basis and include an updated list of the service's or bureau's available practitioners; and require that a copy of the referral service's or information bureau's fictitious name permit be submitted with the original application, and a new copy submitted any time there is a change in information as required in section 317.1.

BCE agreed to pursue this regulatory proposal; at this writing, however, no formal notice of proposed rulemaking has been published in the *California Regulatory Notice Register.*

LEGISLATION

AB 2638 (Boland). Business and Professions Code section 4227 prohibits a person from furnishing any dangerous drug or device, except upon the prescription of a physician, dentist, podiatrist, or veterinarian, except under specified conditions. Sponsored by the California Chiropractic Association and opposed by the California Medical Association, this bill would have clarified section 4227 by providing that the prohibition does not apply to the furnishing of any dangerous device upon the order of a chiropractor acting within the scope of his/her license. This bill also would have provided 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; and provided that a medical device retailer may dispense, furnish, transfer, or sell a dangerous device to a licensed chiropractor. Governor Wilson vetoed this bill on September 26, stating that he objects to the portion of the bill permitting chiropractors to prescribe dangerous devices to their patients.

AB 316 (Epple) provides that, notwithstanding Business and Professions Code section 650 or any other provision of law, it shall not be unlawful for a person licensed pursuant to the Chiropractic Act, or any other person, to participate in or operate a group advertising and referral service for chiropractors, under eight specified conditions. The bill authorizes BCE to adopt regulations necessary to enforce and administer this provision, and provides that it is a misdemeanor for a person to operate a group advertising and referral service for chiropractors without providing its name and address to BCE. This bill was signed by the Governor on September 22 (Chapter 856, Statutes of 1992).

SB 664 (Calderon). Existing law prohibits chiropractors, among others, from charging, billing, or otherwise soliciting payment from any patient, client, customer, or third-party payor 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 is apprised at the first solicitation for payment of the name, address, and charges of the clinical laboratory performing the service. This bill also makes this prohibition applicable to any subsequent charge, bill, or solicitation. This bill makes it unlawful for any chiropractor to assess additional charges for any clinical laboratory service that is not actually rendered by the chiropractor to the patient and itemized in the charge, bill, or other solicitation of payment. This bill was signed by the Governor on June 4 (Chapter 85, Statutes of 1992).

AB 856 (Hunter) would have provided that the offering or performance of colonic irrigations, as defined, is unlawful and prohibited, and that the offering or performance of enemas, as defined, is unlawful and prohibited unless offered or performed, or ordered to be offered or performed, by a physician under prescribed circumstances. AB 856 would have fulfilled a court order in a 1985 lawsuit in which CMA sought to prevent chiropractors from offering colonics. The San Diego County Superior Court ruled that colonic irrigations are invasive procedures and, as such, may not be performed by chiropractors. A term of the decision required BCE to support limitations on colonics; BCE co-sponsored this bill along with CMA. AB 856 died in committee.

RECENT MEETINGS

At BCE's June 18 meeting in Palm Springs, Board member John Emerzian, DC, reported that the Continuing Education Committee is aware of problems arising with the submission of CE programs that are co-sponsored by a Board-approved sponsor. Often, advertisements promoting the seminars make no mention of the sponsor's name, and offer course outlines which focus more on marketing than chiropractic CE. BCE agreed to review all proposed seminars with the exception of the National College of Chiropractic's seminars on HMOs.

At its July 23 meeting, the Board held an informational hearing regarding manipulation under anesthesia (MUA), in which chiropractors perform manipulations and adjustments while patients are under varying degrees of anesthesia. *[12:2&3 CRLR 251]* BCE, as well as the majority of those in attendance at the hearing, expressed general support for the practice of this relatively new technique. Most witnesses stressed the fact that the chiropractor simply performs the adjustment and does not administer the anesthesia; anesthesia may be administered only by a person licensed to deliver such agents. In this vein, various hearing participants expressed concern about the practice of MUA at outpatient centers, which may not have the same level of staff and equipment as hospitals. Thus, it was suggested that chiropractors at outpatient centers wishing to conduct MUA be required to have equipment similar to that found in hospital operating rooms, particularly anesthesia monitoring equipment. It was also suggested that chiropractors who wish to conduct MUA at an outpatient center have privileges at a nearby hospital and that ambulances be available in case of complications or an emergency. Despite these concerns, the majority of the chiropractors at the meeting reported that they have not encountered any serious problems in performing MUA. BCE is expected to discuss this topic further at future Board meetings.

