lations regarding the use of manipulation under anesthesia (MUA). *[12:4 CRLR 218]* The chiropractor requested that the regulation require that a chiropractor be certified by an approved program and conduct MUA only in facilities approved by the state so that the public would be protected from the use of MUA by unqualified persons. Although the Board noted that no such provisions are being considered at this time, members entertained suggestions as to the type of protocol, qualifications, and requirements necessary for such a regulation. The Board was informed that no state has adopted any such regulation to date; however, Texas and Florida are considering doing so in the near future.

FUTURE MEETINGS

May 6 in Sacramento.
July 29 in San Diego.

CALIFORNIA HORSE RACING BOARD

Executive Secretary:
Dennis Hutcheson
(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 and horse care. The purpose of the Board is to allow parimutuel wagering on horse races while assuring protection of the public, encouraging agriculture and the breeding of horses in this state, generating public revenue, providing for maximum expansion of horse racing opportunities in the public interest, and providing for uniformity of regulation for each type of horse racing. (In parimutuel betting, all the bets for a race are pooled and paid out on that race based on the horses' finishing position, absent the state's percentage and the track's percentage.)

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

MAJOR PROJECTS

DOJ's Investigation of Positive Clenbuterol Cases Continues. As of December 31, CHRB is still awaiting the state Department of Justice's (DOJ) report regarding its investigation of the Board's dismissal of four cases involving positive tests for the illegal drug clenbuterol. *[12:4 CRLR 219]* DOJ Special Agent Ron Eicher has completed the investigation and submitted a written report to DOJ; the report is being reviewed by DOJ officials, who may request follow-up investigation. DOJ will then forward the report to the Sacramento County District Attorney, who may also request additional investigation; if the District Attorney determines that there have been no criminal violations, the report and recommendations will be submitted to the Board.

Commissioner Rosemary Ferraro has expressed concern that DOJ's report will focus only on possible criminal violations, and not include a complete investigation into the circumstances and procedures which led to CHRB Executive Secretary Dennis Hutcheson's dismissal of three of the clenbuterol positives. CHRB Chair Ralph Scurfield agreed that a thorough investigation of the entire matter, not just the criminal aspects, is necessary, since the Board is being accused of selective enforcement and attempting to cover up the dismissals; there have also been rumors of possible lawsuits against the Board. In the face of this public outrage, Commissioner Ferraro feels that even if there were no criminal violations, the Board must address its policies and procedures that allowed the clenbuterol positives to be dismissed. Accordingly, Special Agent Eicher has assured the Board that DOJ's report will include a thorough investigation of all aspects of the case dismissals.

Commissioner Ferraro has also been critical of DOJ's appointment of Eicher to conduct the investigation; because Eicher worked as an investigator for the Board in the early 1980s, Ferraro is concerned that his past connection with the Board will compromise his objectivity. However, Eicher's background with CHRB is one of the reasons DOJ chose him to conduct the investigation. The Board wanted the investigation to be expedited, and DOJ felt that this could be most easily accomplished by appointing someone familiar with the industry to conduct the investigation.

In a related matter, the Board devoted part of its November 20 meeting to discussing the handling of the horsemen's split sample. CHRB Equine Medical Director Dr. Dennis Meagher explained that the Board's current split sample program allows a trainer who is faced with a positive test result on the official sample to request a second test on the horsemen's sample. However, Meagher noted that sometimes the CHRB-approved laboratories are unable to test for the drug substance identified in the official sample; the inability of the Board-approved laboratories to test for particular substances leaves the horsemen with no viable alternative. As a result, CHRB staff proposed that the Board adopt a policy statement recognizing several additional laboratories which are capable of performing the required testing to which horsemen could be referred for testing the split sample; under the policy, the horsemen would have the alternative of using one of the newly-identified laboratories or accepting the results of the official laboratory without having their split sample tested. The Board unanimously approved staff's recommendation.

