



INDEPENDENTS

**BOARD OF
CHIROPRACTIC
EXAMINERS**

Executive Director:
Vivian R. Davis
(916) 227-2790

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

The Board consists of seven members—five chiropractors and two public members. In October, Governor Wilson appointed Rosa-Mei Lee, Ph.D., of Mountain View, an acupuncturist, to fill a public member seat on BCE; Lee replaces former Board member Patricia Quibell of Redding.

MAJOR PROJECTS

BCE Continues to Struggle with Unprofessional Conduct Regulations. BCE is continuing its efforts to define acts of unprofessional conduct, in light of concerns raised by—among others—Assemblymember Burt Margolin, Chair of the Assembly Health Committee, that chiropractors are inappropriately advertising that spinal manipulation may be substituted for vaccinations and used to treat infectious diseases. Margolin has introduced AB 2294, which would prohibit chiropractors from engaging in such activity (*see* LEGISLATION); however, because that bill will take effect only if it is passed by the legislature, signed by the Governor, and approved by the electorate, the Assembly Health Committee last year urged BCE to adopt emergency regulations addressing these issues pending passage and voter approval of AB 2294. [13:4 CRLR 188-89]

Accordingly, BCE adopted sections 317(w) and 317(x), Title 16 of the CCR, on an emergency basis on June 21, and section 317(y), Title 16 of the CCR, on an emergency basis on September 27. As originally adopted, section 317(w) pro-

hibits the offer, advertisement, or substitution of a spinal manipulation for a vaccination; and section 317(x) provides that it constitutes unprofessional conduct for a chiropractor to treat communicable diseases listed in Health and Safety Code section 3380. Section 317(y) provides that unprofessional conduct by a chiropractor includes treatment for infectious disease, defined as a disease caused by pathogenic microorganisms in the body; the section also provides that it shall not be interpreted to prohibit the treatment of neuromusculoskeletal or other conditions, diseases, or injuries within the scope of practice of a chiropractor in any patient with an infectious disease. Emergency regulations are only valid for 120 days. Because BCE did not forward a certificate of compliance to the Office of Administrative Law (OAL) within that time period, sections 317(w) and 317(x) were repealed on October 20 by operation of law. However, on November 8, BCE readopted section 317(w), again on an emergency basis; further, on December 23, BCE forwarded to OAL a certificate of compliance on the permanent adoption of section 317(w). BCE chose not to seek the permanent adoption of section 317(x) on the basis that the broad definition of the term "infectious diseases" in section 317(y) encompasses the term "communicable diseases" as used in section 317(x).

On October 22, BCE published notice of its intent to permanently adopt section 317(y), and scheduled a public hearing on the proposed language for December 9 in Sacramento. At the hearing, various chiropractors expressed their opposition to the proposed language on many grounds, and alleged that four Board members have "conflicts of interest" which render them ineligible to vote on the adoption of section 317(y). For example, at least two chiropractors claimed that BCE Chair Louis Newman, DC, should not vote on the matter because "there is a strong possibility that Dr. Newman is planning to sell his practice and leave the State of California" and that "he should not be voting on matters which affect the future of the chiropractic profession in California." Those same two chiropractors contended that Board members R. Lloyd Friesen, DC, and Lloyd Boland, DC, are ineligible to vote on the matter because of their affiliation with the California Chiropractic Association (CCA); the chiropractors allege

CRLR 244-45] In September 1992, EPIC filed a "supplemental petition for writ of mandate" in the same superior court proceeding in which the alternative writ had been previously issued and complied with. The "supplemental petition" was filed six months after the Board's decision to approve the THP, in violation of the 30-day limitation period for challenging a THP approval in PRC section 21080.5(g). Affirming the trial court, the First District rejected EPIC's attempt, finding that full compliance with the alternative writ divested the court of jurisdiction and, in any event, "[w]hether EPIC could file a 'supplemental petition' or was required to initiate a new proceeding, it had to file something within 30 days of the March 13, 1992 reapproval of the THP." As EPIC did neither, the court affirmed the dismissal of its petition.

Redwood Coast Watershed Alliance v. California State Board of Forestry, No. 932123 (San Francisco Superior Court), is still under submission. RCWA alleges that the Board and CDF's regulation of timber operations on private land violates certain provisions of CEQA, and that the THP process administered by CDF and the Board is not functionally equivalent to the environmental impact report process required by CEQA. [12:4 CRLR 214; 12:1 CRLR 176] As the Board has recently revamped its regulations to define the term "sustained yield" and provide for THP review in the context of that definition (*see* MAJOR PROJECTS), the court is waiting for the Board's implementation of those new rules.

FUTURE MEETINGS

May 3-4 in Riverside.
June 6-7 in Sacramento or Eureka.





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
(916) 263-6000

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