

## REGULATORY AGENCY ACTION



CEC also held a public hearing concerning proposed amendments to the Energy Conservation Standards for new residential buildings. Representatives from lumbar companies, contractors, architects, utilities, and developers strongly opposed the amendments, often citing their unwieldiness and specificity as too burdensome to permit efficient compliance.

#### FUTURE MEETINGS:

To be announced.

### HORSE RACING BOARD

Secretary: Leonard Foote  
(916) 920-7178

The California Horse Racing Board (CHRB) is an independent regulatory board consisting of seven members. Each member serves a four-year term and receives no compensation other than expenses incurred for Board activities.

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.

The Board has jurisdiction and power to supervise all things and people having to do with horse racing upon which wagering takes place. 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. (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.) 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.

The Board licenses horse racing tracks and allocates racing dates. It also has regulatory power over wagering and horse care.

#### MAJOR PROJECTS:

##### *Intertrack Simulcast Wagering.*

Under the collective authority of Chapters 24, 1285, and 1286 of the Statutes of 1986, Chapters 566 and 1740 of the Statutes of 1984, and Chapter 186 of the Statutes of 1982, CHRB is now permitted to expand parimutuel wagering with the use of live audio-visual simulcast television programming of horse races. The authorization includes the reception of signals from other jurisdictions and the transmission of simulcasts of California horse races for wagering purposes both within California and outside California. Horse races held at licensed race meetings will be displayed at off-track locations by means of live audio-visual simulcast television programs. Patrons may wager on these races at the off-track locations, and the money bet will be combined with those wagers made within the enclosure of the live race. CHRB must approve the facilities, accommodations, equipment, and methods of operation of simulcast wagering within the state. Finally, the statutes provide that when approved by the Board, the simulcast may also be used by a lawful wagering system outside California.

Because the Board has no existing regulations governing simulcast wagering, CHRB noticed its proposal to add Article 24, Simulcast Wagering, consisting of sections 2056 through 2061, to Title 4 of the California Administrative Code. Section 2056 defines terms used in the regulations which are unique to satellite wagering. Section 2057 specifies the duty of the racing associations to offer simulcast wagering. The regulation empowers the Board to require as a condition for licensing that an association contract with a simulcast operator to provide intrastate simulcast wagering at one or more Board-approved guest location. It also requires that a scrambling device be used to prevent unauthorized use of the broadcast. Section 2058 specifies the requirements for approval of the simulcast wagering locations. These requirements include endorsements from the Division of Fairs and Expositions of the Department of Food and Agriculture, participation in the California Authority of Racing Fairs, an executed agreement between a simulcast operator and the racing association, and finally, plans outlining the proposed facility, its public accommodations, equipment, and security controls.

Section 2059 requires licensing for simulcast operators and specifies requirements for such licensing. Prospective

licensees must submit a financial statement outlining a capitalization of not less than \$1,500,000; post a \$500,000 surety bond with the Board to ensure payment of distributable amounts of parimutuel pools; pay a license fee of \$1,000 for a term of three years; and demonstrate experience in the conduct of simulcast wagering. No licenses will be granted to nonprofit organizations entitled to any state tax exemption or to any corporation in which the majority financial interest (over 50%) is held by a racing association licensed by the Board.

Section 2060 outlines the duties of licensed simulcast operators. The regulation specifies the type of broadcast system to be used, the audited reports and financial statements to be provided to the Board, and distribution of monies acquired as a result of wagering.

Finally, section 2061 regulates out-of-state and interstate wagering. An association intending to conduct wagering on an out-of-state race must file with the Board a copy of the agreement with the out-of-state association, copies of the written approvals required by Chapter 57 of Title 15 of the United States Code, and a statement setting forth the date and time it intends to commence accepting wagers on the out-of-state races. CHRB must also approve the simulcast methods being used by the out-of-state association.

A public hearing on these proposed regulatory actions was scheduled for April 24 at 9:30 a.m. at the Los Angeles Airport Hilton Hotel.

#### LEGISLATION:

*AB 310 (Floyd)* would authorize owners to enter thoroughbred horses in quarter horse races at a distance of 870 yards at quarter horse or mixed-breed races. AB 310 was referred to the Committee on Governmental Organization on February 9.

*AB 195 (Cortese)*, introduced January 6, would require any county fair, district agricultural association fair, or citrus fruit fair in the northern zone, or in the counties of Kern, San Luis Obispo, or Santa Barbara, which conducts satellite wagering to make a specified deduction from its total parimutuel wagers for distribution to the city or county where the meeting is located. If enacted, AB 195 will take effect immediately as an urgency statute. On February 18, the bill was referred to the Committee on Governmental Organization.

*AB 333 (Costa)* would amend section 19617 of the Business and Professions



Code. Currently, an association conducting a thoroughbred meeting is required at the end of that meeting to deposit 34% of the total amount handled with the official registering agency of California-bred thoroughbred horses. The agency is required to distribute these funds in a specified manner and may retain 5% of the funds for expenses. AB 333 would increase the expense deduction to 6%, and is presently pending in the Committee on Governmental Organization.