Alternative Forms of Gambling at Racetracks. At CHRB's October 22 meeting, Brian Sweeney of the California Horsemen's Benevolent and Protective Association reiterated his request that CHRB discuss the impact on the horse racing industry of allowing alternative forms of gambling on the grounds of a racetrack; at CHRB's July 30 meeting, Sweeney had urged CHRB to schedule hearings in order to receive input on this issue. *[12:4 CRLR 220]* Although the item was not listed on its October agenda, the Board briefly discussed one form of alternative gambling—the California Lottery's introduction of Keno, which offers players a new game every five minutes. Some industry members in attendance opined that the new Keno game could have a serious detrimental financial effect on the horse racing industry. In addition, industry members expressed a general concern that the Lottery is developing other games which would also detrimentally affect horse racing. Senator Ken Maddy, a leading supporter of the horse racing industry in the state Senate, echoed the industry members' concerns and confirmed the fact that the Lottery Commission is considering other games which would probably

have some effect upon the horse racing industry.

At CHRB's November 20 meeting, Chair Ralph Scurfield announced that he had met with the Executive Director of the California Lottery and the Chair of the Lottery Commission to discuss the concerns of the horse racing industry; Scurfield felt it was necessary to establish open lines of communication between the Lottery and CHRB since both groups have similar interests. Scurfield's main goals for the meeting were to educate Lottery officials about the horse racing industry and make them aware of the concerns that exist within the industry.

In a related matter, the Board discussed the City of Inglewood's approval, at the November election, of the establishment of a card club at Hollywood Park *[12:4 CRLR 220]*; pending approval by the Attorney General's Office, the new facility is expected to open in the fall. Unlike the Lottery issue, there does not seem to be an industry consensus on what effect an onsite card club might have on the horse racing industry.

Brian Sweeney opined that any time new types of gambling such as the Lottery or card clubs are introduced in areas where horse racing is conducted, horse racing's share of the money wagered in that area is necessarily reduced; Sweeney argued that the Board should initiate legal action to stop the Lottery's new Keno game and onsite card clubs, and conduct a study of the financial impact which other forms of gambling have upon horse racing.

Ron Hubbard of Hollywood Park Operating Company (HPOC) spoke in favor of the new card club; HPOC supported the initiative which established the club because it felt that the operation of a card club at Hollywood Park would benefit horse racing. Hubbard cited statistics which indicate that a large majority of card club patrons do not bet on horses; HPOC feels that exposure to horse racing may convert some of these people to betting on horses. Hubbard also believes that the installation of a card club at Hollywood Park will create a large number of new jobs at the track, and will promote the track's long-term financial stability.

The Board decided to continue discussion of this issue at a later meeting.

Equine Medical Director. At its November 20 meeting, the Board decided to enter into a new agreement with the University of California at Davis regarding the position of CHRB Equine Medical Director. Under the agreement, Dr. Dennis Meagher will continue to serve as Director until the end of 1992. The Board will then enter into a six-month, $60,000 contract with the University; during that time, Dr. Robert Jack will serve as Director. Prior to this agreement, many feared that the position would be eliminated due to CHRB's budget cuts. *[12:4 CRLR 220]*

Simulcast Wagering Regulations. Sections 2056–2061, Title 4 of the CCR, implement legislation enacted in 1987 authorizing simulcast wagering in California; the regulations were adopted in 1988 and have not since been amended. *[8:3 CRLR 121]* On September 25, CHRB published notice of its intent to amend sections 2056–2061 and adopt new section 2062, to reflect the current practice of simulcast wagering by the horse racing industry. Among other things, the proposed amendments would rearrange definitions into alphabetical order, add definitions normally used in the simulcast wagering industry but not currently defined in the regulations, and further define existing terms; establish the means by which racing associations and fairs must satisfy the Board's requirements relevant to the simulcasting of their racing program; streamline the application and approval process for simulcast organizations; and eliminate specific equipment requirements to bring the regulations up-to-date with current industry standards.

