



REGULATORY AGENCY ACTION

also requested that the Board act to protect purse monies which have, as a practice, been commingled with other track funds. Purses paid at fairs are based upon prior year handles, which are comprised of the total annual revenue generated through betting. The purses are augmented by appropriated funds from state license fees generated by simulcast wagering at fairs during the previous fiscal year. However, the 1987 purses did not include that portion of simulcast wagering on the fair wagering programs.

At the October meeting, the CHRB ordered distribution of "75% of the amount from the simulcast handle which was retained for distribution in the form of purses." The Board also ordered that the daily paymaster's report to the Board reflect a separate account status for purse funds.

At its November meeting, the CHRB recognized the Arabian Racing Association of California as the representative of Arabian horsemen. Under recently-enacted SB 287 (Maddy) (Chapter 154, Statutes of 1987), the Board is required to determine the organization which will represent each breed. (See CRLR Vol. 7, No. 4 (Fall 1987) pp. 103-04 for background information.) Recognized organizations act as agents for the breeds' owners and trainers in negotiating agreements with race track organizations, receiving in return a percentage of purse money for administrative expenses. Each organization is required to represent a majority of the horsemen with respect to the breed represented. CHRB recognition is required in order for a horsemen's organization to receive a distribution under the Horse Racing Law.

Also at the November meeting, the CHRB approved several satellite wagering facilities, including the 22nd District Agricultural Association (Del Mar); the 31st District Agricultural Association (Ventura); the National Orange Show (San Bernardino); and the 9th District Agricultural Association (Eureka).

FUTURE MEETINGS:

To be announced.

NEW MOTOR VEHICLE BOARD

Executive Officer: Sam W. Jennings (916) 445-1888

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. Most licenses deal in cars or motorcycles.

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.

RECENT MEETINGS:

At its September 29 meeting in Los Angeles, the NMVB adopted the administrative law judge's (ALJ) decision in several cases.

In the matter of *Brian Chuchua's Jeep dba Brian Chuchua's Four Wheel Drive Center v. American Motors Sales Corporation (AMC)*, the ALJ found, after a hearing, that respondent AMC proved there was good cause for terminating the franchise. Thus, the protest was overruled and AMC was permitted to terminate the franchise. However, the termination was stayed on the condition that protestant will fully comply with all of its obligations under the franchise and the law in regard to performing service on Jeep vehicles, irrespective of where the vehicles were purchased. In the event AMC receives evidence that protestant has failed to comply with the conditions, it may move the Board for an order removing the stay.

In the matter of *Murray's Truck Service, Inc. v. Iveco Trucks of North America, Inc.*, the ALJ found that respondent established good cause for terminating the franchise of protestant, and overruled the protest.

In the matter of *Stevens Pontiac-GMC, Inc. v. Pontiac Motor Division, General Motors Corporation*, respondent had given notice to Stevens Pontiac of Pontiac Motor Division's intention to establish an additional franchise at 750 West Capitol Expressway, San Jose. Stevens Pontiac is located at 620 Blossom Hill Road, Los Gatos. After hearing the matter, the ALJ found that protestant failed to prove that there is good cause for not establishing the additional franchise. Therefore, the protest was overruled and Pontiac Motor Division was permitted to establish the proposed franchise in San Jose.

In the matter of *University Ford Chrysler Plymouth v. Chrysler Corporation*, it was determined that Chrysler failed to establish good cause to terminate the franchise of University Chrysler Plymouth. The protest was sustained upon condition that University Chrysler Plymouth (1) relocate to a suitable existing or new facility within two years and, in the interim, (2) follow through with its plans to modify its present facility to accommodate Chrysler Plymouth products.

FUTURE MEETINGS:

To be announced.

BOARD OF OSTEOPATHIC EXAMINERS

Executive Director: Linda Bergmann (916) 322-4306

In 1922, California voters approved a constitutional initiative which created the Board of Osteopathic Examiners (BOE). BOE regulates entry into the osteopathic profession, examines and approves schools and colleges of osteopathic medicine and enforces professional standards. The 1922 initiative, which provided for a five-member Board consisting of practicing osteopaths, 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:

Regulation Changes. On December 10, 1987, the Office of Administrative Law (OAL) approved the amended regulations originally submitted by BOE in December 1986. (See CRLR Vol. 7, No. 1 (Winter 1987) p. 94.) The regulations affected are sections 1609, 1610(d), 1615(d), 1628(d), 1630(c), 1637(c), 1646(e), 1647(c), 1650, 1651(d), 1656(d), 1658, 1669(d), 1670, 1672, 1673(d), 1678(c), 1678(d), 1681(a), 1681(b), 1682(c), and 1691 in Title 16 of the California Administrative Code, which were the subject of a regulatory hearing on November 21, 1986. These regulations deal with the application and registration for new osteopaths.

At its December 11 meeting the Board expressed concern over the \$200-per-hour attorneys' fees it was charged by OAL for review of its regulations. The Board decided to request a justification from OAL for its fee policy.

Diversion Program. At its December 11 meeting, the Board heard from Bradley Grant, DO, concerning the possibility of an intervention program for osteo-



paths with substance abuse and alcohol problems. The traditional response to such problems is referral to a treatment program and/or disciplinary action, which may ultimately result in revocation of the doctor's license. Recognizing the need to provide an alternative, non-punitive method of helping its licensees, the Board is considering the establishment of a standardized drug diversion program.

