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 introduced March 5, this bill would establish a seller's right of rescission based on the seller's inability to assign the contract, and would require notice of 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. 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 DMV. 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. *[S. Appr]*

LITIGATION

In ***Chrysler Corporation v. NMVB, La Mesa Dodge, Inc., et al., Real Parties in Interest***, No. D016270 (Jan. 15, 1993), the Fourth District Court of Appeal considered the meaning of Vehicle Code section 3067, which provides that if NMVB "fails to act" within thirty days after conducting a hearing on a protest, within thirty days after it receives a proposed decision where the case is heard before a hearing officer alone, or within such period as may be necessitated by Government Code section 11517 or as may be mutually agreed upon by the parties, then the proposed action shall be deemed to be approved.

In this proceeding, NMVB began to process an administrative law judge's (ALJ) proposed decision conditionally approving a Dodge dealership's move to a different location by setting the matter for review and consideration at a date within thirty days of its receipt of the ALJ's proposed decision. On the 31st day after it received the proposed decision, the Board issued a notice of Board action stating that five days earlier it had "considered the proposed decision as well as the administrative record....After such consideration, the Board continued this matter to be again considered at the next meeting of the Board in order to allow further review of the evidence submitted at the evidenciary [sic] hearing on these protests." Although the Board held additional meetings, received information from Chrysler nearly two months later, caused the ALJ to take additional evidence on certain matters, and issued its decision denying the dealership move within thirty days after the ALJ submitted supplemental findings of fact to the Board, the trial court held that section 3067 required the "proposed action"—meaning the ALJ's decision—to be deemed approved. The trial court construed the term "act" in the phrase "fails to act" as referring to the Board's decision; the trial court concluded that since NMVB had not made its decision within thirty days of its receipt of the ALJ's proposed decision, the Board had "failed to act" within the time required; accordingly, the trial court ordered a peremptory writ of mandate commanding the Board to set aside its decision and instead enter the proposed decision of the ALJ.

In reversing the trial court's decision, the Fourth District stated that when considering the statutory scheme as a whole, "it is reasonable to construe section 3067's distinctive reference to 'act' within 30 days after the Board receives a proposed decision where the case is heard before a hearing officer alone, as beginning the initial processing of the case within the 30-day time limit, rather than actually rendering one of the decisions the section specifies within that time." The court noted that "[w]here, as here, by reviewing, discussing, and (according to the Board) rejecting the proposed decision, hearing statements from counsel and setting the matter for further hearing, the Board promptly begins processing the matter within the 30-day limit, it is appropriate under section 3067 to consider that the Board did 'act' in a timely fashion....Thus, the 'deemed approved' provision was not correctly applied in the first instance."

On April 15, the California Supreme Court denied Chrysler's petition for review and its request for an order directing depublication of the Fourth District's opinion.

FUTURE MEETINGS

To be announced.

OSTEOPATHIC MEDICAL BOARD OF CALIFORNIA

Executive Director:
Linda Bergmann
(916) 322-4306

In 1922, California voters approved a constitutional initiative which created the Board of Osteopathic Examiners; 1991 legislation changed the Board's name to the Osteopathic Medical Board of California (OMBC). Today, pursuant to Business and Professions Code section 3600 *et seq.*, OMBC regulates entry into the osteopathic profession, examines and approves schools and colleges of osteopathic medicine, and enforces professional standards. The Board is empowered to adopt regulations to implement its enabling legislation; OMBC's regulations are codified in Division 16, Title 16 of the California Code of Regulations (CCR). The 1922 initiative, which provided for a five-member Board consisting of practicing doctors of osteopathy (DOs), was amended in 1982 to include two public members. The Board now consists of seven members, appointed by the Governor, serving staggered three-year terms.

Richard A. Bond, DO, of Santa Ana, was recently appointed to OMBC by Governor Wilson; OMBC is currently awaiting the appointment of one more DO to make its membership complete.

