



of Regulations (CCR). The Board, which is composed of four public members and three auctioneers, is responsible for enforcing the provisions of the Act and administering the activities of the Commission. Members of the Board are appointed by the Governor for four-year terms. Each member must be at least 21 years old and a California resident for at least five years prior to appointment. In addition, the three industry members must have a minimum of five years' experience in auctioneering and be of recognized standing in the trade.

The Act provides assistance to the Board of Governors in the form of a council of advisers appointed by the Board for one-year terms. In September 1987, the Board disbanded the council of advisers and replaced it with a new Advisory Council (see CRLR Vol. 7, No. 4 (Fall 1987) p. 99 for background information).

New Board member David Moore was introduced at the Board's May 6 meeting.

MAJOR PROJECTS:

Commission Approves Disciplinary Guidelines. At its May 6 meeting, the Board approved disciplinary guidelines for use by administrative law judges who hear disciplinary cases on behalf of the Commission. The guidelines set forth minimum and maximum penalties for failure to pay a consignor; failure to pay a consignor within thirty working days; use of false bidders/false bidding practices; use of false or misleading advertising or statements; and misrepresentation of goods offered for sale. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 166 for background information.)

Commission Proposes to Amend Conflict of Interest Code. On May 31, the Commission published its notice of intent to amend the Appendix to section 3526, Division 35, Title 16 of the CCR, which sets forth the Commission's conflict of interest code. The Appendix presently lists the designated employees who must file statements of economic interest with the Commission; the proposed amendments would add Commission consultants to the list of designated employees.

The Appendix currently requires designated employees to report any investment in or any income from specified activities. The proposed amendments would require designated employees to report any business positions in those specified activities.

Finally, the proposed amendments would provide that the Commission's Executive Officer may determine in writing that a particular consultant,

although a "designated position," is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements of section 3526. Such written determination must include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements for that consultant. According to the proposed amendments, the Executive Officer's determination is a public record and shall be retained for public inspection in the same manner and location as the Commission's conflict of interest code.

At this writing, no public hearing is scheduled regarding the proposed amendments. All public comments concerning the amendments were to be forwarded to the Commission by August 2.

RECENT MEETINGS:

At its May 6 meeting in San Diego, the Board of Governors discussed whether various practices concerning owner bidding harm the public and, if so, how such harm may be prevented or reduced. The Board resolved that the public is harmed when an item owner uses more than one personal bidder to bid on behalf of the owner. The Board also resolved that (1) if an owner intends to bid on his/her own goods, notice of that fact must be posted or distributed; and (2) if an owner is the last bidder on his/her item, the auctioneer may not announce or indicate that the item was "sold," since there is no transfer of ownership. Other issues which were not resolved and may be discussed at future meetings concern whether the public is harmed by the practice of allowing owners or their agents to bid without actually disclosing the identity of such owners/agents to other bidding consumers; whether the public is harmed by the practice of allowing owners or their agents to make more than one bid in competition with the bidding audience; and whether certain practices which would falsely lead other bidders to believe that the owner is a true bidder should be prohibited.

Also at its May 6 meeting, the Board, pursuant to Business and Professions Code section 5734, approved a motion to waive the examination requirement for applicants who are licensed as auctioneers in Florida, Pennsylvania, or Rhode Island. In granting these states reciprocity, the Board determined that the licensing requirement of these states are at least as stringent as those in California.

FUTURE MEETINGS:

November 22 in Monterey.

BOARD OF CHIROPRACTIC EXAMINERS

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

The Board consists of seven members, including five chiropractors and two public members.

MAJOR PROJECTS:

Board Finally Settles Case, Adopts Emergency Regulation Defining Scope of Practice. All parties have finally reached a settlement in *California Chapter of the American Physical Therapy Ass'n, et al. v. California State Board of Chiropractic Examiners, et al.*, Nos. 35-44-85 and 35-24-14 (Sacramento County Superior Court). Since September 1987, the parties have been litigating the validity of BCE's adoption and the Office of Administrative Law's (OAL) approval of section 302 of BCE's regulations, which defines the scope of chiropractic practice. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 199; Vol. 9, No. 1 (Winter 1989) p. 97; and Vol. 7, No. 4 (Fall 1987) p. 100 for background information on this case.)

On February 1, the court approved a settlement agreement between BCE and the California Medical Association (CMA), which required BCE to adopt new section 302 on an emergency basis; OAL approved the emergency rule on April 4. Other parties and intervenors—including the California chapter of the American Physical Therapy Association, the Medical Board of California, and the Physical Therapy Examining Committee—initially objected to the settlement agreement and the proposed regulation, because it included the practice of physical therapy within the scope of practice of a chiropractor. However, BCE later agreed to revise the proposed regulation to include a definition of the "physical therapy" which may be practiced by a chiropractor, which was acceptable to all parties. OAL approved the revised version of emergency section 302 on June 3; BCE was scheduled to hold a regulatory hearing on the permanent adoption of revised section 302 on June 20.