Under the proposed plan, any osteopath suspected of needing assistance would be reported to Occupational Health Services (OHS), an independent agency which is already administering a similar program for dentists and pharmacists. An evaluation committee, comprised of at least three osteopathic physicians, one public member, and one doctor of medicine, would conduct an initial investigation to identify the problem. OHS would then contact the doctor and, if necessary, conduct formal intervention. If necessary, the doctor would be referred to a treatment center, either on an inpatient or an outpatient basis.

The Board will pursue legislation to establish the necessary authority to implement the program.

LEGISLATION:

At its December 11 meeting, the Board discussed two bills which BOE hopes to pursue during the current session. The first would define an "unconscionable fee" and would establish that the charging or obtaining of such a fee for professional services constitutes unprofessional conduct. The second legislative proposal deals with cost recovery for licensees found guilty of unprofessional conduct. Under the proposed bill, a board may request an administrative law judge "to direct any licensee found guilty of unprofessional conduct to pay the board a sum not to exceed the actual and reasonable costs of the investigation and prosecution of the case."

As of this writing, BOE has not found a sponsor for either piece of legislation.

FUTURE MEETINGS:

To be announced.

PUBLIC UTILITIES COMMISSION

Executive Director: Victor Weisser
President: Stanley W. Hulett
(415) 557-1487

The California Public Utilities Commission (PUC) was created in 1911 and strengthened in 1946 to regulate privately-

owned utilities and ensure reasonable rates and service for the public. The Commission oversees more than 1,500 utility and transport companies, including electric, gas, water, telephone, railroads, buses, trucks, freight services and numerous smaller services. More than 19,000 highway carriers fall under its jurisdiction.

Overseeing this effort are five commissioners appointed by the Governor with Senate approval. The commissioners serve staggered six-year terms in an increasingly complex full-time endeavor.

The Commission has responded to public criticism that it is biased in favor of utilities by (1) setting up a Public Staff Division which is structurally distinct from the Commission "to represent the public," with an annual budget of \$9.2 million; (2) creating the position of "public advisor" to serve as a kind of ombudsperson assisting the public; (3) creating a system of intervenor compensation to pay the fees of advocates who intervene or appear and contribute to results benefiting ratepayers; and (4) authorizing enclosures in billing envelopes by groups representing ratepayers.

MAJOR PROJECTS:

Order Instituting Investigation to Consider New Regulatory Alternatives for Local Telephone Companies. On November 25, the PUC issued an Order Instituting Investigation (OII) No. 87-11-033 to consider alternatives and options in regulating local telephone companies such as Pacific Bell and General Telephone Company of California. These companies provide local calling and toll calling within local access and transport areas (LATAs) in California. The proceeding, which is assigned to Administrative Law Judge Charlotte Ford, is expected to last at least eighteen months.

In commencing the investigation, the Commission cited changes in technology and the telecommunications market since the 1984 breakup of American Telephone and Telegraph Company (AT&T). These changes and other issues were discussed at a special *en banc* hearing on telecommunications last September 24-25. (See CRLR Vol. 7, No. 4 (Fall 1987) p. 105.) The views expressed by various groups at the *en banc* hearing played a major role in shaping the procedural framework of the OII. The Commission's order and investigation address concerns about increased competition now facing all telecommunications companies in the current environment. (For detailed discussion of this issue, see *supra* FEATURE ARTICLE.)

The PUC's November 25 order details the three phases in which the Commission will conduct its investigation. Phase I, which is scheduled to begin with a prehearing conference on January 29, will address issues of pricing flexibility for services subject to competition. This initial phase will focus on several local telephone company services to determine whether they are sufficiently competitive to warrant some price flexibility. These services include custom calling features, private line services, and special access services.

The PUC seeks testimony on methods by which it should determine whether there is sufficient competition to justify granting pricing flexibility. Then the Commission will determine the appropriate degree of pricing flexibility; how the range of pricing flexibility should be established; and whether there are any reasons why the PUC should not lift its current ban on competition within the local calling area for the services in question.

The Commission will also consider formal guidelines for special contracts between the local telephone companies and individual customers for custom-tailored telecommunications offerings as an approach to pricing flexibility. The Commission hopes to conclude the pricing flexibility hearings in the spring of 1988.

Phase II will consider alternative approaches to ratemaking and the setting of rates for services not subject to competition. These alternatives may involve changing the basic method of rate-making, or refinements to the existing cost-of-service approach. The PUC encourages parties to submit proposals for improved incentive-based regulation, whether based on cost-of-service regulation or so-called "social contracts."

The questions to be addressed in Phase II include the following:

-What should be the basis for rate-making? Should cost-of-service regulation continue, or would some alternative form of regulation be more effective in meeting PUC goals?

-If the Commission continues to use cost-of-service regulation, should modifications be made to make the ratemaking process more effective?

-How can the Commission allocate costs between regulated and deregulated services to ensure that regulated rates do not cross-subsidize competitive services?

-Should rates, revenue requirements, and earnings continue to be reviewed on a regular schedule, or should the timing