



INDEPENDENTS

BOARD OF CHIROPRACTIC EXAMINERS

Executive Director:
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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—five chiropractors and two public members.

MAJOR PROJECTS

Rulemaking Update. The following is a status update on BCE rulemaking proposals discussed in detail in previous issues of the *Reporter*:

• **Referral Service Regulations.** On December 15, BCE continued to discuss its proposed changes to section 317.1, Title 16 of the CCR, dealing with the regulation and registration of chiropractic referral services. [14:4 CRLR 185; 14:2&3 CRLR 200; 14:1 CRLR 156] Referral services offer a centralized phone number which patients can call for referrals to local chiropractors. According to BCE, the proposed amendments to section 317.1 contain requirements which would protect the public by enabling BCE to ensure that patients are referred only to licensed chiropractors who are not currently on probation with the Board; audit and, if necessary, take action against services which are in violation of any laws or regulations; ensure that referrals are fairly distributed among participating practitioners; and increase the referral service registration fee for the purpose of financing referral service monitoring.

Much of the discussion at the Board's December meeting focused on a proposed provision which would prohibit any one chiropractor from receiving more than 20% of the referrals from a referral service; the Board noted that the intent be-

hind this provision is to preclude services from having only one chiropractor in a given geographic area to which it could refer consumers. The Board took no action on the proposal, and postponed the matter until its January 19 meeting.

• **Preceptor Program Standards.** At its December 15 meeting, BCE continued to discuss its proposed adoption of section 313.1, Title 16 of the CCR, regarding preceptor programs, which are off-campus educational programs that allow chiropractic students to gain practical training and experience. The term "preceptor" refers to the participating chiropractor; the student is the "preceptee." The Board has attempted to adopt section 313.1 on several prior occasions. [14:4 CRLR 185; 13:4 CRLR 189-90; 13:2&3 CRLR 199]

Proposed section 313.1 contains specific regulations governing the operation of preceptor programs. For example, section 313.1 would require BCE to approve all preceptor programs, and provide that the program shall include office management as well as clinical training; it can last a maximum of twelve months with no more than 35 average weekly hours; monthly progress reports concerning the preceptee's performance are required; malpractice insurance must be included for the preceptee during the program; the preceptor must currently be a state-licensed chiropractor with at least five years' experience, and not have been subject to any disciplinary action under the Chiropractic Initiative Act or other regulation, and cannot have been convicted of a felony or misdemeanor related to the practice of chiropractic; a preceptor must provide direct supervision of the preceptee, and must identify him/her as a preceptee to patients; a patient's written consent must be secured before being treated by a preceptee; the preceptor must ensure that the preceptee practices in accordance with all applicable statutes and regulations, and must ensure the filing of monthly progress reports with the appropriate college; a preceptor may supervise only two preceptees at a time, and must have a permit for on-the-job training in X-ray equipment; a preceptee shall satisfactorily complete the program, may not represent him/herself as a chiropractor, and may not administer treatment without the appropriate supervision; and the preceptee must verify the procurement of the signed consent form, comply with all applicable laws, and re-

port to the college any termination, delay or, interruption in the program.

At its December meeting, the Board noted some possible confusion with proposed section 313.1(b)(3), which provides that a preceptor program shall have "an average work week of no more than 35 hours"; some Board members questioned whether the regulation should have a maximum number of hours which may be worked in a week, so that preceptors do not require a very high number of hours in some weeks and none in other weeks. However, the Board generally agreed that because preceptor programs are voluntary in nature, a preceptee who feels that he/she is being overworked can simply cease participating in the program; accordingly, the Board did not amend the proposed language.

Following discussion, BCE approved the proposed changes by consensus; at this writing, the rulemaking file awaits review and approval by the Office of Administrative Law (OAL).

• **Practical Exam Prerequisites.** BCE's proposed amendments to section 349, Title 16 of the CCR, to interpret section 1000-6(d) of the Business and Professions Code regarding prerequisites for taking the practical portion of the California chiropractic examination, would provide that, effective January 1, 1996, prior to being scheduled for the practical portion of the California Board examination, an applicant must show proof of either National Board status or successful completion of the entire written portion of the California licensure examination. The amendments would also clarify that the term "National Board status" means successful completion of Parts I, II, III, and physiotherapy on the national exam. [14:4 CRLR 186; 14:2&3 CRLR 200] According to BCE, requiring candidates to pass the national or state written examination before taking the California practical examination would allow the Board to establish the candidates' academic competence in ten areas of knowledge which are foundational to the practice of chiropractic before they appear before BCE's practical exam commissioners.

At its December meeting, BCE approved these amendments by consensus; at this writing, they await review and approval by OAL.