FUTURE MEETINGS

January 7 in San Diego.
February 18 in Sacramento.
April 8 in Los Angeles.
May 6 in Sacramento.

HORSE RACING BOARD

Executive Secretary:
Dennis Hutcheson
(916) 920-7178

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

positions, 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

CHRB's Handling of Positive Clenbuterol Cases to be Investigated. At its August 28 meeting, CHRB decided to request a special investigation of its recent handling of several cases in which racehorses' urine samples tested positive for the illegal drug clenbuterol. The drug, a bronchodilator that is not approved by the Food and Drug Administration for use in the United States, helps control internal bleeding by enlarging the airways and reducing blood pressure; by increasing the air flow and the level of fatigue-fighting oxygen, it is also believed to enhance performance in racehorses.

At this writing, the urine samples of five racehorses have tested positive for clenbuterol during 1992. The first occurred in January, when Pennsylvania Equine Toxicology and Research Laboratory, CHRB's official testing laboratory at the time (*see infra* RECENT MEETINGS), reported the presence of clenbuterol in the sample of a horse that had finished fourth in a race at Santa Anita. When the trainer of the horse had the split sample sent to Cornell University for a second testing, Cornell reported no detectable levels of the drug in that sample; in accordance with established policy, CHRB dismissed the case.

Approximately three months later, the Pennsylvania lab detected clenbuterol in three more samples from horses with different trainers; further, Truesdail Laboratories, located in California, reported a fourth positive clenbuterol finding. However, before the split samples could be sent to a second laboratory for confirmation, CHRB Executive Secretary Dennis Hutcheson dismissed three of the cases and CHRB itself dismissed the fourth, allegedly based in part on Hutcheson's lack of confidence in the Pennsylvania lab; all four of the split samples subsequently tested positive for clenbuterol. The trainers involved in those cases were notified, but not publicly identified.

In addition to his alleged doubts regarding the Pennsylvania lab's accuracy, Hutcheson contended that he wanted to avoid a recurrence of events similar to those in 1989–90, when CHRB found several cocaine positives in horses and publicly identified the trainers involved *[9:2 CRLR 114]*; however, those charges were eventually dismissed because of a lack of evidence.

In an attempt to determine whether Hutcheson acted improperly in dismissing the cases prior to testing the split samples, CHRB Commissioner Rosemary Ferraro asked the Board to include a discussion of his handling of the clenbuterol positive test results on its August 28 agenda. During that meeting, Ferraro contended that Hutcheson failed to follow clearly established rules and procedures, and opined that his actions represented a gross neglect of duties; Ferraro also stated that Hutcheson's actions are perceived by the public and industry as an attempt to cover up the truth regarding the positive results.

CHRB Equine Medical Director Dr. Dennis Meagher explained CHRB's current policy regarding the handling of positive samples; according to Meagher, data packets on positive test results are sent from the laboratory to the Equine Medical Director, who in turn has the packets evaluated by a qualified scientist. The owners and trainers are then notified and may request that the split sample be tested at an independent laboratory approved by CHRB. *[11:2 CRLR 168–69]* If the second test comes back positive, it is assumed that it is a positive case and is dealt with as such; if the test comes back negative, it is considered a negative case and is dismissed. Regarding the three positive cases identified by the Pennsylvania lab, Meagher stated that the data packets were reviewed by Dr. Frank Galey, who found nothing wrong with the scientific work conducted by the lab. Meagher was then notified that the three cases had been administratively dismissed by Hutcheson prior to the review of the split samples by independent laboratories. In the fourth case which was dismissed, Truesdail Laboratories identified a test as positive for clenbuterol; Meagher opined that the data packet in that case clearly demonstrated the presence of clenbuterol. Meagher reiterated that Board policy requires staff to contact and discuss such cases with the Equine Medical Director prior to dismissal; according to Meagher, Hutcheson did not contact him regarding any of these cases.

