crease in facilities operations, due to an increase in the square footage of the Commission's new headquarters office.

FUTURE MEETINGS:
February 28 in San Francisco.

BOARD OF CHIROPRACTIC EXAMINERS

Executive Director: Vivian R. Davis (916) 739-3445

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:

BCE Scope of Practice Regulatory Amendments. Earlier this year, a settlement was approved 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), a 1987 case in which the parties were 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. 11, No. 3 (Summer 1991) pp. 182–83; Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 199; and Vol. 9, No. 1 (Winter 1989) p. 97 for background information on this case.) The terms of the settlement approved by the court required BCE to amend section 302 specifically as stipulated by the parties to the lawsuit. Accordingly, BCE adopted new section 302 on an emergency basis, containing the agreed-upon language; OAL approved the emergency section 302 on June 3.

On June 20, BCE held a public hearing on the permanent adoption of the new section 302. The Board made two minor clarifying revisions to the proposed language and adopted the modified version. The revisions provide that (1) "[a]s part of a course of chiropractic treatment, a duly licensed chiropractor may use . . . physical therapy techniques in the course of chiropractic manipulations and/or adjustments"; and (2) a chiropractor is prohibited from holding him/herself out as practicing physical therapy or using the term "physical therapy" in advertising unless he/she holds another such license. The Board released the revised version of section 302 for an additional 15-day comment period which expired on July 15. No further revisions were made to the stipulated language of section 302; the Board adopted the revised version of section 302 at its July 25 meeting. On September 27, BCE transmitted the rulemaking file to OAL for review and approval; at this writing, BCE is awaiting OAL's decision.

Also on June 20, the Board held a public hearing on proposed new section 317(v), Title 16 of the CCR. 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, a 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. In response to the public comments received, BCE is considering modifications to proposed section 317(v); at this writing, however, no revisions to the proposed language have been released by the Board.

Board Proposes New Examination Requirement. At its June 20 meeting, BCE agreed to commence a regulatory action which would repeal existing section 349(b) and add a new section 349(b), Title 16 of the CCR, to provide that, effective January 1, 1993, successful completion of all three parts of the National Board of Chiropractic Examiners (NBCE) examination, including physiotherapy, is required before a candidate may sit for BCE's practical examination; and successful completion of all parts, including physiotherapy, of the NBCE examination will serve as the written portion of the California chiropractic licensure examination.

The Board schedules over 1,400 candidates for the entire chiropractic licensure examination each year; approximately 46% of these candidates fail to pass the California examination and return for subsequent examination. According to BCE, requiring National Board status prior to being eligible to sit for the practical examination assures BCE that the "quality of the candidate's didactic knowledge has been established"; the "public is better served and protected"; the "candidate achieves a more far reaching level of competency which is recognized nationwide, not solely in California"; and the "number of candidates eligible to sit for the California exam is reduced to those most likely to succeed." BCE was scheduled to hold a public hearing on these proposed revisions on October 17.

Board Seeks Amendments to Conflict of Interest Code. On June 20, the Board adopted proposed amendments to its conflict of interest code, which appears at section 375 and the Appendix thereto, Title 16 of the CCR. Specifically, the amendments designate BCE employees who must disclose certain investments, income, and interests in real property and business positions, and who must disqualify themselves from making or participating in the making of governmental decisions affecting those interests. BCE forwarded the rulemaking file to the Fair Political Practices Commission (FPPC) for a 45-day comment period which commenced on September 20. Following approval by the FPPC, BCE will forward the amended section to OAL for processing.

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*:

-At this writing, BCE still has not forwarded to OAL its 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. 3 (Summer 1991) p. 183 and Vol. 11, No. 2 (Spring 1991) pp. 166–67 for background information.)

-On July 3, BCE commenced a fifteen-day public comment period regarding modifications to the language of proposed new sections 306.1, which would require the Board to create Mid-Level Review panels as part of its discipline system, and 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. 3 (Summer 1991) p. 183; Vol. 11, No. 2 (Spring 1991) p. 167; and Vol. 11, No. 1 (Winter 1991) p. 137 for background information.) Earlier this year, OAL disapproved the Board's proposed adoption of sections 306.1 and 306.2.