AB 488 (Hill), introduced February 4, would delete an existing January 1, 1989 termination date in two statutory provisions which define a "racing week."

SB 287 (Maddy), introduced February 4, would require a horsemen's organization to be incorporated under the laws of California in order to receive a distribution from horse racing parimutuel wagering pools.

AB 523 (Condit), introduced February 9, would allow beneficiaries of charity days conducted at licensed racing meets to make an accounting to CHRB within eighteen months after the date of receipt of the distribution. Existing law requires a beneficiary to account for the distribution within one year of its receipt.

SB 342 (Maddy) would provide that the employment of stable employees, as defined, engaged in the raising, feeding, and management of race horses by a trainer, as defined, is subject to the same standards governing wages, hours, and conditions of labor as those established by the Industrial Welfare Commission for employees in agricultural occupations engaged in the raising, feeding, and management of other livestock.

SB 532 (Keene) would redefine the phrase "quarter horse" to mean a horse that meets the requirements of and is registered by an organization approved by the association recognized by the CHRB as representing quarter horse owners and breeders in this state.

SB 358 (Keene) would delete the January 1, 1989 termination date in an existing provision which authorizes the CHRB to allocate racing weeks of four days for quarter horse racing in the northern zone upon a specified agreement to that allocation.

SB 361 (Maddy) would authorize the CHRB to allocate up to eighteen weeks of racing to an association for the purpose of conducting an invitational racing meeting primarily for appaloosas.

SB 520 (Dills) would delete existing provisions regarding license fees to be paid by certain associations conducting harness or quarter horse racing meetings,

and would instead generally require every association conducting such meetings to pay reduced license fees.

AB 805 (Condit) would authorize the use of electronic data processing equipment to operate a parimutuel system.

## LITIGATION:

In a recent decision, the California Supreme Court stated affirmatively that CHRB has no legislative authority to award monetary relief. In *Youst v. Longo*, No. L.A. 32114 (January 2, 1987), owner Harlan Youst attempted to recover punitive and compensatory damages in a tort action against harness driver Gerald Longo. During a race, Longo allegedly drove his horse into the path of Bat Champ, a trotter horse owned by Youst. Longo then whipped Bat Champ, causing Bat Champ to break his stride and finish sixth in the race. Longo's horse was later disqualified, moving Bat Champ to a fifth-place finish and \$5,000 purse. Youst sued on the theory that had Longo not caused Bat Champ to break his stride, he might have won the race for a purse of \$50,000. The trial court sustained Longo's demurrer for failure to state a claim. The appellate court affirmed, holding that Youst had failed to exhaust his administrative remedies by not first petitioning CHRB to award damages for civil conspiracy to interfere with a horse race.

The California Supreme Court also affirmed, but on different grounds. The court ruled that no tort liability exists for interference with prospective economic advantage in a sporting event because reasonable probability of the outcome cannot be established. The court also held that any award by CHRB of monetary relief would exceed the Board's legislative authority, as CHRB is vested only with the power to regulate horse racing.

## RECENT MEETINGS:

At CHRB's February 20 meeting, the Santa Barbara National Horse Show and Flower Show Fair facility presented an application for approval of simulcast wagering facilities. The Santa Barbara facility has been inspected by the staff, which recommended approval of the application. The required contract between Simulcast Enterprises, Inc. (a simulcast operator) and the Fair facility is still being negotiated; thus, CHRB approved the facility subject to approval of the final contract and a final inspection of the facility by the Board. The Santa Barbara facility in Santa Maria was also approved subject to the same conditions.

Also at the February 20 meeting, CHRB granted a license to Hollywood Park Operating Company to conduct a horse racing meeting at Los Alamitos Race Course from April 17 through July 29, 1987, and a license to conduct a meeting at Hollywood Park Race Track from April 22 through July 27, 1987. When asked why the latter meeting was no longer being conducted as the first portion of a split meeting (as had been done in previous years), Secretary Foote responded that Hollywood Park plans to form a subsidiary company to operate its late fall/winter meeting as a separate entity and thus a split meeting is not necessary. Mr. Foote stated that the new schedule would not unduly benefit Hollywood Park because in losing the split meeting they also lose the license fee discount inherent in a split meeting. The change would, he said, benefit the horsemen through larger purses, however.

Chris Bardis, representing Cal Expo Racing Association, requested a license to conduct a harness racing meeting at Cal Expo Racing Facility in Sacramento from May 1 to August 15, 1987. Approval of the dates would result in an overlap with the Fairplex harness meeting at Pomona. CHRB is concerned that an insufficient inventory of harness horses will result, despite contrary views expressed by the prospective operators and Western Standardbred Association. William "Wild Bill" Boyer, a member of Western Standardbred, argued that to grant the northern zone less than twelve weeks would make it impractical to include harness racing in the new simulcast wagering and would discourage investment of money in standardbred horses. He stated that any lack of horses is due to a lack of racing opportunities. Mr. Bardis said that if given the dates, he could supply enough horses by bringing them in from Canada if necessary.