Following a lengthy discussion at its August 28 meeting, CHRB unanimously agreed to appoint a committee consisting of people not involved in the horse racing industry to conduct an independent investigation and evaluation of the process that resulted in the dismissal of the clenbuterol cases. That review is to include, but not be limited to, an examination of whether Executive Secretary Hutcheson followed established procedures and policies, whether any impropriety occurred in the dismissal of the cases, and whether drug cases are being handled consistently and properly investigated.

Accordingly, CHRB held a special meeting on September 15 in order to, among other things, discuss and approve the selection of that investigative body. At that meeting, the Board announced that the California Department of Justice (DOJ) would conduct the investigation, and that Whitt Murray, assistant to the chief of DOJ's Bureau of Investigation, would head the inquiry. Although she approved of the investigation, Commissioner Ferraro expressed concern that DOJ, whose deputy attorneys general act as CHRB's counsel, may be unable to conduct a thorough and objective analysis of these events, which technically involve DOJ's clients. Ferraro reiterated her concerns when CHRB announced that Ron Eicher would serve as one of the chief investigators in DOJ's review; Eicher worked as an investigator for CHRB about eight years ago, and at one point supervised the Board's investigators in the southern district. Murray contends that he selected Eicher because CHRB wants an expedited investigation, and Eicher has the experience and background that will enable DOJ to meet that demand. However, Michael Carney, an attorney who represents a trainer whose horse finished second to one of the horses that tested positive for clenbuterol, stated that "[t]he fact that a former racing board investigator is now investigating the Board casts a specter of sympathy over this investigation." DOJ's report was expected to be completed by December.

Before waiting for the results of the investigation, CHRB discussed at its September 23 meeting whether it should modify and supplement Board policies and procedures concerning test results identifying prohibited substances in racehorses. Specifically, the Board considered the adoption of CHRB Directive 11-92, which would supersede Directive 6-91, adopted by CHRB in November 1991. According to Hutcheson, the

amendments are necessary in order "to more fully enumerate and clarify the procedures which are to be followed upon the reporting of the presence of a prohibited drug substance" and "to further provide for a more efficient and effective system and to facilitate consistency on a statewide and breedwide basis." In addition to the language contained in Directive 6-91, Directive 11-92 specifically states that once a sample has tested positive for an illegal substance, "[n]o determination regarding mitigating factors shall be made *nor any other action taken*, until the horsemen's split sample has been tested pursuant to Board Rule 1859.25" (emphasis added); following discussion, CHRB adopted Directive 11-92.

CHRB Faces Budget Cuts. California's current budget crisis forced the legislature to eliminate many of the advisory boards in state government, while cutting the budgets of the agencies that remain. (*See supra* COMMENTARY.) CHRB's 1992–93 budget must be 16.5% less than its 1991–92 expenditures; the Board addressed the areas to be trimmed at its meetings on September 15 and 23.

Despite the most recent drug scandal that is currently the subject of an investigation by the Department of Justice (*see supra*), the deepest cuts are aimed at the Board's drug testing program. At its September 15 special meeting, the Board announced that the amount budgeted for testing by Truesdail Laboratories of Tustin will be cut by 33%, saving $344,000; the amount budgeted for testing by Iowa State University will be cut by 50%, saving $250,000.

Another target of the budget ax may be the position of Equine Medical Director. At CHRB's September 23 meeting, the commissioners discussed possible ways to reduce expenses without losing this position, which is central to the Board's enforcement of horse drugging regulations. One of the proposals was to contact UC Davis officials and inquire whether they would be willing to contribute funds in order to prevent the elimination of the Equine Medical Director position.

Board Discusses Alternative Gambling Proposal. At its July 30 meeting, the Board held an informational discussion regarding whether alternative forms of gambling should be permitted on the grounds of a racetrack. The discussion followed with a June announcement by Hollywood Park officials of their plans for a $100 million expansion of the park, including a 16,000–seat concert hall, a Hollywood Park Golf Academy recreation area, and a card club casino at trackside. Operation of the card club, which would be open around the clock seven days a week, would require voter approval in Inglewood, a city that has twice rejected gambling proposals.