On November 20, the Board conducted a public hearing on the proposed changes. Although various CHRB commissioners and staff acknowledged that the regulations still need some refinement, the Board unanimously adopted the proposed changes following the hearing. At this writing, the amendments await review and approval by the Office of Administrative Law (OAL).

Track Safety Standards. SB 944 (Maddy) (Chapter 424, Statutes of 1991) requires CHRB to establish standards—by January 1, 1993—governing "the uniformity and content of the track base and racing surface, inner and outer rails, gates and gaps, turf, access and egress to the track, lighting for night racing, equipment for horse and rider, drainage, communication, veterinary, medical and ambulance service, and other track facilities in order to improve the safety of horses, riders, and workers in the racing inclosure." *[11:4 CRLR 199]* On December 11, CHRB published notice of its intent to adopt new sections 1471, 1472, 1473, and 1474, Title 4 of the CCR, which would implement SB 944 by establishing the Board's track safety standards.

Proposed section 1471 would provide rail construction and track specifications. Among other things, the section would provide that all rail posts must be set in concrete at least six inches below the racetrack surface and shall be at least 24 inches deep; no rail or post shall be used which will not withstand the impact of a horse and/or rider or driver; no post or rail shall be constructed of a material such as fiberglass, polyvinyl chloride, wood, or hedges, since these materials will break away upon contact with the horse; rail height shall be from 38–42 inches from the top of the racetrack surface to the top of the rail; all racing surfaces, including turf courses, shall have inner and outer rails; and all racetrack lighting systems shall have an emergency back-up system.

Proposed section 1472 would provide that all licensed racing facilities which stable 1,100 or fewer horses shall provide at least one morning break for racetrack surface renovation. Racing facilities which stable more than 1,100 horses shall provide at least two morning breaks to renovate the racetrack surface. Renovation includes watering and harrowing the entire width and length of the racetrack as determined by the track maintenance supervisor.

Proposed section 1473 would require all licensed racing facilities, while conducting live racing and/or training, to maintain a regular and continuous maintenance program to ensure surface consistency and safety. Racetrack superintendents shall be responsible for the proper maintenance of equipment, grade, and renovation of the racetrack. Each racing association is responsible for the arrangement and payment of all costs of an annual survey of its racetrack. The purpose of the annual survey is to determine the percentage of grade in the straightaways and turns, and whether the track surface is level. The survey shall be taken ten feet off the inside rail every sixteenth of a mile. The racetrack surface shall have a 2% grade in the straightaways, and a minimum of 4% grade in the turns.

Proposed section 1474 would prohibit licensed racing facilities from permitting golfing in the infield of the racetrack during the hours of training or racing. Racing facilities which contain golf courses shall ensure, prior to live racing and/or training, that the track is free from golf balls and shall ensure that golf balls are not a hazard to the safety of horses or other racing or training participants.

At this writing, CHRB is scheduled to conduct a public hearing on these proposed sections on January 29 in Monrovia.

Application For License to Conduct a Horse Racing Meeting. Also to implement SB 944 (*see supra*), CHRB published notice on December 11 of its intent to amend section 1433, Title 4 of the CCR, which describes the information which

must be submitted with an application to hold a live horse racing meeting. The amendments would require applicants to submit information regarding the track's compliance with track safety standards. Among other things, the amendments would require an applicant to submit a written certification, verified by the steward responsible for track safety, that the track has been surveyed in accordance with section 1473 (*see supra*); a written analysis of the composition of the racetrack soil sampled every twenty feet from the inside rail to the outside rail, and at every sixteenth of a mile; a written certification that a golf course will not be used during racing or training hours; the name and telephone number of the person(s) responsible for ensuring compliance with the Board's track safety standards; a written statement regarding the association's plans to simulcast other breed(s) of racing, including a list of those races in the proposed simulcast program; and a written maintenance plan for racetrack safety, including a track surface maintenance schedule and a description of the association's personnel and equipment that will be used to renovate the racetrack surface to ensure surface consistency and safety. The amendments would also require the Board to review and approve an applicant's written maintenance plan for racetrack safety prior to licensing.

