



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. [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.

On September 8, BCE held a public hearing on the proposed changes to section 349; at this writing, the amendments await adoption by BCE and review and approval by OAL.

■ RECENT MEETINGS

At its July 7 meeting, BCE discussed proposed legislation which would enable it to increase its licensure, corporation, satellite clinic, and examination fees; the Board is currently seeking a legislator willing to introduce such a proposal. BCE also discussed its authority to raise fees. BCE's current fee limitations are set in section 5 of the Chiropractic Initiative Act; altering the language of the Act generally requires approval of a ballot measure by the electorate. However, Executive Director Vivian Davis suggested that section 12.5 of the Chiropractic Initiative Act might authorize the legislature to increase BCE's fees without a ballot initiative; Deputy Attorney General Joel Primes, who agreed with Davis, was asked to research this matter. In the interim, BCE directed staff to draft legislation which would increase fees; among other things, this increase would be used to finance the addition of a third licensing exam each year. [14:2&3 CRLR 200]

Following up on this issue at its September 8 meeting, BCE discussed the extent of its possible fee increases; the Board considered an increase from \$100 to \$300 for licensure fees and an increase from \$150 to \$350 for renewal fees. BCE also considered imposing a fee for retaking exams, which is currently offered for free, at half the licensure fee. Currently, the Board's fees do not cover its cost of administering exams, and the addition of a third exam would require an additional \$39,000 in revenues. BCE is expected to address this issue again at a future meeting.

At its July 7 meeting, the Board discussed concerns about chiropractors' identification of child abuse; BCE noted that New York gives courses to chiropractors concerning the identification of child abuse, and reviewed information provided by the Chair of the New York Chiropractic College. Board member Louis Newman, DC, commented that the Board should pay closer attention to child abuse; the Board also noted that chiropractors, like medical doctors and other professionals, are in a position to both recognize the problem and intervene on the child's behalf. No decisive action was taken.

■ FUTURE MEETINGS

October 20 in Los Angeles.

December 15 in Sacramento.

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

CHBPA Complies With CHRB Directives on Bylaws. Pursuant to SB 118 (Maddy) (Chapter 575, Statutes of 1993), CHRB is required to approve the bylaws of all horsemen's associations, as well as any changes to those bylaws. Over the past year, the Board's Bylaws Committee has been reviewing the bylaws of the existing thoroughbred horsemen's organization, the California Horsemen's Benevolent and Protective Association (CHBPA). The Committee determined that CHBPA's bylaws were inequitable in numerous respects, and suggested that the Association make significant changes in its bylaws and hold an election for an entirely new board of directors. Initially, CHBPA balked at CHRB's suggestions, but the Board unanimously reaffirmed its directives at its January 1994 meeting. Thereafter, CHBPA decided to accede to all of CHRB's wishes, including the election of a new board of directors. [14:2&3 CRLR 201; 14:1 CRLR 157-58; 13:4 CRLR 197]

At CHRB's May 20 meeting, CHRB staff member John Reagan and Commissioner Robert Tourtelot reported that CHBPA's bylaws had been amended to comply with every suggestion made by CHRB. CHBPA representative Bob McAnally reported that CHBPA would have an election completed by June 22; the new board will be composed of twelve owners and six trainers; and the qualification criteria for owners seeking membership on the board are being enforced. CHRB Executive Secretary Roy Wood indicated that a member of the Board staff would be present to observe the counting of the ballots on June 21 and 22. In light of CHBPA's actions, CHRB unanimously approved CHBPA's amended bylaws, and CHRB Chair Ralph Scurfield announced that the Board need take no further action on this item.

CHRB Continues to Review CHBPA's Finances. At its October and November 1993 meetings, CHRB discussed the CHBPA board of directors' October 1993 authorization of the expenditure of approximately \$400,000 for political activities at the State Capitol during the next



14-month period; the CHBPA board authorized the funds for purposes of seeking repeal of SB 118 (Maddy) and other legislation which it deems harmful to thoroughbred horsemen. Certain "dissident" CHBPA members had protested the planned lobbying expenditure to the CHBPA board and to CHRB, contending that they do not share the political philosophies of the current CHBPA board and thus object to the use of CHBPA funds for political purposes with which they disagree. Those members requested that CHRB limit CHBPA's political expenditures to \$50,000 annually and restrict it to hiring only one lobbyist to represent CHBPA on issues that are strictly related to providing services to thoroughbred horsemen. At its November 18, 1993 meeting, CHRB ordered CHBPA to cease any further expenditures relative to political contributions or lobbying of any nature, until further ordered by CHRB or by a court. [14:1 CRLR 158]

In December 1993, CHBPA filed a lawsuit challenging CHRB's November 18 order (*see* LITIGATION); following a tentative decision in favor of CHBPA, the Board modified its November 18 order by restricting the Association to spending no more than 5% of its annual operating budget on legislative advocacy. On February 16, 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 orders.

After the court order, CHRB continued its investigation into CHBPA's books. Following its April 28 meeting at which a CHBPA board member disclosed that the Association had voted to pay several individuals for legislative lobbying activities, the Board requested production of a number of documents from CHBPA. The Association was unable to produce the requested documents at CHRB's April 28 meeting, but promised to give them to Board staff by CHRB's May 20 meeting. [14:2&3 CRLR 201-02, 209-10]

At CHRB's May 20 meeting, the Board noted that it had received some of the requested documentation from CHBPA. For example, the Board discussed the summary of all CHBPA expenses for the period of January 1, 1994 through March 31, 1994, which had been provided to staff approximately ten days prior to the May meeting. Commissioner James Watson questioned why the insurance line item in CHBPA's budget had increased from an average of \$50,000 per year to \$150,000 for the current year; CHBPA attorney Robert Forgnone responded that the item

covers liability insurance for CHBPA's officers and directors, and that the Association's rating had changed, moving it into a higher premium rate. Upon further questioning, Forgnone acknowledged that the Association had been involved in litigation which had resulted in substantial outlays of funds, and that its previous carrier declined to renew its policy.