At the meeting, Brian Sweeney of the California Horsemen's Benevolent and Protective Association (CHBPA) and Randy Funkhouser of the national Horsemen's Benevolent and Protective Association (HBPA) expressed concern that allowance of other forms of gambling at racetracks would have detrimental effects on the horse racing industry. Sweeney urged CHRB to schedule hearings to determine the impact of other forms of gambling on the industry, including any financial impact that it would have on those who have invested in the industry. Mike Triggs of Residents Against Gambling Expansion commented that many residents of Inglewood do not consider Hollywood Park's plans to be community improvement, as has been represented to the Board.

CHRB Proposes to Codify its Postmortem Policies. On July 10, CHRB published notice of its intent to amend section 1846.5, Title 4 of the CCR, regarding its postmortem program. According to the Board, the current version of section 1846.5 is inconsistent with the present postmortem program which has been conducted by CHRB since 1990, when the Board contracted with the California Veterinary Diagnostic Laboratory System (CVDLS) at UC Davis to perform complex necropsies on horses which expire or are euthanized within an area controlled by the Board. *[11:4 CRLR 198]* According to the Board, the postmortem program is the key ingredient in its efforts to establish the causes of equine athletic injuries and develop preventive measures.

Among other things, the proposed changes would provide that every horse which suffers a breakdown on the race track in training or in competition and is destroyed, and every other horse (with the exception of pony horses) which expires within an area controlled by CHRB, shall undergo a postmortem examination at a Board-designated diagnostic laboratory to determine the injury or sickness which resulted in euthanasia or natural death; the costs associated with the transportation to the designated laboratory of those horses shall be the responsibility of the racing association conducting the meeting where the death occurred or the training center or racetrack where death occurred when no meet is in progress; when submitting an equine carcass for examination, the practicing veterinarian shall file CHRB Form-72 (Necropsy Submission Form) with the official veterinarian of the track where the death occurred, immediately upon the death of the horse; and a written report of the postmortem examination conducted by the CHRB-designated diagnostic laboratory must be filed by the laboratory with the Board's Executive Secretary and Equine Medical Director.

CHRB conducted a public hearing on these proposed amendments on August 28; the Board received no written or oral comments regarding the proposal, and unanimously adopted the amendments. At this writing, the rulemaking file awaits review and approval by the Office of Administrative Law (OAL).

In a related matter, at its May 29 meeting the Board discussed an extension of its interagency agreement with CVDLS to administer its postmortem program during fiscal year 1992–93. Staff noted that the contract would be for $35,000, with the stipulation that tracks would continue to pay for the transportation of the dead equines to the laboratory. Following discussion, the Board agreed to extend its interagency agreement with CVDLS for the 1992–93 fiscal year.

CHRB Proposes to Clarify Occupational Licensure Requirements. On August 21, CHRB published notice of its intent to amend section 1489, Title 4 of the CCR, which enables CHRB to deny a license to anyone who has been convicted of a felony in this state. According to the Board, section 1489 does not recognize that a crime which is a felony in California may not be a felony in other jurisdictions. This omission creates a loophole, and applicants who would be denied a license by the Board had they committed an offense in California could receive a license only because they committed the offense in a jurisdiction which does not recognize that activity as a felony. The proposed amendment to section 1489 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. The Board also proposes to add acts committed in connection with a legalized gaming business which are fraudulent or in violation of a trust or duty to section 1489(g), to constitute grounds for denial or refusal of license. According to CHRB, these proposed amendments were developed in response to a rise in the number of licensure applicants whose backgrounds show evidence of such activities. The Board was scheduled to conduct a public hearing on the proposed amendments on October 30.

Qualification Requirements for Trainer and Assistant Trainer Licenses.

On August 21, CHRB published notice of its proposal to adopt 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. Under the proposal, a candidate would be required to pass a written examination and a practical examination prescribed by the Board and administered by its agents. An individual who holds a current trainer's license in one or more jurisdictions would be subject to the written test and may be subject to the practical test, depending on how long the individual has held his/her license. CHRB was scheduled to conduct a public hearing on the proposed adoption of section 1500.5 on October 30.