MAJOR PROJECTS

OMBC Seeks Solutions to Its Budget Woes. OMBC President Richard Pitts, DO, recently sent a letter to the Department of Finance asking for a reconsideration of the 10% budget cut that OMBC suffered in fiscal year 1992–93. *[13:1 CRLR 134; 12:4 CRLR 1]* In his letter, Dr. Pitts expressed OMBC's concerns that without reinstatement of the expropriated money, the Board will not be able to meet its enforcement costs; OMBC has also consulted Department of Consumer Affairs (DCA) officials for guidance on how to proceed. The 10% cut imposed on the Board by the legislature amounted to an approximate $53,000 reduction in OMBC's 1992–93 budget and has curtailed OMBC's enforcement and disciplinary ability. OMBC is pursuing a fee increase as a way to recover some of its actual administrative expenses (*see below*); however, the Board is aware that any reserves that are accumulated by the fee increase could again be taken by the legislature.

OMBC is also discussing the feasibility of recouping its administrative costs

associated with enforcement activities through a "cost recovery" mechanism; at its February meeting, the Board instructed staff to determine whether cost recovery revenue could be devoted to OMBC's operating budget instead of accruing to the state's general fund. Further, the Board may also pursue legislation to increase OMBC's statutory fee ceilings

OMBC Pursues Rulemaking Proposals. On March 19, OMBC published notice of its intent to amend sections 1600, 1602, 1668, 1620, 1621, 1635, 1641, 1656, 1690, and Article 18, Title 16 of the CCR. Among other things, the proposal would make the following changes:

–change references to the Board of Osteopathic Examiners to the Osteopathic Medical Board of California, in accordance with the Board's recent name change mandated by various sections of the Business and Professions Code;

–delete a reference to a 75% pass rate for the Board's written examination;

–authorize OMBC to accept Category 1-B continuing medical education (CME), in addition to Category 1-A, offered by the American Osteopathic Association (AOA) *[13:1 CRLR 133–34]*;

–eliminate the annual minimum requirement of twenty hours of CME, thus requiring a total of 150 hours of CME during a three-year reporting period, sixty hours of which must be in AOA's category 1-A or 1-B, and ninety of which may be CME offered by AOA or the American Medical Association;

–provide that a petition for reinstatement shall not be heard by the Board unless the time elapsed from the effective date of the original disciplinary decision or from the date of the denial meets the requirements of Business and Professions Code section 2307; and

–increase the Board's examination fee from $125 to $350, its duplicate certificate fee from $10 to $25, its annual tax and registration fee from $175 to $200, and its delinquent annual tax and registration fee from $87.50 to $100.

On May 8, OMBC conducted a public hearing on the proposed changes. Following the public hearing, OMBC adopted all of the changes except the proposals to accept Category 1-B CME and to eliminate the annual minimum requirement of twenty hours of CME. At this writing, the adopted proposals await review and approval by the Office of Administrative Law.

San Diego Osteopath Faces Federal Investigation. In February, federal agents seized the medical records of San Diego osteopath Gerald Wolfe in an investigation of allegations that he billed government health care programs for services he did not provide. Agents also served grand jury subpoenas on sixteen nursing homes and other facilities in an effort to collect Wolfe's records. Wolfe was licensed by OMBC in 1979 and, according to Executive Director Linda Bergmann, the Board has no record of any disciplinary complaints against him. The allegations charge that Wolfe fraudulently billed Medicare, Medi-Cal, and CHAMPUS; at this writing, no charges have been filed and the investigation is continuing.

LEGISLATION

AB 1987 (Horcher). Existing law authorizes OMBC to utilize an examination prepared by the Federation of State Medical Boards until December 31, 1993, for granting certificates of licensure based on reciprocity. As amended May 13, this bill would delete the December 31, 1993 limitation. This bill would also prohibit individuals who possess OD certificates from holding themselves out to be "board certified" unless that certification has been granted by the appropriate certifying board, as authorized by the American Osteopathic Association or the American Board of Medical Specialties, or is the result of certain approved postgraduate training. Finally, this bill would revise certain terminology relating to osteopathic medicine. *[A. Floor]*

AB 2156 (Polanco). Existing law requires various boards that license health care professionals to create and maintain a central file of all persons who hold a license from that board. Under existing law, insurers that provide professional liability insurance, or the parties to certain settlements where there is no professional liability insurance as to the claim, are required to report a settlement or award in a malpractice claim that is over specified dollar amounts to the applicable licensing board. As introduced March 5, this bill would require reports filed with OMBC by professional liability insurers to state whether the settlement or arbitration award has been reported to the federal National Practitioner Data Bank. *[A. Floor]*