Commissioner Watson criticized the significant increase in CHBPA's budget allocation for "extraordinary items," unbudgeted expenses that are spent at the direction of management; Watson opined that the Association was recklessly spending money that belongs to the horsemen. Commissioner Stefan Manolakas concurred with Watson's concerns, and stated that the Board should try to ensure that the current CHBPA board does not deplete the Association's current reserve fund prior to the election of the new board in June (*see above*).

At CHRB's July 28 meeting, newly-elected CHBPA President Ed Friendly reported that CHBPA's new board was reviewing the financial statements of the previous board; according to Friendly, during the last eighteen months of that board's tenure, its expenses exceeded its revenues by \$1.1 million, and most of the money went to lobbying, legal fees, and other items. Friendly also reported that, based on a financial statement prepared by the accounting firm of Ernst and Young, the backstretch employees' assigned benefit plan was underfunded by \$2.8 million as of January 1, 1993.

At CHRB's August 26 meeting, Friendly reported that the CHBPA had decided to freeze the pension fund as of December 31, 1994, so that there will be no new members of the fund and those who were vested would not increase their vesting; Friendly said that the plan will be unfrozen when the deficit has been eliminated, which Ernst and Young predicts will happen in four to six years. Several Commissioners commented that the Board should continue to investigate the actions of the previous CHBPA Board to determine if any of its actions warrant criminal prosecution or civil redress.

Primary and Complementary Drug Testing Contracts. At its May 20 meeting, CHRB staff reported that it had sent out approximately 90 requests for proposals (RFP) to laboratories throughout the country to bid on its primary and complementary drug testing contracts; in response, the Board received five bids for the primary contract and three for the complementary contract. After reviewing the bids for the primary contract, staff recommended that the Board award the contract

to Pennsylvania Equine Toxicology Laboratory; following discussion, the Board unanimously approved staff's recommendation.

Regarding the complementary drug testing contract, staff reported at the May meeting that it had disqualified two of the three bids received on the basis that they were nonresponsive to the RFP; the remaining bidder is Iowa State University, CHRB's current complementary drug testing contractor. [13:2&3 CRLR 206] However, staff recommended that the Board not take any action at that time, to provide staff with additional time to review the bid; the Board postponed action on the complementary drug testing contract until its August meeting.

At the Board's August 26 meeting, 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 awarded the contract to Harris Laboratories. Later on at the same meeting, certain Board members expressed discomfort about awarding the contract to an out-of-state laboratory, and discussed the possibility of changing its RFP method to provide preference points to California-based bidders. After some discussion, the Board reversed its earlier decision to award the primary drug testing contract to Harris and instead voted to award it to Truesdail. Still later at the same meeting, Deputy Attorney General Martin Milas advised the Board to reconsider its actions in light of applicable state contracting law; the Board subsequently took the matter back under submission, and is expected to revisit this matter at its September meeting.

Also at its August meeting, the Board awarded the complementary drug testing contract to Iowa State University.

"Quick Official." At its January 28 meeting, the Board approved the "Quick Official" procedure, which enables stewards to declare a race official almost immediately after the race has been run; any potential objections by jockeys, owners, or trainers must be lodged immediately via two-way radio or telephone. To implement the "Quick Official" procedure, the Board unanimously agreed to suspend, from February 2 until July 27, that part of section 1704, Title 4 of the CCR, which requires jockeys to be weighed before a



race may be declared official, and directed that the Quick Official process be implemented at racetracks under the supervision of the stewards; racing associations are to present their Quick Official plans to the stewards and CHRB staff before starting the program. [14:2&3 CRLR 203]

On May 27, CHRB published notice of its intent to amend section 1704, Title 4 of the CCR; the amendments would permanently eliminate the requirement that jockeys weigh in prior to the official sign being posted. On July 28, CHRB held a public hearing on the proposed change; following the hearing, the Board adopted the amendment, which was approved by the Office of Administrative Law (OAL) on September 1.

Prohibited Drug Substances. On July 8, CHRB published notice of its intent to adopt new section 1843.1, Title 4 of the CCR, which would specify the Board's definition of the term "prohibited drug substance" as any drug substance, medication, or chemical foreign to a horse, whether natural or synthetic, or a metabolite or analog thereof, whose use is not expressly authorized in CHRB's regulations. Section 1843.1 would also clarify that an authorized medication, found in a test sample in a level that exceeds the prescribed limits as authorized by the Board's regulations, is similarly prohibited. On August 26, CHRB held a public hearing on the proposed new section; following the hearing, the Board adopted section 1843.1, which awaits review and approval by OAL.

Also on July 8, CHRB published notice of its intent to adopt new section 1843.2, Title 4 of the CCR, which would categorize prohibited substances into seven classifications, ranging from drug substances with high abuse potential to therapeutic medications. On August 26, CHRB held a public hearing on the proposed new section; following the hearing, the Board adopted section 1843.2, which awaits review and approval by OAL.

Also on July 8, CHRB published notice of its intent to adopt new section 1843.3, Title 4 of the CCR, which would specify the appropriate disciplinary action for the finding of a prohibited drug substance(s) in a test sample taken from a horse participating in a race. On August 26, CHRB held a public hearing on the proposed new section; during the hearing, several participants expressed concern about various parts of proposed section 1843.3, such as the extent to which mitigating circumstances should be considered. Following discussion, CHRB referred the matter back to its Medication Committee for further review.