At this writing, the Board is scheduled to conduct a public hearing on these proposed amendments on January 29 in Monrovia.

Required Equipment in Thoroughbred Racing. On December 11, CHRB published notice of its intent to amend section 1685, Title 4 of the CCR, to set standards for equipment a jockey may use in thoroughbred horse racing. Specifically, the amended section would provide that no bridle shall weigh more than two pounds, nor shall any whip weigh more than one pound; no whip shall be used unless it has affixed to the end thereof a looped leather "popper" not less than one and one-quarter inches in width, and not over three inches in length, and be "feathered" above the "popper" with not less than three rows of leather "feathers," each feather not less than one inch in length; no whip shall exceed 31 inches in length; and all whips are subject to inspection and approval by the stewards. At this writing, the Board is scheduled to conduct a public hearing on these amendments on January 29 in Monrovia.

Use of Whips in Thoroughbred Racing. On December 11, CHRB published notice of its intent to amend section 1688, Title 4 of the CCR, regarding the acceptable use of the whip in thoroughbred horse racing. As amended, section 1688 would provide that in all races where a jockey will not ride with a whip, an announcement shall be made over the public address system of that fact. Although the use of a whip is not required, any jockey who uses a whip during a race shall do so only in a manner consistent with using his/her best efforts to win; however, this does not mean that a jockey may use the whip indiscriminately. Section 1688 would also provide that jockeys are prohibited from whipping a horse on the head, flanks, or on any part of its body other than the shoulders or hindquarters; during the post parade except when necessary to control the horse; excessively or brutally causing welts or breaks in the skin; when the horse is clearly out of the race or has obtained its maximum placing; or persistently even though the horse is showing no response under the whip. Finally, section 1688 would provide that correct uses of the whip include showing horses the whip before hitting them; using the whip in rhythm with the horse's stride; and using the whip as an aid to maintain a horse running straight.

At this writing, the Board is scheduled to conduct a public hearing on these proposed changes on January 29 in Monrovia.

Harness Racing Whips. Existing section 1733, Title 4 of the CCR, provides that whips used in harness racing shall not exceed four feet, eight inches plus a snapper not longer than eight inches. On September 25, CHRB published notice of its intent to amend section 1733 to provide that whips used in harness racing shall not exceed three feet, nine inches plus a snapper not longer than six inches. According to the Board, the shorter whip will restrict how hard and how far the driver can whip the horse, and will reduce the visible injuries on a horse such as welts and cuts. CHRB conducted a public hearing on the proposed amendment on November 20; following the public hearing, CHRB unanimously adopted the proposed amendment, which awaits review and approval by OAL.

Harness Racing Whipping. Existing section 1734, Title 4 of the CCR, provides that no driver shall use unreasonable or unnecessary force in the whipping of a horse, whip any horse about the head, nor whip any horse after the finish line has been crossed except when necessary to control the horse. On September 25, CHRB published notice of its intent to amend section 1734 to additionally provide that no driver shall whip any horse causing visible injury. According to the Board, the proposed amendment is in response to public and industry concern for the protection of the horse from excessive or indiscriminate whipping by the driver; the new language is expected to provide a better guideline for both the drivers and the judges who enforce the rule. CHRB conducted a public hearing on the proposed amendment on November 20; following the public hearing, CHRB unanimously adopted the proposed amendment, which awaits review and approval by OAL.

Veterinary Practices and Treatments Regulation. Existing section 1840, Title 4 of the CCR, prohibits any person other than a veterinarian from administering veterinary treatment, medicine, or medication to a horse in the racing inclosure. However, the section contains an exception allowing the veterinarian to direct or prescribe persons to administer veterinary treatment. According to the Board, the rule does not define the term "persons" as it is used and therefore has been interpreted to mean that veterinarians may direct animal health technicians (AHT), assistants, grooms, or other persons to administer medication. On September 25, CHRB published notice of its intent to amend section 1840 to clarify that only an AHT who holds a valid unexpired AHT certification issued by the Board of Examiners of Veterinary Medicine (BEVM) may, under the direct supervision of a California-licensed veterinarian who has obtained a license from BEVM, administer veterinary treatment or medication to any horse within the inclosure. The amendments would also provide that the term "direct supervision" means that the licensed veterinarian is within the restricted area of the inclosure and in the same general area as the AHT and is quickly and easily available, and that the licensed veterinarian is responsible for the actions of his/her AHT as they relate to veterinary practice under CHRB's regulations. *[12:4 CRLR 221]*