LEGISLATION

• **Future Legislation.** At its December 15 meeting, BCE discussed the possibility of pursuing legislation to clarify its licensure reciprocity policies. Currently, Business and Professions Code section 1000-9 allows BCE to issue a license to a licensee



of another state if that other state had the same general requirements as required in California at the time the license was issued, and if the other state similarly grants reciprocal registration to California licensees. Deputy Attorney General Joel Primes opined that a strict interpretation of section 1000-9 would preclude the Board from granting reciprocity to a licensee from a state with licensure, examination, and/or reciprocity laws different from those in California; however, the Board's current interpretation of that section grants reciprocity to chiropractors if they would meet the prior practice requirement were they applying for reciprocity in their state of licensure. Accordingly, the Board discussed the possibility of introducing legislation which would add a prior practice provision to its statutes, to statutorily allow BCE to grant reciprocity to chiropractors with a minimum number of years of practical clinical experience. The Board asked its legal counsel to review the proposal, and—at this writing—is expected to continue its discussion at its January meeting.

RECENT MEETINGS

At its October 20 meeting, BCE discussed the use by chiropractors of hyperbaric oxygen—oxygen under pressure or in a chamber which is used to promote the healing process for the body's tissues. The Board noted that hyperbaric chambers are normally found only in hospitals; however, manufacturers have now developed portable chambers which can be used in a chiropractor's office. BCE Chair Louis Newman, DC, questioned whether hyperbaric oxygen has a purpose in a chiropractic setting, and expressed doubt whether BCE should form a position until it receives a complaint regarding its use. The Board took no action on this matter.

At its December 15 meeting, BCE discussed a California State Automotive Association proposal which would limit or eliminate insurance payments for chiropractic treatment. The Board took no official action on this matter, but noted that individual Board members could respond to the proposal if they wished.

FUTURE MEETINGS

January 19 in San Diego.
February 23 in Sacramento.
March 30 in Los Angeles.
May 4 in Sacramento.
July 27 in Los Angeles.

CALIFORNIA HORSE RACING BOARD

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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 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 position, 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 Approves CHBPA/TOC Split. AB 991 (Tucker) (Chapter 62, Statutes of 1994) allows for separate owner and trainer organizations to represent thoroughbred horsemen. [14:2&3 CRLR 207-08] Accordingly, the California Horsemen's Benevolent and Protective Association (CHBPA), which formerly represented both

owners and trainers, will now represent only trainers, and the Thoroughbred Owners of California (TOC) will represent the owners. CHRB's main oversight responsibility regarding the split is the division of assets from CHBPA's reserve funds between CHBPA and TOC. According to AB 3287 (Tucker) (Chapter 1213, Statutes of 1994), CHRB is required, upon recognition by the Board of a successor horsemen's organization or organizations, to apportion specified assets for the benefit of the horsemen and the successor organizations. [14:4 CRLR 190-91]

Prior to the split between CHBPA and TOC, however, CHRB was concerned that the previous CHBPA Board was mishandling its funds and perhaps depleting the Association's reserve funds; among other things, CHRB was concerned that CHBPA's lobbying expenditures were excessive and perhaps inappropriate. This concern led to its November 1993 mandate prohibiting CHBPA from making any expenditures relative to political contributions or lobbying of any nature, until further ordered by CHRB or by a court. In December 1993, CHBPA filed a lawsuit challenging CHRB's authority to issue such a directive; in February 1994, Los Angeles County Superior Court Judge Robert H. O'Brien ruled that CHRB's imposition of any limit on CHBPA's legislative lobbying activities exceeds its statutory authority, and vacated CHRB's order. [14:4 CRLR 187, 192-93]

At CHRB's October 28 meeting, TOC representative Ed Friendly estimated that CHBPA's total assets would be between \$300,000 and \$500,000 as of the end of 1994; TOC proposed to leave CHBPA with assets worth \$182,000, and to move the remaining funds over to TOC. Following discussion at its November 18 meeting, CHRB approved the proposed allocation of funds.

Primary and Complementary Drug Testing Contracts. At its May 1994 meeting, CHRB staff recommended that the Board award its primary drug testing contract to Pennsylvania Equine Toxicology Laboratory; following discussion, the Board unanimously approved staff's recommendation. At its August 1994 meeting, however, the Board announced that staff had determined that Pennsylvania Equine Toxicology Laboratory is not able to comply with the Board's contract for primary drug testing. Accordingly, CHRB had released a new RFP, to which it received responses from Harris Laboratories in Arizona, and Truesdail Laboratories, its existing primary drug testing contractor located in California; Harris' bid was \$85,000 lower than Truesdail's bid. Following discussion, the Board