Also on July 8, CHRB published notice of its intent to amend section 1859, Title 4 of the CCR, which identifies prohibited drugs as those which fall into the specific categories of stimulants, depressants, local anesthetics, and narcotics. The Board's proposed amendment would revise section 1859's definition of the term "prohibited drug substances" to correspond with the definition in proposed new section 1843.1 (*see above*). The proposed amendment would also delete the term "saliva" from the text as an example of a post-race test sample taken from a horse. On August 26, CHRB held a public hearing on the proposed amendments; following the hearing, the Board adopted the changes, which await review and approval by OAL.

On July 8, CHRB published notice of its intent to amend section 1859.25, Title 4 of the CCR, which specifies the procedure to be used by an owner or trainer to request the testing of the split urine sample. The Board's proposed changes would clarify the identity of the test samples, by specifying which sample is the official test sample and which sample is the split sample; specify that all samples taken become and shall remain CHRB's property; define the role of the Board's Equine Medical Director in the notification process once a sample tests positive; clarify the documents needed to initiate the testing request; and specify the responsibilities of the CHRB Executive Secretary to notify the Board of results of a split sample test. [13:2&3 CRLR 200-01; 12:4 CRLR 219-20] On August 26, CHRB held a public hearing on the proposed changes; following the hearing, the Board adopted the amendments, which await review and approval by OAL.

On July 8, CHRB published notice of its intent to amend section 1859.5, Title 4 of the CCR, to revise the definition of the term "prohibited drug substance" to coincide with the definition contained in proposed section 1843.1 (*see above*). The proposed amendment would also specify that disqualification shall occur for prohibited drug substances found in a test sample that have been determined to be in Classes I-V, as established in proposed section 1843.2 (*see above*), unless the split sample fails to confirm the presence of the prohibited drug substance. On August 26, CHRB held a public hearing on the proposed changes; following the hearing, the Board adopted the amendments, which await review and approval by OAL.

On July 8, CHRB published notice of its intent to amend section 1887, Title 4 of the CCR, to revise the definition of the term "prohibited drug substance" to coin-

cide with the definition contained in proposed section 1843.1 (*see above*). The proposed amendment would also delete the term "saliva" from the text as an example of a post-race test sample taken from a horse. On August 26, CHRB held a public hearing on the proposed amendments; following the hearing, the Board adopted the changes, which await review and approval by OAL.

Wagering Regulations. On July 8, CHRB published notice of its intent to amend section 1971, Title 4 of the CCR, which prohibits jockeys from making or having wagers made on their behalf when they participate in a race except through the owner or trainer of the horse they ride, and requires owners and trainers to maintain records of wagers they make on behalf of jockeys. CHRB's proposed amendment would prohibit drivers, in addition to jockeys, from making or having wagers made on their behalf when they participate in a race except through the owner or trainer of the horse they drive, and require owners and trainers to maintain records of wagers they make on behalf of drivers. On August 26, CHRB held a public hearing on the proposed change; following the hearing, the Board adopted the amendment, which awaits review and approval by OAL.

On July 8, CHRB published notice of its intent to amend section 1970, Title 4 of the CCR, which prohibits owners, authorized agents, or trainers having a horse entered in a race, or any employee or representative of such an owner, authorized agent or trainer, from wagering on a competing horse to finish first whether the wager is exotic or conventional; when these individuals cash a winning ticket, the burden of proving who made the wager is with the Board investigators. CHRB's proposed amendment would specify that submission of a winning ticket for cash redemption shall be prima facie evidence the individual made the wager; this amendment would shift the burden of proving who made the wager from CHRB investigators to the individual who cashes the winning ticket. On August 26, CHRB held a public hearing on the proposed change; at the hearing, staff recommended that the Board consider modifications suggested by the parimutuel clerks' union. CHRB referred the proposed amendments back to staff for further review and modification.

Security Personnel at Simulcast Wagering Facility. On July 8, CHRB published notice of its intent to amend section 2057, Title 4 of the CCR, to specify that it is the responsibility of a guest association operating a simulcast wagering facility to provide security personnel for the entire facility. On August 26, CHRB held a pub-



lic hearing on the proposed change; following the hearing, the Board referred the proposed amendments back to its Security and Licensing Committee for further review and modification.

Jockeys' Reporting Requirements.

On July 8, CHRB published notice of its intent to amend section 1680, Title 4 of the CCR, which specifies that jockeys, unless excused, are to report one hour prior to post time of the first race, to weigh out at the appointed time, and after reporting not to leave except to ride in a race until all their engagements for the day have been fulfilled. CHRB's proposed amendments would clarify that jockeys are not excused from weighing out, and include specific reporting requirements that apply to drivers. On August 26, CHRB held a public hearing on the proposed changes; after the hearing, the Board adopted the amendments, which await review and approval by OAL.

Rail Construction and Track Specifications. On September 9, CHRB published notice of its intent to amend section 1472, Title 4 of the CCR, one provision of the Board's track safety standards. CHRB's proposed amendments would specify that racing surfaces used for standardbred racing shall have an inner rail or pylons, and shall have an outer rail or shadow fence designed to meet the same impact standards as a permanent rail. The amendments would also provide that if pylons are used, no obstacles shall be placed within an area extending 25 feet from the inner boundary of the racing surface. At this writing, CHRB is scheduled to hold a public hearing on this proposal on October 28.