CHRB conducted a public hearing on the proposed amendments on November 20. At that time, however, Chair Ralph Scurfield removed the item from the agenda, explaining that staff should take a closer look at some concerns expressed regarding the amendments; the proposal was referred back to the Medication Committee.

Designated Races in Which Suspended Jockeys or Drivers May Participate. On September 25, CHRB published notice of intent to adopt section 1766, Title 4 of the CCR, to codify the Board's designated races program for suspended jockeys and drivers. The proposed section

would provide that the Board of Stewards appointed for a race meeting shall, immediately prior to the commencement of that meeting, designate the stakes, futurities or futurity trials, or other races in which a jockey or driver who is under suspension for ten days or less for a riding or driving infraction will be permitted to compete, notwithstanding the fact that the jockey or driver is technically under suspension at the time the designated race is to be run; official rulings for riding or driving infractions of ten days or less shall state that the term of the suspension shall not prohibit participation in designated races in California; the Board of Stewards may prohibit a jockey or driver from participating in designated races if such jockey or driver has previously been suspended at least twice during the race meeting; prior to the commencement of a meeting, a listing of the designated races shall be submitted in writing to the Board, and shall be posted in the jockeys' or drivers' room, and any other such place deemed appropriate by the stewards; a suspended jockey or driver must be named at the time of entry to participate in any designated race; a day in which a suspended jockey or driver participates in one designated race in California shall count as a suspension day; a day in which a suspended jockey or driver participates in more than one designated race in California shall not count as a suspension day; and a day in which a jockey or driver participates in one or more designated races in another jurisdiction while under suspension in California shall not count as a suspension day.

CHRB conducted a public hearing on this proposed section on November 20; following the public hearing, CHRB unanimously adopted the new section, which awaits review and approval by OAL.

Conduct Detrimental to Horse Racing. Existing section 1902, Title 4 of the CCR, provides that no licensee shall engage in any conduct which by its nature is detrimental to the best interests of horse racing, including but not limited to knowing association with any known bookmaker, known tout, or known felon; indictment or arrest for a crime involving moral turpitude or which is punishable by imprisonment in the state prison, when such indictment or arrest is the subject of notorious or widespread publicity in the news media, and when there is probable cause to believe the licensee committed the offense charged; or solicitation of or aiding and abetting any other person to participate in any act or conduct prohibited by Division 4, Title 4 of the CCR.

On September 25, CHRB published notice of its intent to amend section 1902 to provide that conduct considered detrimental to horse racing also includes indictment or arrest for a crime which is punishable by imprisonment in a federal prison, if it is the subject to widespread publicity and if there is probable cause to believe the licensee committed the offense charged. CHRB conducted a public hearing on the proposed amendment on November 20; following the public hearing, CHRB unanimously adopted the proposed amendment, which awaits review and approval by OAL.

Parimutuel Tickets. Existing section 1951, Title 4 of the CCR, provides—among other things—that a racing association shall cash all valid, unmutilated, winning parimutuel tickets when such tickets are presented for payment during the course of the meeting where sold, and for a period of 60 days after the last day of the meeting. However, SB 2010 (Maddy) (Chapter 138, Statutes of 1988) amended Business and Professions Code section 19598 to provide that the public may cash parimutuel tickets within 120 days from the last date of the racing meeting. *[8:3 CRLR 123]* On September 25, CHRB published notice of its intent to amend section 1951 to conform the regulation to the statutory language by changing the 60-day period to 120 days. CHRB conducted a public hearing on the proposed amendment on November 20; following the public hearing, CHRB unanimously adopted the proposed amendment, which awaits review and approval by OAL.

