necessary. *[S. GO]*

SB 204 (Maddy), as amended January 27, would delete an existing provision which states that no California State Lottery game may include a horse racing theme. *[A. GO]*

AB 159 (Floyd) would require CHRB to adopt regulations to eliminate the drugging of horses entered in horse races, and to adopt regulations on the medication of racehorses sold at horse sales or horse auction sales sufficient to protect the horses, owners, and the general public. *[S. GO]*

The following bills died in committee: ***AB 1219 (Costa)***, which would have permitted CHRB, until January 1, 1994, with the approval of the Department of Food and Agriculture, to authorize satellite wagering located at prescribed fairgrounds to receive the audiovisual signal from the northern, southern, or central zone, or from more than one of these zones at the same time; ***AB 520 (Floyd)***, which would have required the Board to include licensees' telephone numbers in its current listing of temporary and permanent licensees; ***AB 1441 (Cortese), AB 1623 (Kelley)***, and ***AB 1887 (Harvey)***, which would have re-enacted a repealed provision of law which distributed the funds deducted from wagers at satellite wagering facilities in the northern zone in a different manner than in the central and southern zones; and ***SB 168 (Hill)***, which would have made it unlawful for any person to sell or offer for sale any horse or foal bred for horse racing if the person knows or has reason to know that steroids have been administered to the horse or foal, and that the horse or foal is or will be entered in a horse race.

RECENT MEETINGS:

At its March 27 meeting, CHRB discussed the possibility of renewing its contract with Truesdail Laboratories for one year; although the Board entered into a two-year contract with Truesdail last May, the second year is contingent upon satisfactory performance. *[12:1 CRLR 188]* CHRB Commissioner Ralph Scurfield noted that the Medication Committee recommended that the Board renew the contract, provided that Truesdail agree to meet specified time constraints. Following discussion, CHRB unanimously agreed to renew its contract with Truesdail.

FUTURE MEETINGS:

August 28 in Del Mar.
September 25 in Foster City.
October 30 in Monrovia.
November 30 in Los Angeles.

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.

LEGISLATION:

The following is a status update on bills reported in detail in CRLR Vol. 12, No. 1 (Winter 1992) at page 184:

AB 126 (Moore) would enact the "One-Day Cancellation Law" which would provide that, in addition to any other right to revoke an offer or rescind a contract, the buyer of a motor vehicle has the right to cancel a motor vehicle contract or offer which complies with specified requirements until the close of business of the first business day after the day on which the buyer signed the contract or offer. *[S. Jud]*

The following bills died in committee: ***SB 1113 (Leonard)***, which would have imposed a $25 fee on the purchase of new automobiles and new light-duty trucks that do not meet, and provide specified rebates to the purchasers of those vehicles that do meet, prescribed standards relative to low-emission vehicles and safety; ***SB 760 (Johnston)***, which would have—among other things—required every applicant for a vehicle dealer's license and every managerial employee, commencing July 1, 1992, to take and complete a written examination prepared by DMV concerning specified matters; and ***SB 1164 (Bergeson)***, which would have provided that, for purposes of vehicle license fees, the market value of a vehicle shall be determined upon the first sale of a new vehicle to a consumer and upon each sale of a used vehicle to a consumer, but the market value shall not be redetermined upon the sale of a vehicle to specified family members.

LITIGATION:

In ***Ri-Joyce, Inc. v. New Motor Vehicle Board***, No. C008797 (Jan. 7, 1992), the Third District Court of Appeal affirmed a trial court judgment directing NMVB to set aside its dismissal of a protest submitted by Ri-Joyce, Inc., a Mazda dealer in Santa Rosa, regarding the establishment by Mazda Motors of America, Inc., of a new Mazda dealership in Petaluma, more than ten miles from Ri-Joyce's dealership. Ri-Joyce protested the action to NMVB, claiming that in its franchise agreement, Mazda reserved for itself only a qualified right to appoint new dealers within Ri-Joyce's specific area of primary responsibility. Specifically, the agreement provided that if Mazda determined it to be in the best interest of customers or Mazda to do so, Mazda may elect to appoint another dealer to promote, sell, and service Mazda products near Ri-Joyce's approved location; prior to doing so, however, Mazda would have to give Ri-Joyce sixty days' written notice for the purpose of enabling the parties to discuss whether there exist any mutually agreeable alternatives to the proposed action.

In dismissing the Ri-Joyce's protest, NMVB concluded that the Third District's decision in *BMW of North America, Inc., v. New Motor Vehicle Board*, 162 Cal. App. 3d 980 (1984), was controlling and mandated the dismissal of the protest. *BMW* concerned—among other things—an interpretation of Business and Professions Code section 3062, which provides that an existing dealer may file a protest of the franchisor's decision to establish or relocate another dealership within the same relevant market area; the term "relevant market area" is defined as any area within a radius of ten miles from the site of a potential new dealership. Upon a protest, NMVB may preclude the franchisor from establishing or relocating the proposed new dealership if the existing dealer can establish good cause for not permitting the dealership within its relevant market area. In *BMW*, the Third District stated that section 3062 not only restricts the right of a franchisee to object to the appointment of a new dealer to the ten-mile radius, but it also implicitly recognizes the right of a franchisor to appoint new dealers, subject to the right of

an existing dealer to show good cause for precluding such appointment if it is to be within ten miles of the existing dealer.