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

• **Horsemen's Organizations.** On June 2, OAL approved CHRB's amendments to section 2040, Title 4 of the CCR, which outlines the purpose of establishing a horsemen's organization and provides that, for each breed of racehorse, CHRB must authorize only one horsemen's association as the exclusive organization empowered to contract with racing associations to conduct the race meetings; section 2040 also establishes the means to affect an orderly change of the horsemen's organization acknowledged by CHRB. The amendments specify, among other things, that upon the filing with CHRB of a notice of intent to decertify an existing horseman's organization as the authorized representative, the alternate horsemen's organization shall have six months to acquire, on a petition, the signatures of 10% of the li-

censed horse owners and trainers of that breed. Once that requirement is satisfied, a deciding vote of 50% plus one of the ballots returned shall be used to determine the one organization which CHRB will acknowledge as the representative of the horse owners and trainers of that breed. The amendments also provide that the 10% signature requirement applies only to horsemen's organizations whose membership is 1,500 or more, and that the existing 30% signature requirement continues to apply to organizations with fewer than 1,500 members. [14:2&3 CRLR 203; 14:1 CRLR 157]

• **Definitions.** On June 23, OAL approved CHRB's amendment to section 1420, Title 4 of the CCR, which defines various terms that are used in the Board's regulations. The amendment provides that the term "sulky" means a dual-wheel racing vehicle with dual shafts not exceeding the height of the horse's withers, and provides that the shafts must be hooked separately on each side. [14:2&3 CRLR 203]

• **Jurisdiction of Stewards to Suspend or Fine.** After an April 28 hearing, CHRB adopted a proposed amendment to section 1528, Title 4 of the CCR, which specifies that stewards have jurisdiction in any matter commencing at the time entries are taken for the first day of racing, and that their jurisdiction extends until thirty days after the close of such meeting. Occasionally, matters occurring at the racing meeting may have to be adjudicated thirty days after the close of the meeting. CHRB's amendment to this rule would provide the stewards with continued jurisdiction by delegating the resolution of such matters to the Board of Stewards at any live racing meeting. [14:2&3 CRLR 203] At this writing, the amendment awaits review and approval by OAL.

• **Occupational Licensing.** On June 24, CHRB held a public hearing on its proposed amendments to section 1481, Title 4 of the CCR, which sets forth the various occupations that are required to obtain licenses from the Board. The amendments would add the licensing classification of general manager and assistant general manager of a simulcast organization, and clarify the term "guest association" as an intrastate simulcast wagering facility as opposed to an out-of-state entity. [14:2&3 CRLR 203] Following the hearing, CHRB adopted the amendments, which were approved by OAL on September 12.

• **Use of Telephones Within the Racing Inclosure.** On June 24, CHRB held a public hearing on its proposed amendments to section 1903, Title 4 of the CCR, which pertains to the use and possession

of various forms of communication equipment within a racetrack or simulcast wagering facility. The amendments would allow the possession and personal use of communication equipment; allow racing associations, fairs, and simulcast facilities to maintain their right to permit or disallow cellular phones within their respective facilities; authorize CHRB enforcement staff to confiscate equipment that is used illegally or improperly; allow patrons the freedom to possess and use a cellular phone for personal use; and allow business entities, such as the press, to legitimately use cellular phones to transmit race results. [14:2&3 CRLR 203] Following the hearing, CHRB adopted the amendments, which await review and approval by OAL.

Also on June 24, CHRB held a public hearing on its proposed repeal of section 1459, Title 4 of the CCR, which also deals with the use and possession of various forms of communication equipment within a racetrack or simulcast wagering facility inclosure. CHRB repealed section 1459 on the basis that amended rule 1903 would address all aspects of the issue. [14:2&3 CRLR 204] Following the hearing, CHRB adopted the repeal, which was approved by OAL on September 1.

• **Exotic Parimutuel Wagering Regulations.** On July 28, CHRB held a public hearing on its proposed amendments to section 1976.9, Title 4 of the CCR, which pertains to wagering on the outcomes of a series of from four to ten races designated by an association to be part of the Pick (n). Under the current regulation, in the event a horse is scratched (does not participate) from any Pick (n) race, the actual favorite of that race is to be substituted in place of the scratched horse. The proposed amendments would allow patrons the opportunity to designate an alternate selection to be substituted for a scratched horse instead of the favorite. However, if the purchaser fails to designate an alternate selection, or if the designated alternate also is scratched, the actual race favorite will be substituted for the scratched selection. [14:2&3 CRLR 204] Following the hearing, CHRB adopted the amendments, which await review and approval by OAL.

• **Unlimited Place Sweepstakes.** On July 28, CHRB held a public hearing on its proposed amendments to section 1976.8, Title 4 of the CCR, which pertains to wagering on the outcomes of a series of nine races designated by an association to be part of the Unlimited Place Sweepstakes. Under the current regulation, in the event a horse is scratched from any Unlimited Place Sweepstakes race, the actual favorite of that race is to be substituted in



place of the scratched horse. The proposed amendments would allow patrons the opportunity to designate an alternate selection to be substituted for a scratched horse instead of the favorite. However, if the purchaser fails to designate an alternate selection, or if the designated alternate also is scratched, the actual race favorite will be substituted for the scratched selection. [14:2&3 CRLR 204] Following the hearing, CHRB adopted the amendments, which await review and approval by OAL.

• **Farrier's License.** On May 20, CHRB adopted proposed new section 1504, Title 4 of the CCR, which provides that an applicant for an original license as a farrier must take and pass a farrier's examination prior to issuance of a license. The section requires an applicant to complete and pass the written and practical portions of the examination as prescribed by CHRB and administered by its agents; a score of 80% is a passing grade on the written portion of the farrier's examination; a passing score in all areas of the practical examination, which is weighted pass/fail, shall constitute a passing grade on the practical portion of the farrier's examination; and an applicant who fails one or both portions of the farrier's examination may apply to retake the failed portion at the next regularly scheduled farrier's examination. [14:2&3 CRLR 205; 14:1 CRLR 159; 13:2&3 CRLR 203] On July 21, OAL approved the new section.