Fingerprint Requirements. On August 21, CHRB published notice of its intent to amend section 1483, Title 4 of the CCR, to increase the minimum number of sets of fingerprints an applicant for an original license must submit to CHRB from one to two. CHRB has proposed this change in order to bring the Board's fingerprinting procedures in line with current Board practice; CHRB licensing technicians routinely collect two sets of fingerprints from applicants for an occupational license, in case one of the sets is unacceptable to DOJ for background check purposes. In addition, a second set of fingerprints would enable Board investigators to make inquiries with the Federal Bureau of Investigations regarding license applicants when appropriate. CHRB was scheduled to conduct a public hearing on the proposed amendment on October 30.

Revisions to Occupational License Classifications. On August 21, CHRB published notice of its intent to amend section 1481, Title 4 of the CCR, regarding occupational licenses and fees. CHRB's proposed amendments would add the new occupational license classifications of associate steward, animal health technician, assistant to the practicing veterinarian, and assistant to the official veterinarian, and delete the classifications of satellite facility supervisor, assistant satellite facility supervisor, and assistant simulcast facility supervisor. CHRB was scheduled to conduct a public hearing on these proposed amendments on October 30.

CHRB Proposes Amendments to Temporary License Regulation. On August 21, CHRB published notice of its intent to amend 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. *[12:2&3 CRLR 252]* The proposed amendment would clarify the term "temporary license" and limit to one the number of temporary licenses an individual may receive. Under the proposed amendment, additional temporary licenses would not be issued until an applicant submits to the Board fingerprints and a completed application as required by the Board's regulations. CHRB was scheduled to conduct a public hearing on the proposed amendment on October 30.

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

• ***Trainer Responsibility Regulation.*** On May 29, CHRB held a public hearing on its proposed amendments to section 1887, Title 4 of the CCR, which provide that if a trainer is not notified by CHRB of a potential positive test within eighteen calendar days from the date the sample was taken, the trainer will not be deemed responsible unless CHRB demonstrates by the preponderance of the evidence that the trainer administered the drug or other prohibited substance, or caused or had knowledge of such administration. *[12:2&3 CRLR 252]* Following the May 29 public hearing, CHRB adopted the amendments, which were approved by OAL on July 9.

• ***Revisions to Medication Regulations.*** On May 29, CHRB held a public hearing on its proposal to amend section 1843 and adopt new section 1843.5, Title 4 of the CCR, regarding medication, drugs, and other substances. *[12:2&3 CRLR 252]* The proposal would identify those substances which may be administered to a horse after it has been entered to compete in a race, and would establish 48 hours as entry time for the purpose of the regulation. Section 1843.5 would state that any drug, medication, or other substance found in a sample which is not authorized pursuant to the section shall be deemed a prohibited drug.

At the May 29 hearing, Vice-Chair William Lansdale announced that staff had made minor modifications to the amendments to section 1843 and that the modified language would be released for an additional 15-day comment period; the hearing regarding the amendments to section 1843 was rescheduled for June 26. The Board adopted section 1843.5 on May 29. At the June 26 public hearing, staff reported that no public comment was offered regarding the modified amendments to section 1843; thus, CHRB adopted those changes. OAL approved the amendments to section 1843 on August 19, and approved new section 1843.5 on August 27.

• ***Revised Parentage Verification Regulation.*** On May 29, CHRB submitted to OAL its proposed amendments to section 1588, Title 4 of the CCR, which states the conditions under which a horse is ineligible to race in California. *[12:2&3 CRLR 253]* CHRB's original plan was to require owners of all horses foaled in the year 1992 and thereafter to provide certification of parentage verification to both sire and dam. Additionally, in response to complaints from a number of industry representatives, CHRB proposed to add section 1588(k), which would provide an exemption—until January 1, 1995—from parentage verification requirements for foreignbred standardbred horses.

