



REGULATORY AGENCY ACTION

standing of the word "harm" includes habitat modification that results in actual injury or death to members of an endangered or threatened species; (2) ESA's broad purpose in providing comprehensive protection for endangered and threatened species supports the Secretary's decision; and (3) a 1982 amendment to 16 U.S.C. sec-

tion 1539(a)(1)(B) suggests that Congress understood ESA section 9 to prohibit indirect as well as deliberate takings.

■ FUTURE MEETINGS

January 9-10 in Sacramento.
February 5-6 in Sacramento.
March 4-6 in Sacramento.

April 2 in Sacramento.
May 6-8 in Sacramento.
June 4 in Sacramento.
July 10 in Sacramento.
August 7 in Santa Cruz.



INDEPENDENTS

BOARD OF CHIROPRACTIC EXAMINERS

Executive Director:
Vivian R. Davis
(916) 227-2790

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

Animal Chiropractic Therapy. On June 17, BCE officials met for a third time with representatives of the Veterinary Medical Board (VMB); the boards are attempting to establish legal protocols enabling chiropractors and veterinarians to work in concert and be held accountable for practicing alternative medicine on animals, while also making access to alternative practice safe and easy for the consumer, and to establish protocols for dealing with people not licensed by either board who are practicing chiropractic on animals. At the June meeting, board officials discussed draft regulatory language which would set forth the conditions under which animal chiropractic may be performed; the draft language under consideration would permit animal chiropractic to be performed by a licensed veterinarian or by a licensed chiropractor who is working under the supervision of a veterinarian (*see* agency report on VMB for related

discussion). [15:2&3 CRLR 174; 15:1 CRLR 97; 14:4 CRLR 104] At this writing, neither board has published notice of the proposed regulatory change in the *California Regulatory Notice Register*.

BCE Considers New Rulemaking Proposals. At its August 31 meeting, BCE considered two draft proposals for regulatory changes. First, BCE agreed to pursue amendments to section 359, Title 16 of the CCR, which currently states that any person making application for reinstatement or restoration of a license which has been revoked or suspended may be required, as a part of the relief granted, to complete an approved course of continuing education, or to complete such study or training as BCE may require. The Board's draft changes would provide that any person making application for reinstatement of a license forfeited for the failure to renew the license in a timely manner, for a period of five calendar years or more, shall be required to complete a training program and/or continuing education hours as designated by BCE or its representative; this requirement may be waived for individuals who are able to provide proof of continuous current and valid licensure, without disciplinary action, in another state.

BCE also agreed to pursue the adoption of new section 311.5, regarding the advertising of a specialty, subspecialty, or certification. Among other things, the draft language would provide that if a chiropractor advertises that he/she specializes or is certified by a specialty board in a specialty or subspecialty area of chiropractic, the specialty board shall be approved by BCE and shall comply with specified requirements. [15:2&3 CRLR 175]

At this writing, BCE has not published notice of its intent to pursue either of these proposals in the *California Regulatory Notice Register*.

Reciprocity Requirements. On June 16, BCE published notice of its intent to amend section 323, Title 16 of the CCR, to require license reciprocity candidates to

show documentation of five years of chiropractic experience. [15:2&3 CRLR 174; 15:1 CRLR 158] On August 3, BCE held a public hearing on the proposed change; on October 12, the Board adopted the amendment, which awaits review and approval by the Office of Administrative Law (OAL).

Unprofessional Conduct. On June 16, BCE published notice of its intent to amend section 317, Title 16 of the CCR. Among other things, section 317 currently provides that, when a licensee has been convicted of any offense involving moral turpitude, dishonesty, or corruption, BCE may order the license to be suspended or revoked, or may decline to issue a license when the time for appeal has elapsed, or when the judgment of conviction has been affirmed on appeal. BCE's proposed amendment would provide that under such circumstances the Board may order the license to be suspended or revoked, or may decline to issue a license upon the entering of a conviction or judgment in a criminal matter. [15:2&3 CRLR 175] On August 3, BCE held a public hearing on the proposed change; on October 12, the Board adopted the amendment, which awaits review and approval by OAL.