• **CHRB Approval of Concessionaires.** At this writing, OAL is reviewing CHRB's proposed amendments to section 1440, Title 4 of the CCR, which requires persons or entities who contract to act as a concessionaire at a racetrack to submit to the Board specified forms and applications for purposes of CHRB approval and licensure. The amendments would remove totalizer companies, simulcast service suppliers, video production companies, timing companies, and photofinish companies from the rule, and would also delete the existing licensure requirement for concessionaires, and codify the Board's current approval procedure. [14:2&3 CRLR 205; 14:1 CRLR 160; 13:4 CRLR 193]

LEGISLATION

The following is a status update on bills reported in detail in CRLR Vol. 14, Nos. 2 & 3 (Spring/Summer 1994) at pages 206-09:

SB 1394 (Maddy). The California State Lottery Act of 1984 prohibits the use of a horse racing theme in lottery games; the Act also prohibits a lottery game from being based on the results of a horse race. As amended April 5, this bill deletes these prohibitions on the use of horse racing in

the state Lottery. The bill also provides that a Lottery game may be based on the results of a horse race with the consent of the association conducting the race and CHRB. In addition, the bill, among other things, specifies that any compensation received by an association for the use of its races to determine the winners of a lottery game shall be divided equally between commissions and purses. This bill was signed by the Governor on August 26 (Chapter 378, Statutes of 1994).

AB 3149 (Tucker). Existing law prohibits the administration of any substance of any kind to a horse after it has been entered to race in a horse race, unless CHRB has, by regulation, specifically authorized the use of the substance and the quantity and composition thereof. In addition to any other penalties that may be imposed, a first violation of that provision is punishable by the imposition of a specified civil penalty. Existing law also authorizes the Board to overrule any steward's decision on a specified finding. As amended August 9, this bill excludes from CHRB's power to overrule steward's decisions those decisions to disqualify a horse due to a foul or a riding or driving infraction in a race, and instead provides for punishment specified by regulations adopted by the Board, including the permanent revocation of a license. The bill also permits the Board to adopt regulations that prohibit the entry in a race of any horse that tests positive for a drug substance; permits the disqualification of the horse from the race in connection with which the drug sample was taken; and makes any medication or equipment used to dispense medication that is located within the inclosure subject to search and inspection at the request of any Board official. This bill was signed by the Governor on September 28 (Chapter 1052, Statutes of 1994).

AB 3150 (Tucker), as amended August 22, makes it a misdemeanor to enter or accept the entry of a horse in a race upon which there is parimutuel wagering until two years after the horse's foaling date. This bill authorizes CHRB to suspend the license of any person who violates this provision for a period of not more than one year. This bill was signed by the Governor on September 17 (Chapter 617, Statutes of 1994).

SB 1372 (Dills). Existing law requires each licensed racing association, except as specified, to designate a certain number of racing days as charity days, the proceeds of which are distributed to qualified beneficiaries. As amended July 7, this bill requires CHRB to designate a nonprofit organization that is dedicated to research

and development of improved safety standards for horse racing as a beneficiary qualified to receive a distribution of those proceeds.

Existing law provides for the distribution of breeder's premiums and owner's and stallion awards in order to encourage the breeding of quarter horses in this state. For those purposes, this bill includes a thoroughbred stallion bred to a quarter horse mare in the definition of "eligible quarter horse sire." This bill also provides for the distribution of uncashed awards or premiums. This urgency bill was signed by the Governor on September 20 (Chapter 698, Statutes of 1994).

AB 3287 (Tucker). The Horse Racing Law requires that a sum equal to 10% of the first and second place money of every purse won by a California-bred Appaloosa horse at a horse racing meeting be paid by the licensee conducting the meeting to the breeder of the horse; that law also requires that four-tenths of 1% of the total handle be distributed to breeders of Appaloosa horses. As amended August 26, this bill sets forth the requirements for determining the amount of breeder premiums, and owners' and stallion awards for Appaloosa horse races, and provides for the distribution of those amounts. The bill also provides that up to, but not to exceed, 10% of the total deposits made may be deducted by the official registering agency for Appaloosa horses to compensate it for its administrative costs.

Existing law permits any county fair or district agricultural association in San Joaquin or Fresno County to operate one satellite wagering facility on leased premises, as specified. This bill additionally permits Humboldt County to operate one satellite wagering facility pursuant to those provisions.

Under existing law, CHRB is authorized to permit an association conducting a race meeting to accept wagers on the results of out-of-state harness or quarter horse feature races or stake races and, with the Board's approval and with the concurrence of the horsemen's organization contracting with the association, other designated harness or quarter horse races during the period it is conducting the racing meeting, if specified conditions are met. This bill includes as a condition that the association conducts at least seven live races, and imports not more than four races on those days during a racing meeting when live races are being run.

Existing law provides that all purse moneys derived from wagering on out-of-zone races at fair racing meetings conducted within the northern zone shall be distributed to all breeds of horses partici-



pating in the fair meeting in direct proportion to the purse money generated by breed on live races conducted during the fair race meeting. This bill instead provides that all purse moneys derived from wagering on out-of-zone races at fair racing meetings conducted shall be distributed, as specified above.

Existing law provides that if the total revenues distributed to the state as license fees for deposit in the general fund for the 1992-93 fiscal year in the central and southern zones, as determined by CHRB, do not equal or exceed the amount of total revenues distributed to the state as license fees for deposit in the general fund for the 1990-91 fiscal year in the central and southern zones, the license fees in the central and southern zones shall be increased by one-fourth of 1% for meetings in the central and southern zones commencing during the following fiscal year. This bill repeals these provisions and specifies that the repeal of these provisions does not constitute a change in existing law.

