Under California caselaw, whether the exhaustion doctrine is to be applied in a particular instance has been determined by a qualitative analysis on a case-by-case basis, with concentration on whether a paramount need for agency expertise outweighs other factors. The First District noted that, in the instant action, "the genesis of the dispute between the parties concerns warranty service charges," and Vehicle Code section 3050(c) grants the Board authority to consider any matter concerning the activities or practices of persons holding licenses as a new motor vehicle dealer and/or manufacturer; further, section 3065 specifically governs warranty reimbursement practices. Thus, the court concluded that an administrative hearing by NMVB would facilitate a complete record, include the Board's expertise, and promote judicial efficiency. The court added that "[i]f the Board resolves those factual prerequisites within its area of expertise in plaintiffs' favor, but is unable to afford full common law relief, plaintiffs have exhausted their administrative remedy and may proceed to file a tort claim in court. If, on the other hand, the Board finds against plaintiffs, the Board's decision must be overturned by a grant of a writ of mandate prior to plaintiffs filing a tort action." Accordingly, the First District affirmed the trial court's holding.

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.

MAJOR PROJECTS

Rulemaking Update. On May 8, OMBC adopted proposed amendments to sections 1600, 1602, 1668, 1620, 1621, 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;

–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.

At this writing, the rulemaking file on this regulatory action is pending review at the Office of Administrative Law.

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 deletes the December 31, 1993 limitation. This bill also prohibits individuals who possess DO 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 revises certain terminology relating to osteopathic medicine. This bill was signed by the Governor on July 26 (Chapter 226, Statutes of 1993).

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 August 26, this bill requires, commencing July 1, 1994, a clinical laboratory to provide, upon request, to each of its referring providers, as defined, a schedule of fees for prescribed services. The bill also requires, commencing July 1, 1994, a clinical laboratory that provides a list of laboratory services to a referring provider or to a potential referring provider to include a schedule of fees for the laboratory services listed. This bill was signed by the Governor on September 28 (Chapter 593, Statutes of 1993).

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 June 18, this bill deletes the requirement that the patient, client, or customer be apprised for any subsequent solicitation for payment of the name, address, and charges. The bill prohibit this provision from applying to a clinical laboratory of a health facility, as defined, or a health facility when billing for a clinical laboratory of the facility, or to any person licensed for one of those practices, if the standardized billing form used by the facility or person requires a summary entry for all 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 also provides 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 health facility, or by a person licensed for one of those practices if the standardized billing form used by the facility or person requires a summary entry for all clinical laboratory charges. This bill was signed by the Governor on August 25 (Chapter 304, Statutes of 1993).

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, as specified, and authorizes disclosure of medical information for purposes of diagnosis or treatment, when authorized by law, and in other circumstances, as specified. Existing law exempts from these provisions the disclosure of medical information and records to, and their use by, the Insurance Commissioner, the Division of Industrial Accidents, the Workers' Compensation Appeals Board, and the Department of Insurance. As amended September 2, this bill provides 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. The bill requires such a corporation to maintain the same standards of confidentiality required of providers of health care with respect to medical information disclosed to the corporation. The bill also specifies that the corporation shall be subject to the penalties for improper use and disclosure of medical information prescribed by existing law. The bill additionally exempts from these provisions the disclosure of medical information and records to, and their use by, the Commissioner of Corporations and the Department of Corporations. This bill was signed by the Governor on October 9 (Chapter 1004, Statutes of 1993).

AB 2156 (Polanco). 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 amended May 25, 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. *[S. Inactive File]*

RECENT MEETINGS

OMBC's August 21 meeting in Costa Mesa was cancelled; the Board has not held a meeting since May.

FUTURE MEETINGS

To be announced.

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 August 24, Governor Wilson named Jessie J. Knight Jr. to a six-year term with the Commission. The 42-year-old Knight has been executive vice-president of the San Francisco Chamber of Commerce since May 1992. Prior to his job with the Chamber, Knight worked for seven years as marketing vice-president for the San Francisco Newspaper Agency. He also has worked for Castle and Cooke Foods in its Dole Pineapple division.

Knight's appointment puts the Commission at its full strength of five members for the first time since October 1991. While still subject to confirmation by the Senate, Knight will fill the seat left empty when John Ohanian's term expired on December 31, 1992.

MAJOR PROJECTS

PUC Toll Call Competition Decision Marred by Allegations of Improper Industry Contacts. On September 17, the PUC announced its long-awaited decision allowing long distance telephone service providers to compete with local phone companies such as Pacific Bell and GTE for "intraLATA" toll service. However, just eleven days later, the PUC announced that it would conduct an internal investigation and might even stay the decision in light of allegations that the chief witness for PacBell during the PUC's evidentiary hearings on the proposal held improper meetings with PUC staff, and that PacBell employees drafted portions of the decision the evening before it was announced. The allegations, which have come from PUC staff members, consumer organizations such as Toward Utility Rate Normalization (TURN), and members of the Senate Energy and Public Utilities Committee, prompted Committee Chair Senator Herschel Rosenthal to issue a letter to the PUC demanding an investigation of the matter. At this writing, the decision is to go into effect on January 1, unless it is postponed by the PUC.

According to Rosenthal aide David Gamson, the Energy and Public Utilities Committee is also considering holding independent hearings on the PUC's decisionmaking process, including its policy concerning ex parte contacts. This policy allows a party to a PUC evidentiary proceeding to lobby PUC decisionmakers outside the public record, so long as the communication is later reported in a filed "Notice of Ex Parte Communication." *[12:1 CRLR 187]* However, contacts with lower-level PUC staff members are excluded from the notice requirement. The PUC often requests informal assistance from industry personnel regarding technical information when writing decisions. In the present case, according to TURN's Program Manager Regina Costa, PacBell employees, including lead expert witness Jerry Oliver, either lobbied PUC staff or actually helped draft parts of the decision the evening before it was announced. Costa stated, "We know the decision was