



2,000 claims; according to the Board, the fraud committed by Zaheri was so sophisticated that Mitsubishi is unable to quantify the total dollar amounts involved. Accordingly, the Board denied Zaheri's petition and protest, and awarded costs and reasonable attorneys' fees against Zaheri in favor of Mitsubishi.

NMVB Proposes Fee Increase. On December 9, NMVB published notice of its intent to amend section 553, Title 13 of the CCR, in order to raise its original and renewal licensing fees from \$300 to \$350; the action would also increase from \$0.45 to \$0.55 the amount paid per vehicle distributed by a manufacturer or distributor in California, and increase from \$300 to \$350 the minimum distribution fee to be paid by each manufacturer. According to the Board, the fees it currently collects are insufficient to fully fund the Board's activities and have resulted in the creation of a substantial deficit in the New Motor Vehicle Board Account in the State Transportation Fund; the Board also contends that the current fee assessment amount is unreasonably low in light of the amount of the deficit. At this writing, no public hearing is scheduled; the Board will receive public comments on the proposal until January 23.

Rulemaking Update. On October 21, the Office of Administrative Law (OAL) approved NMVB's amendments to section 585 and adoption of new section 593.1, Title 13 of the CCR, regarding the duties and procedures which the NMVB Executive Secretary must follow in accepting and filing protests; however, OAL disapproved the Board's proposed amendments to section 598, Title 13 of the CCR, on the basis that the changes did not satisfy the clarity standard of the Administrative Procedure Act. [14:4 CRLR 194; 14:2&3 CRLR 212; 14:1 CRLR 163] Specifically, OAL found that the proposed amendments are unclear in that they conflict with the Board's description of their effect; persons affected could interpret the text of the regulation to have more than one meaning; and the regulation uses language incorrectly. Accordingly, NMVB revised the language of the proposed changes to section 598 and resubmitted the rulemaking file to OAL; on December 12, OAL approved the changes.

LITIGATION

In *University Chrysler-Plymouth, Inc., v. Chrysler Corporation*, 28 Cal. App. 4th 386 (Aug. 19, 1994, as modified on Sept. 16, 1994), plaintiff University Chrysler-Plymouth (University) challenged, among other things, Chrysler's opening of a competing Chrysler-Plymouth dealership in the Kearny

Mesa area of San Diego. Among other things, the Fourth District Court of Appeal held that Business and Professions Code section 3050 gives NMVB the power to consider any matter concerning the activities or practices of any manufacturer; accordingly, the court held that University's failure to exhaust its administrative remedy before NMVB barred any proceeding in superior court. [14:4 CRLR 195] On December 15, the California Supreme Court denied University's petition for review; however, the court also directed that the Fourth District's decision not be published in the *Official Appellate Reports*.

FUTURE MEETINGS

To be announced.

OSTEOPATHIC MEDICAL BOARD OF CALIFORNIA

Executive Director:
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In 1922, California voters approved a constitutional initiative which created the Board of Osteopathic Examiners; 1991 legislation changed the Board's name to the Osteopathic Medical Board of California (OMBC). Today, pursuant to Business and Professions Code section 3600 *et seq.*, OMBC regulates entry into the osteopathic profession, examines and approves schools and colleges of osteopathic medicine, and enforces professional standards. The Board is empowered to adopt regulations to implement its enabling legislation; OMBC's regulations are codified in Division 16, Title 16 of the California Code of Regulations (CCR). The 1922 initiative, which provided for a five-member Board consisting of practicing doctors of osteopathy (DOs), 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.

In October, Governor Wilson appointed Ernestina Agresti, DO, an osteopathic physician from Roseville, to OMBC; Dr. Agresti's appointment leaves OMBC functioning with two vacancies—one public member position and one professional position.