The language of revised section 302, as scheduled for hearing on June 20, sets forth the scope of chiropractic practice as follows:

-a duly licensed chiropractor may manipulate and adjust the spinal column and other joints of the human body and, in the process thereof, a chiropractor may manipulate the muscle and connective tissue related thereto;

-as part of a course of chiropractic treatment, a licensed chiropractor may use all necessary mechanical, hygienic, and sanitary measures incident to the care of the body, including but not limited to air, cold, diet, exercise, heat, light, massage, physical culture, rest, ultrasound, water, and physical therapy;

-a chiropractor may not practice surgery, or sever or penetrate tissues of human beings; deliver a child or practice obstetrics; practice dentistry or optometry; use any drug or medicine included in materia medica; use a lithotripter; use ultrasound on a fetus for either diagnostic or treatment purposes; or perform a mammography;

-a chiropractor may employ the use of vitamins, food supplements, foods for special dietary use, or proprietary medicines, if the above substances are included in section 4052 of the Business and Professions Code, and so long as such substances are not included in materia medica as defined in section 13 of the Business and Professions Code;

-a chiropractor may make use of X-ray and thermography equipment for the purposes of diagnosis, but not for the purposes of treatment; and

-a chiropractor may make use of diagnostic ultrasound equipment for purposes of neuromuscular skeletal diagnosis.

The Board also published notice of its intent to hold a public hearing on the proposed addition of section 317(v) to its regulations. Also compelled by the settlement agreement in the litigation, new section 317(v) would make it unprofessional conduct for a chiropractor to fail to refer a patient to an appropriate physician, surgeon, podiatrist, or dentist if in the course of a diagnostic evaluation, the chiropractor detects an abnormality that indicates that the patient has a condition, disease, or injury that is not subject to complete treatment by chiropractic methods and techniques. The hearing on the proposed addition of section 317(v) was also scheduled for June 20.

OAL Approves Renewal Fee Increase. On April 23, OAL approved the Board's amendment to section 355(a) of its regulations, which increases the annual license renewal fee from \$95 to \$150 (the statutory maximum). OAL

also approved BCE's amendment of section 355(c), which establishes a cyclical renewal system under which licenses expire during the birth month of the licensee. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 166 for background information.)

Four Hours of Adjustive Technique. At its March 7 meeting, the Board adopted a proposed regulatory amendment to section 356, which would specify that four hours of each licensee's annual twelve-hour continuing education requirement must be completed in adjustive technique, and must be satisfied by lecture and demonstration. (See CRLR Vol. 11, No. 2 (Spring 1991) pp. 166-67 for background information.) At this writing, the rulemaking package has not yet been submitted to OAL.

Update on Other Proposed Regulatory Changes. The following is a status update on other regulatory changes recently proposed and/or adopted by BCE, and discussed in detail in previous issues of the *Reporter*:

-On February 15, OAL rejected the Board's proposed amendments to section 331.1, which would add a preamble to the section obliging chiropractors to diagnose and recognize conditions and diseases beyond their scope of practice. BCE also sought to add new subsection (d), relating to the approval of chiropractic schools. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 165 and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 198 for background information.) BCE has decided not to resubmit this regulatory proposal to OAL.

-On March 25, OAL rejected BCE's proposed addition of sections 306.1, which would authorize the Board to create Mid-Level Review panels as part of its discipline system, and section 306.2, which would provide legal representation by the Attorney General's office in the event that a person hired or under contract to the Board to provide expertise to BCE, including a Mid-Level Review Panel member, is named as a defendant in a civil action. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 167; Vol. 11, No. 1 (Winter 1991) p. 137; and Vol. 10, No. 4 (Fall 1990) pp. 165-66 for background information.)

BCE recently released a modified version of sections 306.1 and 306.2, and accepted written comments on the modifications until July 19. Section 306.1 would require the Board to create Mid-Level Review Panels based on geographical considerations to make recommendations to the Board on the review, education, and/or assistance to individual chiropractors who have been assigned to a Panel by the Board or its designee. The Panel would meet with the chiro-

practor for the purpose of addressing minor violations of the rules and regulations of the practice of chiropractic. The Mid-Level Review Panel shall include outside chiropractic experts chosen by the Board; chiropractors under review shall participate on a voluntary basis, and the records and proceedings shall be confidential unless an accusation is filed and evidence becomes subject to discovery.

Revised section 306.2 would require the Board to provide legal representation (by the Attorney General's Office) for any person who provides expertise to the Board under contract, including but not limited to the evaluation of the conduct of a licensee by a Mid-Level Review Panel member, administration of an examination, or performance of educational audits. The Board shall not be liable for any judgment rendered against such person if a finding is made that the Board's representative or expert did not act in good faith.