Conduct on Licensee Premises. On June 16, BCE published notice of its intent to amend section 316, Title 16 of the CCR, regarding responsibility for conduct on the premises of a licensee. Specifically, BCE's changes would provide that a chiropractor's commission of any act of sexual abuse, sexual misconduct, or sexual relations with a patient, client, customer, or employee is unprofessional conduct which is substantially related to the qualifications, functions, or duties of a chiropractic license. The changes would also provide that this provision does not apply to sexual contact between a licensed chiropractor and his/her spouse or person in an equivalent domestic relationship when that chiropractor provides professional treatment. [15:2&3 CRLR 175] On



August 3, BCE held a public hearing on the proposed changes; on October 12, the Board adopted the amendments, which await review and approval by OAL.

Cost Recovery. On June 16, BCE published notice of its intent to adopt new section 317.5, Title 16 of the CCR, which would—among other things—provide that in any order in resolution of a disciplinary proceeding before BCE, the Board may request the administrative law judge to direct a licensee found to have violated the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. [15:2&3 CRLR 175] On August 3, BCE held a public hearing on the proposed changes; on October 12, the Board adopted the amendments, which await review and approval by OAL.

Continuing Education Regulations. On June 16, BCE published notice of its intent to amend sections 356, 357, and 358, Title 16 of the CCR, regarding continuing education (CE). Specifically, BCE's proposed changes would increase the number of CE hours required annually and establish specific hour requirements for three categories of seminar or course subjects; require each approved CE sponsor to have a policy requiring disclosure of the existence of any significant financial or other relationship a faculty member or the sponsor has with the manufacturer(s) of any commercial product(s) discussed in an educational presentation; and exempt persons enrolled in specified chiropractic residency programs from the Board's CE requirement. [15:2&3 CRLR 175] On August 3, BCE held a public hearing on the proposed changes; on October 12, the Board adopted the amendments, which await review and approval by OAL.

Referral Service Regulations. On June 16, BCE published a new notice of its intent to amend section 317.1, Title 16 of the CCR, dealing with the regulation and registration of chiropractic referral services; since mid-1994, BCE has been struggling with the language of these proposed amendments. Referral services offer a centralized phone number which patients can call for referrals to local chiropractors. [15:2&3 CRLR 175-76; 15:1 CRLR 157; 14:4 CRLR 185]

Part of BCE's difficulty in developing this language stems from the need to ensure that section 317.1 does not conflict with Business and Professions Code section 650.3, which provides that it is not 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 if all of the following conditions are met:

- patient referrals by the service are the result of patient-initiated responses to service advertising;

- the service advertises, if at all, in conformity with section 651, and the service does not employ a solicitor;

- the service does not impose a fee on the member chiropractors that is dependent upon the number of referrals or amount of professional fees paid by the patient to the chiropractor;

- participating chiropractors charge no more than their usual and customary fees to any patient referred;

- the service registers with BCE, providing its name and address;

- the service files with BCE a copy of the standard form contract that regulates its relationship with member chiropractors, which contract shall be confidential and not open to public inspection; and

- if more than 50% of its referrals are made to one individual, association, partnership, corporation, or group of three or more chiropractors, the service discloses that fact in all public communications, including but not limited to communication by means of television, radio, motion picture, newspaper, book, or list or directory of healing arts practitioners.

Among other things, the Board's proposed changes to section 317.1 would provide that generally, no more than 20% of the calls received by a referral service may be referred to any one participating doctor per month, although it is understood that in a particular month there may be some exceptions to this requirement; each participating chiropractor shall have a current license in good standing to practice in California; advertisements for a referral service must be listed in a phone directory for each area in which participating chiropractors practice; each licensee is subject to administrative action for failure of the referral service to comply with California law; each individual component group or society which is part of a larger organization must register separately as a referral service; the referral service may not be located in a chiropractor's office or residence; the service telephone number must give access to the public during at least eight hours of the business day; each advertisement for a referral service must disclose that the service is paid for by participating chiropractors; and individual chiropractic offices may not be listed on referral service advertisements. On August 3, BCE held a public hearing on the proposed changes; on October 12, the Board adopted the amendments, which await review and approval by OAL.