Existing law provides for the distribution of certain amounts as additional commissions and purses by an association with an average daily handle of \$750,000 that conducts a harness, quarter, Arabian, or Appaloosa horse meeting, and sets forth the percentage to be distributed as additional commissions, and the percentage to be distributed as additional purses. This bill permits the association and the horsemen's organization to agree to a different distribution of those funds.

This bill requires the Board, 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. This bill was signed by the Governor on September 30 (Chapter 1213, Statutes of 1994).

AB 2935 (Hoge). Existing law provides that any person claiming to be entitled to any part of a redistribution from a parimutuel pool operated by a racing association, who fails to claim the money due the person prior to the completion of the horse racing meeting, may, within 120 days after the close of that meeting, file a claim with the association issuing the person's ticket. As introduced February 17, this bill instead requires the claim to be filed prior to May 15 of the year following the close of the horse racing meeting.

Existing law requires the payment, 126 days after the close of any horse racing meeting, of any redistributable money in a parimutuel pool not successfully claimed. This bill instead requires estimated payments to be made quarterly, as specified,

and on May 30 of the year following the close of any horse racing meeting, the association would be required to pay all of the redistributable funds owed by it, less any estimated payments. This bill was signed by the Governor on September 15 (Chapter 577, Statutes of 1994).

AB 2936 (Hoge). The California Horse Racing Law requires that horses entered in a horse race be tested for the presence of a prohibited substance in their blood, urine, saliva, or other test sample. As amended May 12, this bill defines the term "prohibited drug substance" for the purposes of that law. This bill was signed by the Governor on July 15 (Chapter 208, Statutes of 1994).

SB 1544 (Maddy). Existing law provides, with respect to various breeds of horses, that in order to encourage and develop the racing of those horses, whenever the California State Fair and Exposition or a district or county fair conducts a program of horse races on which there is parimutuel wagering, it may provide a program of horse racing of the specific breed on the same days that it provides a program of other types of horse racing, if sufficient horses are available to provide competition in one or more horse races. Existing law also provides that these horse events may be in addition to the customary number of thoroughbred, quarter horse, or standardbred events. As amended August 10, this bill repeals these provisions, and instead requires state designated fairs, to the extent practicable, to provide a program of mixed breed racing whenever the fair conducts a program of horse races. This bill was signed by the Governor on September 19 (Chapter 671, Statutes of 1994).

SB 1339 (Rosenthal). Existing law requires each licensed racing association to designate a certain number of racing days to be conducted as charity days by the licensee for the purpose of distribution of the net proceeds therefrom to beneficiaries. As amended April 21, this bill provides that no racing association shall be required to pay to a distributing agent for the purpose of distribution to charity beneficiaries more than a specified percentage of the association's on-track handle. The bill also permits a racing association to act as its own distributing agent under specified conditions. This bill was signed by the Governor on August 31 (Chapter 402, Statutes of 1994).

AB 1209 (Tucker). Existing law provides that an association licensed to conduct a racing meeting in the southern zone may operate a satellite wagering facility at a location approved by CHRB if the location is eligible to be used as a satellite

wagering facility during any of specified periods. As amended August 26, this bill deletes that provision.

Existing regulations adopted by CHRB provide for an official veterinarian whose duty is to supervise practicing licensed veterinarians at horse racing meetings, and to enforce the Board's rules and regulations relating to veterinary practices. This bill requires every veterinarian who treats a horse within a racing inclosure to report to the official veterinarian in a manner prescribed by him/her, in writing and on a form prescribed by the Board, the name of the horse treated, the name of the trainer of the horse, the time of treatment, any medication administered to the horse, and any other information requested by the official veterinarian. This bill was signed by the Governor on September 26 (Chapter 881, Statutes of 1994).

AB 1418 (Tucker), as amended July 7 in conference committee, changes the definition of the term "racing week" and permits CHRB to authorize a licensed racing association or fair to conduct horse racing on a minimum of four racing days during a racing week if the racing association or fair petitions the Board to do so.

Existing law permits the Board to authorize any licensed association or satellite wagering facility to accept wagers on races conducted in this state comprising the program of racing generally known as the Breeders' Cup and feature races conducted in this state having a gross purse of \$50,000 or more, if certain requirements are met. Existing law requires that amounts distributed from the parimutuel pool on out-of-zone races be proportionally reduced by the amount of fees paid as compensation to the association or fair conducting the race. Excepted from the foregoing, however, are license fees, fees paid to a city, county, or city and county, and the fees paid to the Equine Research Laboratory and the California Diagnostic Lab System. Under existing law, all breakage and unclaimed tickets on out-of-zone races are required to be distributed equally among the state, the association or fair that accepts wagers on the race, and the horsemen, as purses.

This bill permits full-card simulcasting on a statewide basis, and allows commissions to be kept by the track where the wagers are made and not sent to the track transmitting the signal. Specifically, it permits a licensed association or fair that is conducting a live meeting in any racing zone to accept wagers on any race conducted in this state, if certain requirements are met. The bill provides that wagers made pursuant to these provisions shall be considered to have been made at the satel-



lite wagering facility and excluded from the handle of the association conducting the meeting for the purpose of determining the state license fee; permits the fees paid to a city, county, or city and county, and fees paid to Equine Research Laboratory and the California Diagnostic Lab System, to be proportionally reduced by the amount of fees paid as compensation to the association or fair conducting the race; and provides for the division of breakage and unclaimed tickets between the association or fair that accepts wagers, and the horsemen.