-At its June 20 meeting, the Board was scheduled to adopt new section 312.3, regarding the ability of chiropractors licensed in other states to render professional services and/or evaluate or judge any person in California. This regulatory action was the subject of a December 1990 public hearing. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 136 for background information.)

-On March 15, the Board published notice of its intent to adopt amendments to section 317(u), which would prohibit chiropractors from using "no out of pocket" billing as an advertisement or billing device unless the patient and the insurance company are notified by the chiropractor. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 136; Vol. 10, No. 4 (Fall 1990) p. 166; and Vol. 10, No. 1 (Winter 1990) p. 145 for background information.) The Board received written comments on these amendments until April 30, and has scheduled a public hearing on the proposed amendments for October 17.

-The Board has also scheduled an October 17 public hearing on the adoption of new section 349, which would require, effective January 1, 1992, all applicants for licensure to submit proof of successful completion of the national board examination, including a written clinical competency examination, prior to being eligible to sit for the California practical examination. Also, Parts I, II, and III of the national board examination will serve as the written portion of the California licensure exam.

LEGISLATION:

AB 316 (Epple), as amended April 23, would provide that, notwithstanding Business and Professions Code section



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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 to petition the superior court in any county for the issuance of an injunction restraining conduct which is in violation of this section. AB 316 also 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 is pending in the Assembly Health Committee.

The following is a status update on bills reported in detail in CRLR Vol. 11, No. 2 (Spring 1991) at page 167:

SB 1165 (Davis), as introduced March 8, would prohibit any health care service plan which offers or provides one or more chiropractic services as a specific chiropractic plan benefit, when those services are not provided pursuant to a contract as described above, from refusing to give reasonable consideration to affiliation with chiropractors for provision of services solely on the basis that they are chiropractors. This bill passed the Senate on May 24 and is pending in the Assembly Insurance Committee.

SB 664 (Calderon), as introduced March 5, would prohibit 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, except as specified. This bill is pending in the Senate Business and Professions Committee.

RECENT MEETINGS:

BCE cancelled its May 2 meeting.

FUTURE MEETINGS:

September 5 in Sacramento.
October 17 in San Diego.
December 5 in Sacramento.
January 9 in Los Angeles.

HORSE RACING BOARD

Executive Secretary:

Dennis Hutcheson
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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 Profes-

sions 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.

In May, Governor Wilson appointed Donald Valpreo of Bakersfield to the Board.

MAJOR PROJECTS:

Post-Mortem Examination Program.

At its May 31 meeting, the Board discussed its post-mortem examination program established in section 1846.5, Title 4 of the CCR, which CHRB is currently operating with unbudgeted funds, *i.e.*, without the necessary approval of the Department of Finance and the legislature. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 142; Vol. 10, No. 4 (Fall 1990) pp. 173-74; and Vol. 10, Nos. 2 & 3 (Spring/Summer 1991) p. 203 for detailed background information.) Dr. Rick Vulliet, CHRB's Equine Medical Director, reported that the program is designed to help determine why horses are dying or being put down, and to discover ways to prevent or minimize such deaths. According to Dr. Vulliet, the pro-

gram should be continued because the quality of the necropsies performed is good; the program acts as a deterrent to the abuse of horses; and the program helps to determine if there was a pre-existing condition that may have led to a horse's death. The Board discussed possible ways to fund the program if this item is again excluded from CHRB's budget, as is anticipated. The Board agreed to continue its discussion of this issue in depth at a future meeting.

Board Adopts Trainer Licensing Guidelines. At its May 31 meeting, the Board approved "guidelines" which prospective trainers must meet in order to be licensed by the Board. Among the requirements included in the guidelines are the following:

- candidates must show need for a trainer's license;

- candidates must have at least two years' documented and uninterrupted experience working as a foreman, groom, hot-walker, jockey, or exercise rider at a CHRB-licensed track or training facility, or the equivalent in another state or country;

- candidates must serve a one-year apprenticeship, which will begin at the time written notification of intent to take the trainer's test has been received by CHRB's Medication Steward. This apprenticeship may not begin until the two years' work experience has been completed; and

- candidates must have two letters of recommendation written by two active CHRB-licensed trainers or two active racing commission-licensed trainers in another state or country.

Further, a trainer requesting a change of trainer's license from one form of racing to another shall be subject to the examination procedure consisting of the Steward's Oral Interview, Practical Examination of Horsemanship-Section D, and Oral Examination.

Board Proposes Amendment to Rule Concerning Ambulance Services. At its May 31 meeting, the Board again discussed section 1468, Title 4 of the CCR, which requires that the services of an onsite ambulance and qualified medical personnel be provided at all times during the running of races and during the hours an association permits the use of its race course for training purposes. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 171 for background information.) According to CHRB, some portions of the fair industry complained about the Board's February 1991 reaffirmation of section 1468, and its call for strict enforcement of the rule, because they are unable to support the cost of maintaining an ambulance. As a result, the Board has proposed