hearing, the Board unanimously adopted the amendments, which await review and approval by OAL.

• **Written Complaints.** At its October 29 meeting, CHRB held a public hearing on its proposed amendment to section 1765, Title 4 of the CCR, which would require that written complaints filed with the stewards be referred to the Board's investigative unit for evaluation and further action. [13:4 CRLR 194] These amendments would relieve the stewards from investigating complaints which may come before them in a hearing and place responsibility for investigation with the Board. At the conclusion of the hearing, CHRB unanimously adopted the amendments which await review and approval by OAL.

• **Registration of Colors.** On October 29, CHRB held a public hearing on its proposed amendments to section 1780, Title 4 of the CCR, which states that racing colors shall be registered with the clerk of the course when registering a horse within an inclosure [13:4 CRLR 193]; although the section currently requires that a horse owner register a horse's racing colors with CHRB when filing an application for a horse owner's license, this requirement is rarely enforced. After the hearing, the Board unanimously adopted the amendment, which awaits review and approval by OAL.

LEGISLATION

■ **AB 142 (Tucker).** Existing law provides for the determination and recogni-

tion of organizations of horsemen to receive distributions of purses for the benefit of horsemen. As amended March 22, this bill would require the organization representing thoroughbred horsemen to be an organization whose members are owners of a racehorse that has started in a California licensed race in the preceding calendar year and who, in the current calendar year, own a horse eligible to enter a California licensed race. The bill would require that each member of the organization hold a valid horse owner license issued by CHRB and not be licensed by the Board in any other capacity or classification. [A. GO]

AB 702 (Tucker). Existing law permits CHRB, 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 meetings, and fair meetings. Existing law requires that minor breeds of horses make up more than half of the number of horses in the race. As introduced February 23, this bill would delete the requirement that CHRB provide for this type of race by regulation, and delete the requirement that minor breeds of horses make up more than half of the number of horses in the race. [A. GO]

AB 1556 (Tucker). Existing law permits CHRB to adopt rules governing, permitting, and regulating mutual wagering on horse races under the system known as the parimutuel method of wagering. That wagering may be conducted only by a person licensed under the Horse Racing Law to conduct a horse racing meeting, and only within the enclosure and on the dates for which horse racing has been authorized by the Board. As introduced March 4, this bill would delete the restriction permitting wagering only on the dates for which horse racing has been authorized by the Board. [A. GO]

SB 638 (Maddy). Under existing law, no license to conduct a horse racing meeting upon a track may be issued unless the track has been inspected and approved by CHRB. As amended September 8, this bill would instead provide that no license to conduct a horse racing meeting upon a track may be issued unless the track has been inspected by the Board within 30 days prior to the date of application for a license. This provision would become operative on January 1, 1995. [S. Inactive File]

AB 991 (Tucker), as amended June 7, 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 enclosure 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. Inactive File]

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 amended May 25, this bill would, with respect to thoroughbred racing only, 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. [S. GO]

AB 274 (Hoge). Existing law permits CHRB 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. As



REGULATORY AGENCY ACTION

amended August 26, this bill would delete the authorization to accept wagers on races conducted in this state comprising the program of racing generally known as the Breeders' Cup, and permit fairs and licensed associations to accept wagers on any featured race in this state having a gross purse of \$20,000 or more if wagering is offered and under the conditions specified in the bill. [A. Inactive File]

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; prohibit CHRB from issuing or renewing any license until the applicant has certain documents on file with the Board relating to workers' compensation coverage; and 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. Inactive File]

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 July 14, this bill would require that an amount equal to 10% of the total advertised purse be distributed as a bonus payment for California-bred thoroughbred horses, as described.

Existing law requires every licensee conducting a horse racing meeting, each racing day, to provide for the running of at least one race limited to California-bred horses, to be known as the "California-Bred Race." This bill would repeal that provision. [A. GO]

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 CHRB 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. [A. GO]

SB 549 (Hughes). The Gaming Registration Act regulates the operation of gam-

ing clubs, and prohibits any person 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 CHRB, 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]

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 amended July 1, this measure would create the California Gaming Control Commission, and would authorize the Commission to regulate legal gaming in this state, subject to legislative control. The measure would also create a Division of Gaming Control within the Office of the Attorney General, and permit the legislature to impose licensing fees on all types of gaming regulated by the Commission to support the activities of the Commission and the Division. The measure would provide for the regulation of bingo by the Commission, and provide that the proceeds of those games shall be used exclusively to further the charitable, religious, or educational purposes of a nonprofit organization or institution that is exempt from state taxation.

Existing statutory law establishes the California State Lottery Commission and requires it to administer the California State Lottery Act of 1984. Under existing statutory law, CHRB regulates horse racing and wagering thereon. This measure would permit the legislature to provide for the regulation of parimutuel wagering on

horse racing and the state Lottery by the Gaming Control Commission.

This measure would exclude from the meaning of the term "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 prohibit the state Lottery from using any slot machine whether mechanical, electromechanical, or electronic.