In rejecting NMVB's decision, the Third District held that *BMW* is not controlling, since in *BMW*, the franchisor had reserved the unqualified power to appoint new dealers, whether in the dealer's geographical area or elsewhere; in contrast, Mazda reserved only a qualified right to establish a new dealership "near" Ri-Joyce's approved location. Although the agreement does not define the term "near," the Third District noted that the interpretation proposed by Mazda (that the term "near" should be construed consistent with section 3062 so that it corresponds with Ri-Joyce's relevant market area) and that proposed by Ri-Joyce (that the term "near" includes a neighboring community which has traditionally been served by Ri-Joyce and which produces a significant portion of its business) are both reasonable interpretations of the term as it is used in the franchise agreement. According to the court, "[t]he meaning and scope of Mazda's reservation of the power to appoint another dealer near Ri-Joyce's approved location is a matter which may be illuminated by extrinsic evidence and which Ri-Joyce must be accorded an opportunity to establish." The Third District concluded that "[w]here a franchise agreement is reasonably susceptible to the meaning urged by a franchisee, the Board must hear and consider such extrinsic evidence as the franchisee can produce in order to determine what rights were granted under the agreement....Only then can it be determined whether the franchisor's proposed action constitutes a modification of the franchise."

The court acknowledged that even if Ri-Joyce is correct in its claim that the proposed Petaluma dealership is "near" its approved location within the meaning of the contract, Mazda still cannot be precluded from establishing the Petaluma dealership. However, at a minimum, Mazda would be required to exercise good faith in deciding to do so, and could take such action only after conferring with Ri-Joyce as to any mutually agreeable alternatives.

RECENT MEETINGS:

At its April 8 meeting, NMVB elected Manning Post to serve as President of the Board, and Pete Johnston to serve as Vice-President; the terms are for a one-year period.

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:

OAL Rejects Medical Board Regulation as Discriminatory Toward DOs. For over two years, the Medical Board of California's Division of Licensing (DOL) has been engaged in an attempt to revise regulations which enable it to approve alternative training programs (commonly known as "section 1324 programs") for foreign medical graduates (FMG) who are seeking licensure but having difficulty securing an ACGME-approved postgraduate training program. In proposing to amend sections 1324 and 1325.5, Division 13, Title 16 of the CCR, DOL intended to improve the quality of these programs in order to respond to criticisms by the California Medical Association and all medical schools in California that section 1324 programs are inferior to those approved by the ACGME, exploitative in that the sponsoring training facility sometimes charges the FMG a significant amount of money (up to $35,000) for the privilege of receiving the training, and unnecessary in that there are sufficient ACGME-accredited residencies in California to accommodate FMGs. *[12:1 CRLR 71; 11:4 CRLR 86–87]*

After two rejections by the Office of Administrative Law (OAL), DOL's amendments to section 1324 were finally approved on May 7. However, OAL rejected for a third time DOL's proposed amendments to section 1325.5, which would have required that a medical director of a section 1324 program have an MD degree. DOL insisted upon this requirement over numerous objections that it violates Business and Professions Code section 2453, which prohibits discrimination between MDs and DOs on the basis of the degree. OAL rejected section 1325.5 and DOL's arguments that it does not discriminate against DOs: "As a state agency [subject to section 2453], the [Medical] Board is attempting to prohibit osteopathic physicians from being employed as a medical doctor. To imply that such employment is not part of the physician's professional service is misleading." DOL plans to appeal OAL's rejection to the Governor.

Continuing Medical Education. At its February 15 meeting, OMBC discussed concerns raised by osteopathic specialists regarding OMBC's continuing medical education (CME) requirement which must be satisfied to maintain DO certification. Pursuant to section 1635, Division 16, Title 16 of the CCR, OMBC currently requires 150 hours of CME during each three-year period, including a minimum of sixty hours of CME in Category 1-A as defined by the American Osteopathic Association (AOA). OMBC instead decided to pursue the adoption of AOA's standard, which requires a minimum of sixty hours of osteopathic CME in either Category 1-A or 1-B of AOA's CME program. Category 1-A consists of formal education programs sponsored by recognized osteopathic institutions which meet the definition of "osteopathic" CME; Category 1-B allows credit for alternative projects such as preparing scientific papers and publications, engaging in osteopathic medical teaching, and conducting osteopathic hospital inspections. OMBC is expected to initiate rulemaking and hold a public hearing on the proposal to modify its CME regulation in the near future.

DOs as Physician Assistant Supervisors. At its February 15 meeting, OMBC discussed the creation of a follow-up program to ensure that DOs who serve as physician assistant (PA) supervisors are complying with their submitted protocols regarding their PAs. Although PAs are licensed by the Physician Assistant Examining Committee of the Medical Board of California, they have limited authority and must work under the direction of a supervising physician. DOs who want a PA to work for them must first submit to OMBC for review and approval a protocol which describes the procedures that the PA will be required to perform. Currently, once OMBC approves a DO to supervise a PA, the Board does not follow up to