Rulemaking Update. The following is a status update on BCE rulemaking pro-

posals discussed in detail in previous issues of the *Reporter*:

- **Preceptor Program Standards.** At its December 1994 meeting, BCE adopted new section 313.1, Title 16 of the CCR, regarding preceptor programs—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. [15:2&3 CRLR 176; 15:1 CRLR 157; 14:4 CRLR 185]

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

On August 25, however, OAL disapproved the Board's adoption of section 313.1, on the basis that the rulemaking proposal failed to comply with the clarity and necessity requirements of the Administrative Procedure Act (APA), and that the Board failed to comply with some of the APA's procedural requirements. Specifically, OAL found that the initial statement of reasons and other documents in the



rulemaking file did not provide the rationale or the factual basis for specific provisions of the proposed section; OAL also found that the section is unclear in a number of ways, and that it uses confusing, inconsistent, ambiguous, and undefined terms. Finally, OAL found that the rulemaking file did not contain evidence showing that BCE formally adopted the regulation; did not contain good cause for an early effective date; contained incorrect citations to the CCR; failed to mention or explain the post-hearing modifications to the regulation; and failed to mention a 15-day public comment period on post-hearing modifications to the regulations.

At this writing, no further action on this proposed action has been taken by BCE.

• **Practical Exam Prerequisites.** On August 14, OAL approved BCE's amendments to section 349, Title 16 of the CCR, which interpret section 1000-6(d) of the Business and Professions Code regarding prerequisites for taking the practical portion of the California chiropractic examination. The amendments 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 also clarify that the term "National Board status" means successful completion of Parts I, II, III, and physiotherapy on the national exam. [15:2&3 CRLR 176; 15:1 CRLR 157; 14:4 CRLR 186] According to BCE, requiring candidates to pass the national or state written examination before taking the California practical examination will 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.

■ LEGISLATION

SB 682 (Peace). Existing law requires the Medical Board of California, the State Bar, and BCE to each designate employees to investigate and report to the Bureau of Fraudulent Claims of the Department of Insurance any possible fraudulent activities relating to motor vehicle or disability insurance by licensees of the boards or the Bar. As introduced February 22, this bill additionally requires those entities to investigate and report any possible fraudulent activities relating to workers' compensation. This bill was signed by the Governor on July 22 (Chapter 167, Statutes of 1995).

ACR 31 (Gallegos), as amended May 8, acknowledges the significant contributions made by the chiropractic profession to the health and welfare of Californians, and commemorates 1995 as the centennial anniversary of the founding of the chiropractic profession. This measure was enrolled on May 25 (Chapter 32, Resolutions of 1995).

■ RECENT MEETINGS

At the Board's July 27 meeting, BCE Chair Lloyd Boland, DC, introduced new Board member Stephen Foreman, DC; Dr. Boland also announced that Raymond Ursillo, DC, a former BCE member, has joined the Board's staff as a consultant.

Also at its July 27 meeting, BCE discussed the possibility of requiring licensees to have malpractice insurance. Following discussion, the Board generally noted that while malpractice insurance might be important for licensees to have, addressing the issue is not an immediate necessity for the Board.

At BCE's October 12 meeting, Executive Director Vivian Davis announced her resignation from the Board, effective December 31.

■ FUTURE MEETINGS

January 18 in Los Angeles.
February 29 in Sacramento.
April 11 in San Diego.
June 6 in Sacramento.

CALIFORNIA HORSE RACING BOARD

Executive Secretary:

Roy Wood
(916) 263-6000
Toll-Free Hotline:
800-805-7223

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 pub-

lic 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

Protests. On June 9, CHRB published notice of its intent to amend section 1754, Title 4 of the CCR, which explains its guidelines for filing protests; the Board's amendments specify when the time requirement starts and what procedures are followed when a protest is filed with the Board's Executive Secretary. The Board held a public hearing on the changes on July 27; following the hearing, CHRB adopted the changes, which were approved by the Office of Administrative Law (OAL) on September 18.

Grounds for Protests. On June 9, CHRB published notice of its intent to amend section 1755, Title 4 of the CCR, which lists the grounds for protests. The amendments specify that protests must be made to the stewards, and provides that a driver who is ineligible to participate in a race is grounds for a protest. The Board held a public hearing on the changes on July 27; following the hearing, CHRB adopted the changes, which were approved by OAL on September 18.

Appeals. On June 9, CHRB published notice of its intent to amend section 1761, Title 4 of the CCR, which permits an appeal from every decision of the stewards and defines the process for filing the appeal. CHRB's amendments would prohibit appeals on decisions to disqualify a horse for riding or driving infractions, and include the criteria that must be met for filing an appeal. The Board held a public hearing on the changes on July 27; following the hearing, CHRB adopted the