AB 2046 (Margolin). Existing law prohibits osteopaths from charging, billing, or otherwise soliciting payment from any patient, client, or customer, for any clinical laboratory service if the service was not actually rendered by that person or under his/her direct supervision, unless the patient, client, or customer is apprised at the first, and any subsequent, solicitation for payment of the name, address, and charges of the clinical laboratory performing the service. As amended May 4, this bill would require, by January 1 of each year, and by July 1 or each year, a clinical laboratory to provide to each of its referring providers a schedule of fees for prescribed services. *[A. W&M]*

AB 179 (Snyder). Existing law provides that it is unlawful for an osteopath to charge, bill, or otherwise solicit payment from any patient, client, or customer, for any clinical laboratory test or service if the test or service was not actually rendered by that person or under his/her direct supervision, unless the patient, client, or customer is apprised at the first, or any subsequent, solicitation for payment of the name, address, and charges of the clinical laboratory performing the service. As amended April 20, this bill would require this provision to apply to a clinical laboratory of a health facility, as defined, or a health facility when billing for a clinical laboratory of the facility only if the standardized billing form used by the facility requires itemization of clinical laboratory charges.

Existing law provides that it is unlawful for an osteopath to charge additional charges for any clinical laboratory service that is not actually rendered by the licensee to the patient and itemized in the charge. Existing law prohibits that provision from being construed to prohibit any itemized charge for any service actually rendered to the patient by the licensee. This bill would also provide that the prohibition against additional charges is not to be construed to prohibit any summary charge for services actually rendered to a patient by a clinical laboratory of a health facility, if the standardized billing form used by the facility requires a summary entry for clinical laboratory charges. *[A. Floor]*

AB 336 (Snyder). Existing law prohibits defined providers of health care from disclosing medical information regarding a patient of the provider without first obtaining authorization, except when compelled by court order or otherwise, and authorizes disclosure of medical information for purposes of diagnosis or treatment, when authorized by law and in other circumstances, as specified. Existing law also limits the use and disclosure of medical information by employers and by defined third-party administrators. A violation of these provisions that results in economic loss or personal injury to a patient is punishable as a misdemeanor. As amended March 30, this bill would provide that, for purposes of these provisions, any corporation organized for the primary purpose of maintaining medical information in order to make the information available to the patient or to a provider of

health care on request shall be deemed to be a provider of health care, an employer, and a third-party administrator. *[A. Floor]*

RECENT MEETINGS

At its February 6 meeting, OMBC reviewed the Department of Health Services' draft guidelines regarding the transmission of bloodborne pathogens in health care settings. OMBC is expected to consider the adoption of the guidelines at a future meeting. (*See* agency report on MEDICAL BOARD OF CALIFORNIA for related discussion.)

At its May 8 meeting, OMBC passed a resolution authorizing Executive Director Linda Bergmann to sign a contract with the DCA's Division of Investigation for the purpose of conducting investigations into allegations of violations of state laws regulating the activities of osteopathic physicians. OMBC also passed a resolution authorizing Bergmann to execute—on the Board's behalf—a three-year contract with Occupational Health Services, Inc., for the administration of OMBC's diversion program for substance-abusing licensees.

Also at its May meeting, Board members who attended the annual meeting of the Federation of State Medical Boards gave reports to other OMBC members regarding key issues discussed at the meeting, including quality of care concerns such as enforcement standards and discipline of incompetent or dishonest physicians, and a study of physician malpractice claim resolutions.

FUTURE MEETINGS

August 21 in Costa Mesa (tentative).

PUBLIC UTILITIES COMMISSION

Executive Director:
Neal J. Shulman
President: Daniel Wm. Fessler
(415) 703-1487

The California Public Utilities Commission (PUC) was created in 1911 to regulate privately-owned utilities and ensure reasonable rates and service for the public. Today, under the Public Utilities Act of 1951, Public Utilities Code section 201 *et seq.*, the PUC regulates the service and rates of more than 43,000 privately-owned utilities and transportation companies. These include gas, electric, local and long distance telephone, radio-telephone, water, steam heat utilities and sewer companies; railroads, buses, trucks, and vessels transporting freight or passengers; and wharfingers, carloaders, and pipeline operators. The Commission does not regulate city- or district-owned utilities or mutual water companies.