On July 9, OAL disapproved CHRB's adoption of section 1588(k), finding a lack of necessity. According to OAL, evidence that the United States Trotting Association requires parentage verification of all horses to start in a race without any exceptions renders CHRB's section 1588(k) unnecessary; OAL also stated that CHRB itself admitted that the exemption is not necessary. As a result, OAL severed subsection (k) from the rulemaking proposal; the remainder of the proposed amendments to section 1588 were approved by OAL on July 9.

• ***Animal Health Technician Regulations.*** On May 29, CHRB was scheduled to hold a public hearing on its proposed adoption of new section 1840.8, Title 4 of the CCR, which would outline the duties of animal health technicians and unregistered animal health assistants. *[12:2&3 CRLR 252]* However, Vice-Chair William Lansdale announced that because the amendments to section 1840.8 were being revised, the item was taken off the agenda. A new public hearing date on the proposed regulation has not yet been scheduled.

• ***Unlimited Place Sweepstakes Wagering.*** On June 4, OAL approved CHRB's adoption of section 1976.8, Title 4 of the CCR, which establishes the provisions for unlimited place sweepstakes (place pick nine) wagering in California. *[12:2&3 CRLR 251]*

• ***Jockey/Driver Attire Regulations.*** On June 4, OAL approved CHRB's adoption of section 1691, Title 4 of the CCR, which prohibits any form of advertising—including logos, labels, or product endorsements—from appearing on a jockey's attire during the running of a race. On July 9, OAL approved the Board's adoption of section 1732, Title 4 of the CCR, which prohibits any form of advertising on harness drivers' racing attire. *[12:2&3 CRLR 252]*

• ***Trifecta Regulations.*** On June 9,

OAL approved CHRB's amendments to section 1979, Title 4 of the CCR, which allows racing associations to run more than one Trifecta wager per race program, and allows Trifecta wagers to be offered on races where there are eight or more official starters. *[12:2&3 CRLR 251]*

LEGISLATION

The following is a status update on bills reported in detail in CRLR Vol. 12, Nos. 2 & 3 (Spring/Summer 1992) at pages 254–55:

SB 1950 (Russell) provides that on wagers made in the counties of Orange and Los Angeles on thoroughbred races conducted in either of those counties, excluding the 50th District Agricultural Association, the amount deducted for promotion of the satellite wagering program at satellite wagering facilities shall be .5%. This bill was signed by the Governor on July 27 (Chapter 367, Statutes of 1992).

SB 1605 (Kopp) permits any county fair or district agricultural association in San Joaquin of Fresno County to operate one satellite wagering facility with the approval of the Department of Food and Agriculture and the authorization of CHRB on leased premises within the boundaries of that fair or district agricultural association. The bill permits a racing association or any existing satellite wagering facility in the northern zone to consent to the location of another satellite wagering facility within twenty miles of the facility or track. This bill was signed by the Governor on September 26 (Chapter 957, Statutes of 1992).

AB 2671 (Floyd) requires, with respect to harness meetings, all funds not distributed to horsemen as purses or as breeder awards within 180 days after the conclusion of a licensed harness race meet or a portion of a split harness meet to be deposited into the account for the California standardbred sires stakes program. This bill was signed by the Governor on September 17 (Chapter 748, Statutes of 1992).

AB 2716 (Floyd) would have required CHRB to hold not less than three of its monthly meetings each year in Sacramento. This bill was vetoed by the Governor on July 27.

SB 1433 (Maddy). Existing law requires any racing association, if it authorizes betting systems located outside of this state to accept wagers on a race, to pay a license fee to the state in a specified amount. This bill exempts from the license fee a thoroughbred association that hosts the series of races known as the "Breeder's Cup," and requires amounts received by the association from out-of-state betting systems to be distributed in a specified manner. This bill was signed by the Governor on September 21 (Chapter 806, Statutes of 1992).

AB 2551 (Mountjoy). Existing law requires an association accepting wagers on out-of-state feature races having a gross purse of at least $100,000 to deduct a percentage equal to the percentage deducted by the entity conducting the out-of-state racing, and to distribute the amount as specified. This bill permits a racing association to deduct that percentage amount with the permission of CHRB. Otherwise, the bill requires an association conducting wagering on out-of-state feature races to deduct a percentage equal to the percentage deducted from the amount handled by the association in its parimutuel pools at its racing meetings. This bill was signed by the Governor on September 12 (Chapter 644, Statutes of 1992).