MAJOR PROJECTS

OMBC's Budget Difficulties Continue. OMBC's fiscal crisis—which required it to shut down its enforcement program in 1994—has not abated. [14:4 CRLR 196; 14:2&3 CRLR 213] Although the tax and

registration fee increase authorized by AB 3732 (Takasugi) (Chapter 895, Statutes of 1994) will provide the Board with additional funds, the Board remains committed to recapturing reserve fund moneys misappropriated by the legislature. OMBC President Ronald Kaldor has proposed a course of action based on that taken by the Medical Board of California (MBC), which was recently the beneficiary of a court judgment requiring the restoration to MBC of \$2.6 million in reserve funds misappropriated by the legislature [14:2&3 CRLR 72-73]; OMBC hopes to have the \$500,000 in reserve funds taken from it by the legislature returned based upon MBC's judgment, as the Board is without the funds to pursue its own lawsuit. Additionally, OMBC has submitted a budget change proposal to the Department of Finance, seeking additional funds for the 1995-96 fiscal year, which begins on July 1.

Board Adopts Fee Increase, Other Regulatory Changes. Also on October 14, OMBC published notice of its intent to adopt several amendments to its regulations in Title 16 of the CCR, including the following:

- **Appendix of forms.** OMBC's existing regulations include an appendix of forms for use in communication with the Board on various matters; however, the forms are no longer in use and are outdated. OMBC's proposed amendments to sections 1609, 1610(a), 1646(a), 1651, 1669(a), 1673(b) and (c), 1678(a), and 1681(a) would delete the references to such forms and the appendix containing the forms themselves.

- **Biennial tax and registration fee.** Business and Professions Code section 2456.1 was recently amended to require OMBC to have a biennial tax and registration fee; OMBC's proposed amendments to sections 1630, 1635(a), 1636, and 1647 would delete all references to an annual tax and replace them with references to a biennial tax and registration system.

- **CME deficiency as basis for non-renewal of license.** Existing regulations require 150 hours of continuing medical education (CME) over a three-year period (or a proration thereof) for the purpose of annual license renewal; a physician may make up any CME deficiency in the year following license renewal. OMBC's proposed amendments to section 1641 would eliminate this make-up period and provide that a license will not be renewed if there is a CME deficiency at the time of biennial renewal.

- **New fees for forfeited certificates.** Section 1650 relates to the restoration of a forfeited certificate and refers to the appendix and required forms as well as the annual fee; the Board's proposed changes



to section 1650 would delete references to the appendix of forms and replace references to the annual tax and registration fee with references to the new biennial fee. The proposed amendment would also clarify the required restoration fee by establishing the fact that the fee includes not only the new biennial tax and registration fee, but also a new delinquent tax and registration fee set forth in proposed amendments to section 1690(f) and (g) (*see below*).

• **Professional corporations.** Recently-amended law relating to professional corporations authorizes a chiropractor to be a limited corporate shareholder, director, officer, or employee of a medical corporation, under certain circumstances. OMBC's proposed changes to section 1670 would reflect the inclusion of a chiropractic licensee to these categories.

• **Tax and registration fee increased.** Recent amendments to Business and Professions Code sections 2455 and 2456.1 authorize an increase in the tax and registration fee which OMBC may charge its licensees. [14:4 CRLR 196] OMBC's proposed amendments to sections 1690(f), (g), and (h) would increase the annual tax and registration fee of \$200 to a biennial tax and registration fee of \$600; the proposed amendments would also fix the delinquency tax and registration fee at \$150.

On December 3, OMBC held a public hearing on all of these proposed changes; following the hearing, the Board adopted the amendments. At this writing, the proposed changes are undergoing review by the Office of Administrative Law (OAL).

Infection Control Regulations Adopted. On October 14, OMBC published notice of its intent to adopt new section 1633, Title 16 of the CCR, which sets forth minimum standards for infection control through citation to several documents promulgated by the U.S. Centers for Disease Control; the standards are designed to minimize the transmission of bloodborne pathogens such as HIV and hepatitis in the health care setting. Following a December 3 hearing, OMBC adopted the proposed changes in new section 1633, Title 16 of the CCR.