Following OAL's decision, the Board has twice modified both sections; on September 5, BCE adopted the final version of the sections. The Board has submitted the rulemaking file to OAL and, at this writing, is awaiting OAL's decision.

-At its June 20 meeting, the Board adopted 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. 3 (Summer 1991) p. 183 and Vol. 11, No. 1 (Winter 1991) p. 136 for background information.) Section 312.3 would provide that the rendering of professional services by chiropractors not licensed to practice chiropractic in California to persons in California constitutes the practice of chiropractic in California and a violation of section 15 of the Chiropractic Act, unless the unlicensed chiropractor actively consults with a chiropractor licensed in California each time professional services are rendered to a person in California. At this writing, BCE has not yet submitted the rulemaking file to OAL for review and approval.

-On October 17, BCE was scheduled to hold a public hearing on its proposed amendments to section 317(u), which would prohibit a chiropractor from using "no out of pocket" billing as an advertisement or billing device unless the patient and his/her insurance company are notified by the chiropractor of the chiropractor's intent to waive a deductible or co-payment. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 183; Vol. 11, No. 1 (Winter 1991) p. 136; and Vol. 10, No. 4 (Fall 1990) p. 166 for background information.)

LEGISLATION:

The following is a status update on bills reported in detail in CRLR Vol. 11, No. 3 (Summer 1991) at pages 183–84:

SB 1165 (Davis), as introduced March 8, prohibits 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 was signed by the Governor on October 14 (Chapter 1224, Statutes of 1991).

AB 316 (Epple), as amended April 23, would provide 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 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 two-year bill is pending in the Assembly Health 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:

At its June 20 meeting, the Board established a committee to research the possibility of implementing a diversion program for substance-abusing BCE licensees. The Board also established a committee to assess continuing education seminars for Board approval and provide recommendations to the Board.

At BCE's September 5 meeting, Jim Barquest from the Department of Health Services (DHS) spoke to the Board about the use of medical devices which have not yet been approved as safe and effective by DHS and the federal Food and Drug Administration (FDA), such as the Toftness device. Mr. Barquest said that the use of such unapproved devices is illegal unless the user fulfills three conditions: (1) any proposed use of the device must have received official approval from an institutional review board for the purpose of gathering experimental data; (2) the device must be used in conjunction with some other proven technique; and (3) the device must not introduce energy into the body. The Board asked Mr. Barquest whether BCE's official policy regarding use of the Toftness device is consistent with the law regarding unapproved medical devices. Although the Board has no regulation directly addressing the use of Toftness devices, the Board's current policy regarding the Toftness device states that "the Toftness Radiation Detector is an experimental testing device which may only be used in conjunction with accepted diagnostic/analytical procedures. Accordingly, its use is limited to research purposes and not as the sole procedure in determining the condition of a patient. Further, doctors may not charge patients for use of this device nor may they hold themselves out in any form of advertising as employing the Toftness Radiation Detector." Mr. Barquest responded that the Board's policy regarding the Toftness device appears to be consistent with medical practice laws.

Also at its September 5 meeting, the Board discussed a proposal to combine portions of its practical examination in order to more efficiently and effectively administer the examination. The proposal would combine physical therapy and adjustive technique into a chiropractic technique examination, and combine X-ray with the clinical competency examination. Instead of administering four practical examinations, the Board would administer two. BCE believes the combined examinations would be more job-related and would allow more efficient scheduling and use of examination commissioners. Each of the two practical examinations would have one final score, and a candidate failing to achieve a score of 75% in any part of the two-part practical examination would fail that portion of the examination. At this time, the Board has not reached a final conclusion regarding the proposed two-part practical examination, but will continue to consider such a change at future Board meetings.

A provision in the state's 1991 Budget Act requires the Board to submit data to the legislature's fiscal committees, the Assembly Health Committee, the Senate Health and Human Services Committee, and the Joint Legislative Budget Committee by December 31, 1991, documenting BCE's efforts to increase licensee participation in mandatory continuing education (CE) courses concentrating on the prevention of human immunodeficiency virus (HIV) infection. At its September 5 meeting, the Board discussed the possibility of adopting a regulation which would require each licensee in California to take part in one to four hours of annual CE on the prevention of HIV infection. However, the Board did not reach a final decision, preferring to have staff explore all options available until the October 17 BCE meeting, when the Board was scheduled to discuss the issue further.