Existing law provides that CHRB may authorize an association conducting a racing meeting in this state to accept wagers on the results of out-of-state feature races having a gross purse of at least \$100,000 during the period the association is conducting the racing meeting on days when live races are being run. This bill changes these provisions to apply to out-of-state feature races having a gross purse of at least \$50,000, rather than of at least \$100,000, during the period the association is conducting the racing meeting on days when live races are being run. In addition, the bill provides that a thoroughbred racing association may accept wagers on the results of out-of-country thoroughbred races during the period the association is conducting a race meeting without the consent of the organization that represents horsemen participating in the race meeting and without regard to the amount of purses, provided the association conducts not less than eight live races per day on days the association is licensed to conduct racing.

Existing law provides for the payment of 1% of exotic parimutuel pools as an additional state license fee, and provides for the distribution of an additional 1% of the parimutuel pool from certain harness and mixed breed meetings between license fees, purses, and commissions. This bill exempts a quarter horse meeting from the additional license fee, and instead provides that the additional 1% from harness and mixed breed meetings be divided equally between purses and commissions.

Under existing law, the state is divided into agricultural districts within the boundaries of which district agricultural associations may be formed. District 1A is the County of San Mateo and a portion of the City and County of San Francisco south of a designated line. Under existing law, District 5 is the remainder of the City and County of San Francisco. This bill includes the City and County of San Francisco in both District 1A and District 5. Existing law prohibits the location of a satellite wagering facility within 20 miles

of an existing satellite wagering facility or any track where a racing association conducts a live racing meeting. This bill provides that notwithstanding these provisions, the Department of Food and Agriculture may approve not more than three satellite wagering facilities that are licensed jointly to the 1A District Agricultural Association and the 5th District Agricultural Association and that are located on the fairgrounds of the 1A District Agricultural Association or within the boundaries of the City and County of San Francisco. This urgency bill was signed by the Governor on July 21 (Chapter 311, Statutes of 1994).

The following bills died in committee: **AB 3217 (Murray)**, which would have authorized video wagering in California and required CHRB to license manufacturers, distributors, and operators of video gaming devices and to license video gaming devices and the premises on which these devices are located for use by the public; **AB 3689 (W. Brown)**, which would have prohibited the location of a satellite wagering facility within twenty miles of any track where a racing association conducts a live racing meeting unless the track where the live racing is conducted and the satellite wagering facility are located in different counties; **SB 1359 (Maddy)**, which would have reduced by one-half the amounts to be distributed for the support of specified activities in the central and southern zone; **AB 2577 (Hoge)**, which would have defined the term "parimutuel wagering," for the purposes of the Horse Racing Law; **AB 1003 (Brulte)**, which would have required 33/100 of 0.1% of the total amount handled by satellite wagering facilities be distributed to the Equine Research Laboratory at the UC Davis School of Veterinary Medicine and to the Equine Research Center at California State Polytechnic University at Pomona; **AB 362 (Tucker)**, which would have enacted the Horse Racing and Gaming Control Act, created the California Horse Racing and Gaming Control Board, provided that the new board succeeds to and is vested with all powers and duties of CHRB with respect to horse racing and parimutuel wagering, and granted the new board jurisdiction over the licensing and regulation of other forms of legal gaming in this state; **SCA 29 (Maddy)**, which would have—among other things—created the California Gaming Control Commission and authorized the Commission to regulate legal gaming in this state; **SB 549 (Hughes)**, which would have provided, notwithstanding any other provision of law, that a racing association licensed by CHRB and which has a class of securities registered

under the Securities Exchange Act of 1934 may operate a gaming club if the officers, directors, and beneficial owners of more than 10% of the shares of stock of the racing association are registered with the Attorney General and no person owning 5% or more of the shares of stock of the racing association is determined by the Attorney General to be unfit to own an interest in a gaming club; **AB 1936 (Costa)**, which—with respect to thoroughbred racing only—would have revised the distribution of the amount remaining after payment of the license fee by requiring 5% to be deposited with the official registering agency for thoroughbreds for distribution as breeder awards, owner premiums, and stallion awards, and requiring the remaining amount to be distributed 50% to the association conducting the race as commissions, and 50% to the horsemen as purses; **AB 274 (Hoge)**, which would have deleted the authorization to accept wagers on races conducted in this state comprising the program of racing generally known as the Breeders' Cup, and permitted fairs and licensed associations to accept wagers on any featured race in this state having a gross purse of \$20,000 or more if wagering is offered and under the conditions specified in the bill; **AB 1762 (Tucker)**, which would have provided that no person shall be licensed as a trainer, owner, trainer-driver, or in any other capacity in which that person acts as the employer of other licensees at a race meeting, unless his/her liability for workers' compensation coverage has been secured in accordance with law; **SB 847 (Presley)**, which would have expressly authorized an association licensed to conduct a racing meeting in Riverside County to operate a satellite wagering facility at a location approved by the Board; and **AB 1764 (Tucker)**, which would have defined the term "out-of-state," for purposes of existing law which provides that CHRB may authorize an association that conducts a racing meeting in this state to accept wagers on the results of out-of-state feature races and out-of-state harness or quarter horse feature races or stake races or other designated races under prescribed conditions, to mean anywhere outside this state within or outside the United States.