It is the duty of the Commission to see that the public receives adequate service at rates which are fair and reasonable, both to customers and the utilities. Overseeing this effort are five commissioners appointed by the Governor with Senate approval. The commissioners serve staggered six-year terms. The PUC's regulations are codified in Chapter 1, Title 20 of the California Code of Regulations (CCR).

The PUC consists of several organizational units with specialized roles and responsibilities. A few of the central divisions are: the Advisory and Compliance Division, which implements the Commission's decisions, monitors compliance with the Commission's orders, and advises the PUC on utility matters; the Division of Ratepayer Advocates (DRA), charged with representing the long-term interests of all utility ratepayers; and the Division of Strategic Planning, which examines changes in the regulatory environment and helps the Commission plan future policy. In February 1989, the Commission created a new unified Safety Division. This division consolidated all of the safety functions previously handled in other divisions and put them under one umbrella. The Safety Division is concerned with the safety of the utilities, railway transports, and intrastate railway systems.

On February 11, Governor Wilson named P. Gregory Conlon to the Commission. Conlon, a 59-year-old Republican, was the chief utilities and telecommunications partner in the San Francisco office of Arthur Anderson and Company, an international accounting firm, until he retired in August 1991. During thirty years at the firm, Conlon was in charge of auditing several California utilities. Since his retirement, Conlon has been a consultant to Alameda schools. Conlon, whose appointment requires Senate confirmation, will fill a six-year term and occupy one of the seats left vacant by the resignation of Mitchell Wilk in October 1991 and the expiration of John Ohanian's term on December 31, 1992.

MAJOR PROJECTS

Pacific Bell Fined $50 Million for Improper Late Charges. On May 19, the PUC fined Pacific Bell $50 million for regularly charging its customers improper late fees and connection charges. *[12:4 CRLR 31, 227; 12:2&3 CRLR 38, 259]* In its decision, the Commission upheld the earlier findings of Administrative Law Judge (ALJ) Kim Malcolm, but reduced the size of the penalty she recommended.

On April 6, ALJ Malcolm issued a proposed decision finding that Pacific Bell wrongfully charged customers late fees and connection fees when in fact the customers had paid their bills on time or had their service improperly disconnected. Pacific Bell failed to record payments when received, resulting in improperly assessed late payment charges for timely payments. ALJ Malcolm noted that one PacBell customer routinely sent his bill ten days before it was due, yet he was just as routinely assessed late payment charges.

The proposed decision concluded that Pacific Bell managers knew about internal payment processing problems, yet failed to correct them because of the complexity of its system and the cost involved in adopting stricter processing standards. Pacific Bell's management received numerous complaints regarding substandard payment processing between 1986 and 1990, and the PUC notified PacBell management regarding the growing problem in 1987. According to Malcolm, consumers were assessed improper charges on more than seven million occasions between 1986 and early 1991. However, no formal action was taken until February 1991, when the *San Diego Union* published an article exposing the situation.

Pacific Bell's corrective measures, including advertisements in over one hundred newspapers, failed to inform customers of the full extent of the problem, according to Malcolm. "If it was the intent of Pacific to provide truthful and complete information to its customers, it failed to do so either because of mismanagement or a lack of interest." Malcolm further stated, "We are disappointed that so little attention was given to these problems until after the matter became public. We expect that in the future a newspaper article will not be required to motivate Pacific's managers to action when its employees and customers identify circumstances which result in tariff violations." In her proposed decision, ALJ Malcolm recommended that the Commission fine Pacific Bell a total of $65 million, including a $33 million penalty and an order requiring the phone company to refund $32 million to affected customers. Malcolm explained the fine: "The intent of the penalty is to signal Pacific's management and shareholders that we will not countenance service problems and tariff violations that are systematic and ongoing."

In its decision, the Commission increased the required refund to $35 million and reduced the penalty to $15 million,