FUTURE MEETINGS:
January 9 in Los Angeles.
February 13 in Sacramento.
March 19 in San Diego.
April 23 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.

At its August 30 meeting, CHRB welcomed new member Stefan Manolakas to the Board; Manolakas, appointed by Governor Wilson, replaces Paul Deats on the Board.

MAJOR PROJECTS:

Board Pursues Ambulance Services Regulatory Amendment. On July 5, CHRB published notice of its intent to amend 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. 3 (Summer 1991) pp. 184–85 and Vol. 11, No. 2 (Spring 1991) p. 171 for background information.) The Board proposes to amend section 1468 to provide alternative emergency medical procedures for authorized training facilities that are not designated as auxiliary stables for a host track. The proposed amendments require these training facilities to submit to CHRB a written plan detailing the emergency procedures to be followed in the event an accident occurs.

On August 30, the Board conducted a public hearing on the proposed amendments. Following the hearing, the Board adopted the proposed language and subsequently submitted the rulemaking file to the Office of Administrative Law (OAL) for review and approval. At this writing, the Board is awaiting OAL's decision.

Pick Seven Wagering Regulations. On July 5, CHRB published notice of its intent to adopt new section 1959.7, Title 4 of the CCR, which would establish provisions for Pick Seven parimutuel wagering in California. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 188 for background information.) The Pick Seven parimutuel pool would consist of amounts contributed for a selection for win only in each of seven races designated by the relevant racing association. Each person purchasing a Pick Seven ticket designates the winning horse in each of the seven races comprising the Pick Seven.

On August 30, the Board conducted a public hearing on the proposed adoption of section 1959.7. Following the hearing, the Board adopted the proposed section and subsequently submitted the rulemaking file to OAL for review and approval. At this writing, the Board is awaiting OAL's decision.

Pick (n) Wagering Regulations. On July 5, the Board published notice of its intent to adopt new section 1976.9, Title 4 of the CCR, which would establish provisions for Pick (n) wagering in California. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 188 for background information.) The Pick (n) parimutuel pool would consist of amounts contributed for a selection for win only in each of a specified number of races designated by the relevant racing association. Each patron purchasing a Pick (n) ticket must designate the winning horse in each of the designated races comprising the Pick (n). According to CHRB, the adoption of such a rule would enable California horse racing associations and the public to participate in national wagers.

On August 30, CHRB conducted a public hearing on the proposed adoption of section 1976.9. Following the hearing, the Board adopted the proposed section and subsequently submitted the rulemaking file to OAL for review and approval. At this writing, the Board is awaiting OAL's decision.

Quarter Horse Regulatory Amendments Proposed. SB 519 (Maddy) (Chapter 1481, Statutes of 1990) amended Business and Professions Code section 19533 to provide that any license granted to an association other than a fair shall be only for one type of racing—thoroughbred, harness, or quarter horse racing, as the case may be—except that CHRB may, by regulation, authorize the entry of thoroughbred and Appaloosa horses in quarter horse races at a distance not exceeding five furlongs at quarter horse meetings, mixed breed meetings, and fair meetings. Further, section 19533 provides that if CHRB adopts regulations authorizing the entry of thoroughbred and Appaloosa horses in quarter horse races, the regulations shall set forth specified conditions, including that minor breeds of horses shall make up more than half the number of horses in the race.

On July 12, CHRB published notice of its intent to adopt new section 1743, Title 4 of the CCR, to establish conditions for the entering of thoroughbred and Appaloosa horses in five-furlong or shorter quarter horse races at quarter horse meetings, mixed breed meetings, and fair meetings. On August 30, the Board held a public hearing on the proposed adoption of section 1743. Following the hearing, CHRB adopted the proposed section and subsequently submitted the rulemaking file to OAL for review and approval. At this writing, the Board is awaiting OAL's decision.

Occupational Licenses and Fees. On August 7, OAL approved the Board's proposed amendments to section 1486, Title 4 of the CCR, which change CHRB license expiration dates from December 31 to coincide with the licensee's birth month. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 185; Vol. 11, No. 2 (Spring 1991) p. 169; and Vol. 11, No. 1 (Winter 1991) pp. 141–42 for detailed background information.)