■ LITIGATION

In *California Horsemen's Benevolent and Protective Association v. CHRB*, No. BS-0026323, CHBPA successfully challenged CHRB's imposition of restrictions on CHBPA's ability to expend funds for legislative advocacy purposes. On February 16, Los Angeles County Superior Court Judge Robert O'Brien ruled that CHBPA's



legislative advocacy efforts for the benefit of horsemen, generally or specifically, constitute services rendered to horsemen and fall within the purview of CHBPA's authority relating to the expenditure of its funds; further, the court found that CHRB may not limit or control CHBPA's allocation of such funds (see MAJOR PROJECTS). [14:2&3 CRLR 209-10]

Although CHRB filed notice of an appeal, CHBPA attorney Robert Forgnone announced at CHRB's August 26 meeting that he and Deputy Attorney General Cathy Christian agreed to jointly file a stipulation with the appellate court postponing the commencement of the briefing schedule until after January 30; however, Forgnone also stated that he expects the appeal to be dropped after AB 991 (Tucker) (Chapter 62, Statutes of 1994) takes effect on January 1. Among other things, AB 991 allows for separate owner and trainer organizations to represent thoroughbred horsemen, provides that no funds deducted from purses may be used to make campaign contributions to candidates for public office or to support or oppose ballot measures, and provides that the organizations may not spend more than is "reasonably necessary" to represent themselves before the legislature and CHRB. [14:2&3 CRLR 207-08]

In January 1994, attorney Ron Zumbrun filed a suit in Sacramento County Superior Court against CHRB and members of the quarter horse industry; in *Ronald and Ann Zumbrun v. CHRB, et al.*, No. 376925, plaintiffs allege that California racing law requires CHRB to assure equality between breeds, and that the named defendants failed to provide parity and equality for harness racing at Los Alamitos in 1993 and 1994. [14:2&3 CRLR 210] At this writing, the matter is still pending in superior court.

RECENT MEETINGS

At its May 20 meeting, CHRB discussed its implementation of AB 991 (Tucker) (Chapter 62, Statutes of 1994), which allows for separate owner and trainer organizations to represent thoroughbred horsemen. [14:2&3 CRLR 207-08] The Board discussed the factors it should consider in approving the new owner and trainer organizations. CHRB Chair Ralph Scurfield stated that the Board would receive proposals from interested groups, and that each proposal should contain a list of the group's members and a way to validate that list; the proposal should also contain the group's mission statement and a sample of its bylaws.

Also at its May meeting, CHRB unanimously agreed to allow wagering in California on the National Best Seven, a fifty-

cent bet in which a player tries to select the winners of seven specified races around the country; the weekly wager, which began in late May, is run by the Thoroughbred Racing Association.

At its July 28 meeting, the Board's California Horse Racing Industry Advisory Committee presented its final report on ways to improve attendance and the overall quality of horse racing in the state. The Committee presented seventeen specific recommendations, some aimed at CHRB and others for the industry in general, for stimulating interest in the sport; for example, the Committee recommended instituting full-card intrastate simulcasting (see LEGISLATION for a description of AB 1418); increasing out-of-state simulcasting; developing racing broadcasts for live television; creating a centralized marketing group; and instituting more wagering opportunities such as propositions and parlays. CHRB Chair Ralph Scurfield reported that the Committee will also be preparing a five-year action plan for the industry.

FUTURE MEETINGS

September 23 in San Mateo.
October 28 in Arcadia.
November 18 in Inglewood.
December 16 in Los Angeles.
January 27, 1995 in Arcadia (tentative).

NEW MOTOR VEHICLE BOARD

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

Pursuant to Vehicle Code section 3000 *et seq.*, 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 (DMV). Most licensees deal in cars or motorcycles.

NMVB is authorized to adopt regulations to implement its enabling legislation; the Board's regulations are codified in Chapter 2, Division 1, Title 13 of the California Code of Regulations (CCR). 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.

MAJOR PROJECTS

Protest/Petition Actions. *Frances Holmes and Marvin Holmes v. American Honda Motor Co., Inc.* (Petition No. P-260-93) involved a dispute under the Song-Beverly Consumer Warranty Act (Civil Code section 1790 *et seq.*) and other consumer protection laws. Petitioners alleged that they purchased a new motor vehicle from respondent, that the vehicle had a defective braking system, and that Honda had been unable to adequately repair the system after multiple attempts. The original claim sought recovery of the purchase price of \$19,894.82 and other damages, as well as attorneys' fees and costs as provided by statute.

Immediately before the hearing commenced on January 24, the parties reached an agreement disposing of all issues except for the amount of attorneys' fees and costs to be paid by Honda to the petitioners; as part of the settlement, the parties agreed that Honda would pay the Holmes' attorneys' fees and costs as determined by the Board, within the range of \$9,500 to \$16,050.35. Petitioners' counsel requested a total of \$15,580.35; following a February 10 hearing on this matter, the administrative law judge (ALJ) recommended an award of \$13,270.60 based on findings that portions of the fees charged by petitioners' counsel were unreasonably high. On June 14, NMVB adopted the ALJ's recommendation, but also ordered that the respondent deliver to NMVB the check or draft made payable to petitioners, and that NMVB would hold the check or draft until petitioners tender to the Board the \$200 filing fee required by section 553.40, Title 13 of the CCR.

Draco Trucks & Equipment, Inc. v. Isuzu Truck America, Inc. (Protest No. PR-1392-94) arose when Draco Trucks & Equipment, Inc., an Isuzu franchisee, alleged that Isuzu intended to permit the establishment of Dion International Trucks as an Isuzu extra-duty truck franchisee in Escondido; Dion also maintains a truck facility in San Diego which is within ten miles of Draco's business. Draco stated that the new facility would violate Vehicle Code section 3062 because Dion would be advertising or otherwise conducting Isuzu sales and service operations out of Dion's San Diego location; section 3062 requires that, except as otherwise provided, if a franchisor seeks to enter into a franchise establishing an additional motor vehicle dealership within a relevant market area where the same line-make is then represented, or seeks to relocate an existing