If the changes are approved by OAL, this action would bring OMBC into compliance with SB 1070 (Chapter 1180, Statutes of 1991), which requires the Board to adopt infection control guidelines through reference to those promulgated by the California Department of Health Services. Since Business and Professions Code section 2221.1 makes it unprofessional conduct to fail to follow infection control guidelines, OMBC plans to distribute these standards to licensees pending OAL approval. At this writing, the action awaits approval by OAL.

RECENT MEETINGS

At its December 3 meeting, OMBC heard a presentation by a representative from Occupational Health Services regarding its rehabilitation and diversion program for physicians who are impaired due to substance abuse; the representative discussed the structure of the program, its success rate, and its cost per participant. The Board noted the program's value, but was concerned about the cost of diversion. However, if OMBC joins the program, it would be reimbursed for any expenses by participating licensees.

Also at its December 3 meeting, OMBC discussed the necessity of taking a position on the growing use of ultrasound video for entertainment purposes. The U.S. Food and Drug Administration has issued a statement on its position that the nonmedical use of ultrasound for the purposes of making a home video of an unborn fetus constitutes the improper use of medical equipment. OMBC declined to take a position.

Also on December 3, Deputy Attorney General Alan Mangels discussed the Department of Insurance's (DOI) new Fraud Division Task Force. DOI's regulations require all insurance companies to have special investigative units for the investigation of insurance fraud; these units will report directly to newly-created district attorney units specializing in the prosecution of insurance fraud. [14:2&3 CRLR 133; 14:1 CRLR 103-04] OMBC hopes that this new system will obviate the need for its own investigation of insurance and workers' compensation fraud by licensees and has already asked that several of its cases be assumed by the appropriate district attorney's office.

FUTURE MEETINGS

March 4 in Anaheim.

PUBLIC UTILITIES COMMISSION

Executive Director:

Neal J. Shulman

President: Daniel Wm. Fessler

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The California Public Utilities Commission (PUC) was created in 1911 to regulate privately-owned utilities and ensure reasonable rates and service for the public. Today, under the Public Utilities Act of 1951, Public Utilities Code section 201 *et seq.*, the PUC regulates the service and rates of more than 43,000 privately-

owned utilities and transportation companies. These include gas, electric, local and long distance telephone, radio-telephone, water, steam heat utilities and sewer companies; railroads, buses, trucks, and vessels transporting freight or passengers; and wharfingers, carloaders, and pipeline operators. The Commission does not regulate city- or district-owned utilities or mutual water companies.

It is the duty of the Commission to see that the public receives adequate service at rates which are fair and reasonable, both to customers and the utilities. Overseeing this effort are five commissioners appointed by the Governor with Senate approval. The commissioners serve staggered six-year terms. The PUC's regulations are codified in Chapter 1, Title 20 of the California Code of Regulations (CCR).

The PUC consists of several organizational units with specialized roles and responsibilities. A few of the central divisions are: the Advisory and Compliance Division, which implements the Commission's decisions, monitors compliance with the Commission's orders, and advises the PUC on utility matters; the Division of Ratepayer Advocates (DRA), charged with representing the long-term interests of all utility ratepayers; and the Division of Strategic Planning, which examines changes in the regulatory environment and helps the Commission plan future policy. In February 1989, the Commission created a new unified Safety Division. This division consolidated all of the safety functions previously handled in other divisions and put them under one umbrella. The Safety Division is concerned with the safety of the utilities, railway transports, and intrastate railway systems.

Members of the Commission include Daniel Wm. Fessler, President, Norman D. Shumway, P. Gregory Conlon, and Jessie J. Knight, Jr. The term of Patricia Eckert expired on December 31; thus, at this writing, the Commission is functioning with one vacancy.

MAJOR PROJECTS

Commission's Proposed Restructuring of California Electric Service Delivery Generates Sparks. At this writing, the PUC continues to consider various proposals to substantially restructure the delivery of electricity. [14:4 CRLR 197; 14:2&3 CRLR 215; 14:1 CRLR 170]

Traditionally, electric utilities have been considered "natural monopolies" not amenable to competition. Such inevitable monopoly occurs where a high fixed-cost structure is needed to provide service, as with utility lines and rights of way which must be provided "up front" to provide service. Where a single fixed-plant struc-