AB 507 (Floyd) would have created the California Horseracing Industry Commission and prescribed its membership; the Commission would have been responsible for promoting the horse racing industry and for conducting market research related to horse racing. This bill was vetoed by the Governor on September 26.

The following bills died in committee: **AB 3480 (Costa)**, which—as to racing associations which authorize betting systems located outside California to accept wagers on a race—would have revised the formula for distributing specified amounts remaining after payment of the license fee; **AB 3720 (Eaves)**, which would have required the first $1.2 million of the total amount handled by satellite wagering facilities in the central and southern zones to be distributed pursuant to specified provisions annually to the Equine Research Laboratory, and any funds to be distributed in excess of that amount annually to be divided equally between the Equine Research Laboratory at UC Davis and the Equine Research Center at the California State Polytechnic University at Pomona; **AB 2864 (Floyd)**, which would have permitted CHRB to approve a location to conduct a racing meeting in the central zone pursuant to specified provisions if the location is at least 45 air miles from a location where a thoroughbred meeting is conducted; **AB 2714 (Floyd)**, which would have prohibited the furnishing to or use by any person of a tape of any thoroughbred horse race occurring in this state for any commercial purpose without first securing the consent of the racing association conducting the meeting, the organization representing horsemen participating in the meeting, and CHRB; **SB 1269 (Maddy)**, which would have changed the name of the California Poultry and Livestock Disease Diagnostic Laboratory System to the California Veterinary Diagnostic Laboratory System, authorized the construction of an equine drug testing laboratory at UC Davis as part of the California Veterinary Diagnostic Laboratory System, and amended existing law to require that one-third of the samples taken be sent to that Laboratory System; **AB 832 (Floyd)**, which would have prohibited CHRB from granting a trainer's license unless the applicant's liability for workers' compensation is secured; **AB 1786 (Floyd)**, which would have continued otherwise repealed law under which funds deducted from wagers at satellite wagering facilities in the northern zone are distributed in a different manner than in the central and southern zones; **SB 729 (Maddy)**, which would have—among other things—permitted CHRB to authorize associations licensed to conduct racing meetings in the northern or southern zones to operate satellite wagering facilities at not more than three sites within each zone in which the association is licensed to conduct racing meetings, other than fairgrounds which are located within those zones, if specified conditions are met; **AB 244 (Floyd)**, which would have authorized an association to revise its estimate for the aggregate handle during the meeting only if CHRB determines that the revision is necessary; **SB 204 (Maddy)**, which would have deleted an existing provision stating that no California State Lottery game may include a horse racing theme; and **AB 159 (Floyd)**, which would have required CHRB to adopt regulations to eliminate the drugging of horses entered in horse races, and 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.

RECENT MEETINGS

At its May 29 meeting, CHRB discussed the contracts for its equine complementary drug testing program and the human drug testing program for fiscal year 1992–93. Following discussion, CHRB awarded the complementary drug testing program contract to Iowa State University, which had submitted the lowest bid for the contract; this award ended CHRB's contractual relationship with the Pennsylvania Equine Toxicology and Research Laboratory, the lab which detected several of the positive clenbuterol cases involved in the current horse drugging investigation (*see supra* MAJOR PROJECTS). CHRB

awarded the human drug testing contract to PharmChem Laboratories, which had submitted the only bid for that contract.

At its September 23 meeting, CHRB elected Ralph Scurfield to serve as Board Chair, and Donald Valpredo to serve as Vice-Chair.

FUTURE MEETINGS

January 29 in Monrovia.
February 26 in Arcadia.
March 26 in Berkeley.
April 30 in Arcadia.