Ralph Hines, representing Fairplex Racing, Inc., presented the contrary position. He opposed the Sacramento application because of a lack of horses and drivers, and stated that Pomona is not in a position to take competition from Sacramento. He argued that it is not in the best interests of racing to allow the overlap and requested that if Cal Expo is granted the dates, that Fairplex be allowed to vacate its dates already granted.

Chairperson Deats announced that no decision would be made until the two entities could reach an agreement. The Board deferred a decision on the application to the March meeting and appointed Commissioners Ferraro and



Deats to attempt to facilitate a negotiation between the two associations.

Commissioner Ferraro reported on the progress of the Medication Committee. In response to a proposal from Cliff Goodrich, Vice President and General Manager at Santa Anita, information will now be placed in the Daily Programs to advise the public as to those horses which are being treated as bleeders and those which are coming off the bleeder list. Commissioner Ferraro also reported that the Medication Committee is taking a stand to ensure the safety of horses and jockeys and to curb excess use of even permitted medications. The Committee, she said, plans to do everything it can to enforce the medication rules.

## FUTURE MEETINGS:

May 22 in Los Angeles.

June 19 in Los Angeles.

## 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 licensees 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.

## LITIGATION:

In *Yamaha Motor Corp., U.S.A. v. Superior Court*, 185 Cal. App. 3d 1232 (1986), the Second District Court of Appeal has held that a motorcycle dealership franchisee's failure to exhaust its administrative remedies against its franchisor before the NMVB precludes the franchisee from seeking judicial relief.

Van Nuys Cycle Inc. (Van Nuys)

was a motorcycle dealership franchised by Yamaha Motor Corp., U.S.A. (Yamaha). Yamaha began sales of a new motorscooter called the Riva, but established new dealerships for its distribution rather than selling it to Van Nuys. Yamaha maintained that because the Riva is a motorscooter, it is not within the terms of its motorcycle dealership agreement with Van Nuys. Van Nuys sued Yamaha, seeking damages for breach of the franchise agreement and an implied covenant of good faith and fair dealing, and for intentional interference with a prospective business advantage. The trial court overruled Yamaha's demurrer. The Second District Court of Appeals issued a peremptory writ of mandate ordering the lower court to vacate its order overruling the demurrer and to enter an order sustaining the demurrer. The court held that Yamaha's refusal to supply the new product to Van Nuys was a modification of the franchise agreement and that Van Nuys should have sought a determination of the issue by the NMVB.

In *Toyota of Visalia Inc. v. New Motor Vehicle Board*, 87 DAR 379 (Jan. 14, 1987), the Fifth District Court of Appeal has affirmed the trial court's ruling that new evidence in an administrative proceeding may be admissible to mitigate a Department of Motor Vehicles (DMV) penalty if the evidence was not reasonably available at the time of the original hearing.

In January 1980, the DMV accused Toyota of Visalia Inc. (Toyota) of false and misleading advertising in violation of Vehicle Code provisions. After an administrative hearing, the DMV found that the dealership was guilty of ten Code violations and ordered the dealership license suspended. Toyota petitioned to the NMVB. The Board ultimately reduced the penalty to a license suspension of thirty days with three years' probation. Toyota sought to augment the record before the Board with eleven new exhibits relevant to the penalty issue, but the Board refused to review the evidence.

The Fifth District affirmed the Board's ruling in part and reversed in part. The eleven proffered exhibits contained evidence of restitution to certain injured customers and evidence that the Toyota dealership agreement would be terminated if it were closed for more than five days. The court found that eight of the exhibits could not have been diligently produced at the original hearing and therefore should have been admitted by the Board.

In *Sonoma Subaru Inc. v. New Motor Vehicle Board of California*, 87 DAR 526 (Jan. 7, 1987), the Third District Court of Appeal held that an automobile franchisee's failure to timely protest the termination of its franchise license to the NMVB bars judicial relief. Subaru of Northern California and Subaru of America, Inc. (Subaru) had decided to terminate the Sonoma Subaru (Sonoma) dealership franchise after Sonoma had repeatedly failed to provide Subaru with a certified financial statement and proof that it was solvent. Under Vehicle Code section 3060, a franchisor may terminate its franchisee's dealership if the franchisee cannot demonstrate its solvency. Section 3060 also provides the franchisee with an automatic right to appeal the termination notice to the Board within ten days of receipt of the notice.

Sonoma failed to file a timely appeal although it had properly filed two earlier appeals with the Board. The Board refused to hear an untimely protest, and the trial court upheld the refusal due to Sonoma's failure to meet the ten-day requirement. The Third District Court of Appeal affirmed.

## 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.* The Office of Administrative Law (OAL) has disapproved the regulations submitted by the BOE in December 1986. (See CRLR Vol. 7, No. 1 (Winter 1987) p. 94.) According to the OAL, some regulations failed to satisfy the clarity, consistency, and necessity standards of Government Code section 11349. Other regulations did not comply with the incorporation