Conflict of Interest Code. On September 25, CHRB published notice of its intent to amend section 2000, Title 4 of the CCR, which sets forth the Board's conflict of interest code; the proposed amendments would update the code with title changes for certain designated positions, add new designated positions, and remove racing officials who are not required by the Fair Political Practices Commission to complete economic interest statements. CHRB conducted a public hearing on the proposed amendment on November 20; following the public hearing, CHRB unanimously adopted the proposed amendment, which awaits review and approval by OAL.

Farrier Qualifications. On September 25, CHRB published notice of its intent to adopt new section 1500.7, Title 4 of the CCR, which would set forth the conditions under which an applicant may be considered qualified to be licensed as a farrier by the Board. The section would provide that an applicant for license as a farrier shall satisfactorily complete a written examination and a practical examination prescribed by the Board and administered by its agents; a score of 70 on a scale of 100 would constitute a passing grade for the examinations. Section 1500.7 would also provide that a current Journeyman Certification issued by the Southern California Race Track Shoer's Guild or the International Union of Journeymen Horseshoers shall be accepted for licensing purposes in lieu of a Board-administered test.

Although the Board was scheduled to conduct a public hearing on proposed section 1500.7 on November 20, the item was pulled from the agenda; at this writing, the hearing has not yet been rescheduled.

Rulemaking Update. The following is a status update on CHRB rulemaking proceedings described in detail in recent issues of the *Reporter*:

• ***Postmortem Policies.*** On November 10, OAL approved CHRB's amendments to section 1846.5, Title 4 of the CCR, regarding its postmortem program. *[12:4 CRLR 220]*

• ***Occupational Licensure Requirements.*** On October 22, CHRB adopted proposed amendments to section 1489, Title 4 of the CCR, which would enable the Board to deny a license application if the applicant has been convicted in another jurisdiction of an offense which, if committed in California, would be punishable as a felony; at this writing, the amendments are being reviewed by OAL. *[12:4 CRLR 220]*

• ***Qualification Requirements for Trainer and Assistant Trainer Licenses.*** CHRB's proposed adoption of section 1500.5, Title 4 of the CCR, which would set forth the conditions and qualifications necessary for an applicant to obtain a license as a trainer or assistant trainer, was not heard on October 22 as previously scheduled. *[12:4 CRLR 220]* Due to opposition to the proposed language, the Board has temporarily shelved this proposal, and anticipates publishing new language during late summer or early fall.

• ***Fingerprint Requirements.*** On October 22, CHRB adopted proposed amendments to section 1483, Title 4 of the CCR, which would increase the minimum number of sets of fingerprints an applicant for an original license must submit to CHRB from one to two; at this writing, the amendments are being reviewed by OAL. *[12:4 CRLR 221]*

• ***Occupational License Classifications.*** On October 22, the Board adopted proposed amendments to section 1481, Title 4 of the CCR, regarding occupational licenses and fees; the changes await review and approval by OAL. *[12:4 CRLR 221]*

• ***Temporary License Regulation.*** On October 22, CHRB adopted proposed amendments to section 1488, Title 4 of the

CCR, which provides for the issuance of temporary occupational licenses by CHRB and sets forth the conditions under which such licenses may become permanent; at this writing, the amendments are being reviewed by OAL. *[12:4 CRLR 221]*

LEGISLATION

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 introduced December 7, this bill would require that an amount equal to not less than 15% of the total purses paid be dedicated and set aside as purses for California-bred races, as described. *[S. GO]*