The measure would require the legislature to provide for the recording and reporting of financial transactions by commercial gaming establishments. The measure would also define the term "casino" for the purpose of the prohibition against casinos. [S. GO]

AB 1418 (Tucker). Existing law requires the execution of an agreement between, among others, the racing association conducting the meeting and the satellite wagering facility as a prerequisite to the transmission of the audiovisual signal of the live racing and the conduct of wagering at the satellite wagering facility. As amended September 8, this bill would permit the agreement to contain a provision requiring the payment of a proximity fee to a racing association or fair as a condition of receiving the audiovisual signal of the live meeting under the circumstances specified in the bill. [A. Conference Committee]

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. Inactive File]

RECENT MEETINGS

At its October 29 meeting, the Board discussed the Association of Racing Commissioners International's (ARCI) amendment to its trifecta rule (Section V, Paragraph L of the ARCI Parimutuel Wagering Rules). The previous version of the rule prohibited any coupled entries in trifecta contests; as amended, the ARCI rule allows coupled entries when the race in question has Grade I status, provided that the relevant state racing commission approves the change. CHRB noted that this amendment is not contrary to existing CHRB policy and regulations, since section 1979, Title 4 of the CCR, already allows coupled entries for trifectas con-



ducted by California racing associations; accordingly, CHRB unanimously concurred in the amendment.

At its November 18 meeting, CHRB reaffirmed the California Western Appaloosa Association (CWAA) as the official organization to represent Appaloosa horsemen in California; this action followed a CHRB-conducted election to determine whether Appaloosa owners and trainers wanted the CWAA to be replaced by Cal-Western Appaloosa Racing, Inc. In the mail-in election, which ended on October 29, CWAA received 114 votes to 89 for Cal-Western.

At its December 16 meeting, the Board unanimously voted to reelect Ralph Scurfield as CHRB Chair and Donald Valpreo as Vice-Chair.

■ FUTURE MEETINGS

April 28 in Los Angeles.
May 20 in Cypress.

NEW MOTOR VEHICLE BOARD

Executive Secretary:
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.

■ MAJOR PROJECTS

Board Proposes Rulemaking Package. On December 31, NMVB published

notice of its intent to amend sections 585 and 598 and adopt new section 593.1, Title 13 of the CCR. According to NMVB, the amendments to sections 585 and 598 will formalize the current Board procedure by which the Executive Secretary files a protest only after it is determined the submitted protest comports with form, content, and timeliness requirements. The amendments will delegate the authority for determining the timeliness of a protest to the Executive Secretary, and further define the procedures by which the Board staff assigns filing dates in relation to the date the document was received at the Board's offices or mailed by certified or registered mail. Proposed new section 593.1 would describe the means for removing ambiguity from written notices under Vehicle Code section 3062 and thus decrease the likelihood of disputes over sufficiency of notice for actions under that section. At this writing, NMVB is scheduled to hold a public hearing on these proposed changes on February 14 in Sacramento.

■ LEGISLATION

AB 699 (Bowen), as amended June 10, would change the name of NMVB to the Franchise Dispute Resolution Board; revise references to NMVB in other provisions of existing law; and enlarge the Board's scope of authority to include regulation of all franchisee-franchisor relationships and authorize the charging of certain fees, as specified. [*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 that established place of business. [*A. Trans*]

SB 1081 (Calderon). Under existing law, every conditional sales contract, defined to include certain contracts for the sale or bailment of a motor vehicle, is required to contain certain disclosures, as specified. As amended May 26, this bill would establish a seller's right of rescission based on the seller's inability to assign the contract, and would require the right of rescission to be included in conditional sales contracts. The bill would specify the conditions under which the seller may rescind a contract, including requiring the seller to send a Notice of Cancellation to the buyer, as specified; however, the bill would specify circumstances in which, after rescission, the seller may repossess the vehicle without notice. The bill would provide that a seller is liable in a civil action to a buyer for any damages caused by an unauthorized rescission. The bill would prohibit conditional sales contracts from containing a seller's right of rescission based on inability to assign the contract, except as provided by the bill.

Existing law prohibits various activities in connection with the advertising or sale of motor vehicles by, among others, vehicle dealers licensed by the Department of Motor Vehicles. This bill would prohibit a licensed dealer from rescinding a contract for the sale of a vehicle and subsequently engaging in any unlawful, unfair, or deceptive act or practice, as specified, or stating an intent to rescind a contract pursuant to the right of rescission provided by the bill without having the ability to comply with the requirements of the bill.

The bill would state that the provisions regarding conditional sales contracts only apply to contracts entered into on or after January 1, 1994. [*A. Desk*]

■ LITIGATION

In *Automotive Management Group, Inc. v. New Motor Vehicle Board*, 20 Cal. App. 4th 1002 (Dec. 2, 1993), plaintiff Automotive Management Group (AMG) challenged the finding of an administrative law judge (ALJ) and the trial court that AMG's protest regarding its termination as a franchised dealer of Mitsubishi Motor Sales of America, Inc., was untimely. Finding that NMVB did not review the finding of the ALJ and render a final agency decision, the Sixth District Court of Appeal remanded the matter to the Board for appropriate proceedings.

Because AMG failed to maintain sufficient lines of credit (called "flooring") to buy vehicles from Mitsubishi, as required by the franchise agreement, Mitsubishi notified AMG of its intention to terminate the franchise on January 9, 1990. After