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 Permits Termination of Franchise. At its July 24 meeting, NMVB considered a protest filed by Jim Lynch Cadillac, Inc., against General Motors Corporation's (GMC) Cadillac Motor Car Division, following GMC's October 1991 decision to terminate the Cadillac franchise held by Lynch. In considering the protest, NMVB noted that Vehicle Code section 3066 imposes upon GMC the burden of establishing the existence of good cause to terminate or refuse to continue Lynch's franchise. In determining whether good cause has been established, Vehicle Code section 3061 requires NMVB to consider the amount of business transacted by the franchisee, as compared to the business available to the franchisee; any investment necessarily made and obligations incurred by the franchisee to perform its part of the franchise; the permanency of the investment; whether it is injurious or beneficial to the public welfare for the franchise to be modified or replaced or the business of the franchisee disrupted; whether the franchisee has adequate motor vehicle sales and service facilities, equipment, vehicle parts, and qualified service personnel to reasonably provide for the needs of the consumers for the motor vehicles handled by the franchisee and has been and is rendering adequate services to the public; whether the franchisee has failed to fulfill the warranty obligations of the franchisor to be performed by the franchisee; and the extent of the franchisee's failure to comply with the terms of the franchise.

According to GMC, good cause existed to terminate Lynch's franchise because of Lynch's breach of the terms of the franchise. According to GMC, Lynch breached its Dealer Agreement by abandoning its sales facility located on La Brea Avenue in Inglewood, and consolidating its new car sales operation at an unapproved and unauthorized service location on Centinela Avenue in Inglewood. Lynch contended that it had been attempting for five years to find possible sites for the relocation of the dealership, and that the Centinela location was merely a temporary arrangement while it continued to pursue efforts to relocate. Lynch also contended that the consolidation was justified because continued operations from both facilities would have resulted in Lynch's insolvency.

After reviewing the available data, NMVB made the following findings:

–In light of the sufficient opportunity for Cadillac sales within Lynch's area of geographic sales and service, Lynch has been "weak and marginal as a Cadillac dealer."

–Of the $2.775 million acquisition price, only $160,000 qualifies as Lynch's permanent investment.

–The public is inconvenienced and Cadillac's image and standards are diminished by the fact that there is no showroom for new vehicles at the Centinela facility; new and used car sales are conducted out of two mobile home-type trailers located in the parking lot; the facility is crowded and new car customers must first go through the service area before they get to the area where the new cars are located.

–The Centinela facility has only 17.3% of the space required by GMC's space and facilities guidelines and is therefore deficient under those guidelines.

–Lynch's decision to consolidate was precipitated by the expiration of its lease at the La Brea location and its desire to reduce its monthly losses.

–Lynch's fiscal condition does not justify an unauthorized relocation of its sales operations.

Accordingly, NMVB concluded that Lynch breached its Dealer Agreement by unilaterally moving its new car sales operations from the approved location to an unauthorized location, and to the extent that the unauthorized relocation resulted in inadequate facilities which are far below the facilities and space guidelines required under the Dealer Agreement. As a result, NMVB held that GMC is permitted to terminate the franchise of Jim Lynch Cadillac.

Board Settles Warranty Debate. In November 1991, Quaid Imports, Inc., a Maserati franchisee since 1983, filed petition number P-230-91 with NMVB, seeking damages and declaratory relief on its claim that Maserati Automobiles, Inc. (Maserati) had refused to reimburse Quaid for warranty repairs made to a certain 1989 Maserati automobile. Pursuant to an April 1990 settlement agreement reached by the parties in an unrelated matter, Maserati had delivered a new Maserati to Quaid and agreed that Quaid would retain "the two new Maserati automobiles currently in its possession"; the 1989 Maserati at issue in Quaid's November 1991 petition was one of the "new Maserati automobiles" referred to in the Aprill 1990 settlement agreement.

Pursuant to Maserati's Standard Dealer Agreement, Quaid was required to maintain at least one demonstrator available at all times. On November 22, 1988, the date of delivery of the 1989 Maserati, Quaid informed his inventory manager that he would use that automobile as his demonstrator; the manager immediately filed a Demonstrator Report Card with Maserati, as required by the Agreement. Under the terms of Maserati's 1989 model year warranty, the coverage period could start either on the date of retail delivery to a customer or upon first use as a demonstrator or company car; the total term of the warranty was three years or 36,000 miles, whichever came first. Maserati was to administer the coverage for the first two years or 24,000 miles directly, and the third year of extended