LITIGATION

In ***Cabazon Band of Mission Indians v. State of California***, No. CIV-S-90-1118-DFL, the Cabazon and Sycuan Bands of Mission Indians sought a determination from the U.S. District Court for the Eastern District of California that the state of California may not impose license fees on its on-reservation betting facilities for simulcast horse racing. The plaintiffs—collectively called "the Tribes" by the court—argued that the license fees are a direct tax on them that is barred by the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. section 2701 *et seq.*, and the doctrine of tribal sovereign immunity. Specifically, one provision of the IGRA provides that "[e]xcept for any assessments that may be agreed to [to permit the state to recover its costs of regulation], nothing in this section shall be interpreted as conferring upon a State...authority to impose any tax, fee, charge, or other assessment upon an Indian tribe...engag[ing] in a class III activity." Although the parties disagreed about whether California has jurisdiction to collect its license fee based on revenues generated at the Tribes' simulcast operations, the parties agreed that the fees are taxes, even though they are called license fees.

The court acknowledged that relevant portions of the IGRA "constitute a prohibition on direct taxation of revenues generated by tribes, other than that necessary to reimburse the state for the cost of its regulatory activities." However, the court noted that the IGRA "consistently speaks only to direct taxation," and that the issue presented is whether the license fees, which are levied on the racing associations and which affect the Tribes only indirectly, are an impermissible burden on the Tribes. The court found that a "primary purpose of IGRA was to create an arena in which Indian tribes could compete on an equal footing with non-Indian entities, 'to achieve a fair balancing of competitive economic interests.'" According to the court, California seeks to treat revenue generated by racing associations on Indian lands in precisely the same fashion as it treats revenue generated on non-Indian lands; the court held that such a tax furthers the twin goals of equality and uniformity in regulation. Based on IGRA's silence as to indirect taxation, and Congress' intent that Class III tribal gaming be treated equally to non-Indian gaming, the court concluded that IGRA does not preempt the tax at issue here.

In response to the Tribes' contention that the tax is invalid as an impermissible intrusion on the Tribes' sovereignty, the court considered—among other things—the economic and administrative burden on the tribe and the extent and cost of state regulation and state services provided. The court noted that if California cannot tax the revenues derived from betting at simulcast facilities located on the Tribes' lands, those revenues would be distributed 50% to the racing associations and 50% as purses to horsemen who participate in the races; because the Tribes do not have the responsibility of paying the taxes, and have no right to the revenues if the taxes were to go unpaid, the court found that the license fees do not impose an economic burden on the Tribes. Also, the court found that no additional administrative burden is placed on the Tribes by collection of the monies ultimately used by the racing associations to pay the license fees; under state law, the Tribes must turn over to the racing associations all monies received from wagering except for the percentage to which they are entitled as simulcast facility operators. The court also found that the presence of horse racing in California requires the state to support additional law enforcement and tax collection bureaucracies, as well as establish and operate the extensive administration that oversees the horse racing industry, and concluded that "[e]ven if the state revenues were disproportionately larger than state expenses, the lack of proportionality does not make the tax an impermissible burden on the tribes." Finally, the court noted that when the nature of an activity that a state seeks to tax is unrelated to traditional Indian activity and consists of taking advantage of an exemption not available to non-Indians, an indirect tax will be upheld, and acknowledged that "[g]aming is a major source of employment on Indian reservations," with tribes making large investments in building and maintaining gaming facilities. Accordingly, the court concluded that the license fees California collects from the horse racing associations which broadcast their races to on-reservation betting operations are neither preempted by IGRA nor a violation of the Tribes' sovereign immunity.

FUTURE MEETINGS

June 25 in Sacramento.
July 29 in Del Mar.
August 27 in Del Mar.
September 24 in San Mateo.

NEW MOTOR VEHICLE BOARD

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

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

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

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

MAJOR PROJECTS

Board Considers Protest Regarding Franchise Termination. On November 5, NMVB and an administrative law judge (ALJ) heard a protest filed by Toyota of Visalia (TOV) against Toyota Motor Distributors, Inc. (Toyota) concerning Toyota's proposed termination of TOV's franchise. Toyota's request for termination of the franchise was based on its belief that TOV had deceived clients and Toyota, breached Toyota's dealer agreement, mistreated and abused employees, and committed over 150 counts of consumer fraud. Additionally, Toyota contended that its dealership