



extent that conditions relating to the perimeters and access to the buildings were not imposed as part of the approval of the parcel or tentative maps.

**Redwood Coast Watershed Alliance v. California State Board of Forestry**, No. 932123 (San Francisco Superior Court), is still under submission. RCWA alleges that the Board and CDF's regulation of timber operations on private land violates certain provisions of the California Environmental Quality Act (CEQA), and that the THP process administered by CDF and the Board is not functionally equivalent to the environmental impact report process required by CEQA. [12:4 CRLR 214; 12:1 CRLR 176] As the Board has recently revamped its regulations to define the term "sustained yield" and provide for THP review in the context of that definition (*see* MAJOR PROJECTS), the court is waiting for the Board's implementation of those new rules.

#### ■ FUTURE MEETINGS

September 7-9 in Sacramento.  
October 5-6 in Sacramento.  
November 9-10 in Sacramento.  
December 7-8 in Sacramento.



## INDEPENDENTS

### AUCTIONEER COMMISSION

**T**he Auctioneer and Auction Licensing Act, Business and Professions Code section 5700 *et seq.*, was enacted in 1982 and establishes the California Auctioneer Commission to regulate auctioneers and auction businesses in California.

The Act is designed to protect the public from various forms of deceptive and fraudulent sales practices by establishing minimal requirements for the licensure of auctioneers and auction businesses and prohibiting certain types of conduct.

Section 5715 of the Act provides for the appointment of a seven-member Board of Governors, which is authorized to adopt and enforce regulations to carry out the provisions of the Act. The Board's regulations are codified in Division 35, Title 16 of the California Code of Regulations (CCR).

During the summer of 1992, the California legislature defunded the Auctioneer Commission and its Board of Governors in retaliation for the Commission's filing of *California Auctioneer Commission v. Hayes*, No. 370773 (Sacramento County Superior Court). The petition for writ of mandate sought a court order prohibiting state budget officers from carrying out a June 30, 1992 transfer to the general fund of all but three months' worth of operating expenses from the Commission's reserve fund, in compliance with a legislative directive in the Budget Act of 1991. The Commission was attempting to prevent a loss of \$127,000 in auctioneers' licensing fees to the general fund. [12:4 CRLR 1, 214-15; 12:2&3 CRLR 248; 12:1 CRLR 177] The legislature did not repeal the Auctioneer and Auction Licensing Act, the provisions of law which establish the Commission and its Board of Governors and set forth their respective jurisdiction, or any other provision affecting the licensing of auctioneers or the conduct of auctions in California. It simply eliminated all funding for the Commission, preventing it from paying the attorneys handling its lawsuit and from functioning in any other way.

#### ■ LEGISLATION

**SB 514 (Alquist)**, as amended May 19, would repeal existing law establishing the California Auctioneer Commission and delegating it the responsibility for licens-

ing and disciplining auctioneers, and enact similar provisions to be administered by the Secretary of State. However, the Secretary of State would have no disciplinary duties, and the bill would authorize courts in criminal actions to revoke an auctioneer's license. The bill would also revise existing bonding provisions to, among other things, increase the amount of the required auctioneers' bond to \$15,000. [*S. Appr*]

**SB 685 (Wright)**, as amended May 12, would suspend the licensing requirements for auctioneers and auction companies under the Auctioneer and Auction Licensing Act until January 1, 1994. [*A. CPGE&ED*]

**AB 259 (Hannigan)**, as amended April 27, would repeal the Auctioneer and Auction Licensing Act, require every auctioneer and auction company to maintain a surety bond in the amount of \$30,000 with the Secretary of State, and enact related provisions regulating that bond.

Under existing law, it is a crime for any person to obtain any money or property from another, or to obtain the signature of another to any written instrument, the false making of which is forgery, by means of any false or fraudulent sale of property or pretended property, by auction, or by any of the practices known as mock auctions. Under existing law, a person who violates this provision shall also forfeit any license he/she may hold as an auctioneer and is permanently disqualified from receiving a license to act as an auctioneer in this state. This bill would delete this latter provision. [*A. Floor*]

### BOARD OF CHIROPRACTIC EXAMINERS

*Executive Director:*  
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**I**n 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. Effective January 31, Barbara Bagwell, Ph.D., resigned her appointment as a Board public member; Dr. Bagwell was serving during a grace period following her second term on the Board. Governor Wilson has yet to name her replacement or a replacement for a vacant chiropractor position; thus, the Board is currently operating with only five members.

## MAJOR PROJECTS

**Board Approves Unprofessional Conduct Regulation.** On February 18, BCE adopted new section 317(v), Title 16 of the CCR, which includes as unprofessional conduct a chiropractor's failure to refer a patient to a physician or other licensed health care provider when an abnormality is detected which is not subject to appropriate management by chiropractic methods; the section provides that it shall not apply when the patient states that he/she is already under the care of another licensed health care provider who is providing appropriate management for that condition. The chiropractic community fiercely opposed the adoption of this regulation, claiming that it greatly limits the right and ability of chiropractors to treat and diagnose their patients without the supervision of other health care professionals. [13:1 CRLR 127; 12:4 CRLR 215] On April 16, the Office of Administrative Law (OAL) approved the action.

**OAL Approves Modified Version of Review Panel Regulations.** Last October, OAL disapproved—for the third time—BCE's proposed adoption of sections 306.1 and 306.2, Title 16 of the CCR, regarding Chiropractic Quality Review Panels (CQRP). [13:1 CRLR 126] Following that disapproval, BCE again revised its proposed language and released the modified text for a fifteen-day public comment period commencing on January 8. At its February 18 meeting, BCE adopted the modified language; on May 13, OAL approved the regulatory action.

As revised, new section 306.1 provides that BCE shall establish a CQRP in each county to hear cases referred by BCE's Executive Director. The authority and duties of CQRPs are to review chiropractic care provided by California licensees; to act on all matters assigned to them by BCE's Executive Director; and to inspect all chiropractic records where reasonable cause exists to initiate a quality review. Section 306.1 also provides that each

panel shall consist of three licensees appointed by BCE; each panel member shall have at least five years' experience practicing chiropractic in California; each panel member shall have no disciplinary action against their license; the purpose of the CQRP is to review specific complaints and, where appropriate, to provide recommendations of continuing education and to strengthen aspects of the licensee's chiropractic practice.

Regarding CQRP hearing procedures, section 306.1 provides that a closed panel hearing shall be conducted with a court reporter; any licensee required to appear before a panel will be notified by certified mail with a summary of the specific complaint together with supporting documents at least thirty days prior to the scheduled panel hearing; when requested by the panel, licensees shall present to the panel all patient treatment records relevant to the specific complaint as required by section 318, Title 16 of the CCR; the licensee's failure to present all requested patient records authorizes the panel to presume that the information in the records is adverse to the licensee; the licensee may bring in any witnesses and documents to assist in responding to the complaint; the licensee may have counsel present during the panel hearing; the licensee will be given an adequate opportunity to respond to any questions by the panel; a postponement of the scheduled panel hearing may be granted by BCE's Executive Director upon a showing of good cause made at least ten days prior to the scheduled hearing; and the failure of a licensee to appear, without good cause, constitutes grounds for a recommendation to the Executive Director for filing of a disciplinary action, or further investigation.

Section 306.1 also provides that, at the conclusion of the CQRP hearing, the panel shall prepare a written report based on the evidence presented at the panel hearing with specific recommendations regarding the licensee and/or the licensee's practice. The panel may make the following recommendations: continuing education seminars in the related field; recommendations that would strengthen aspects of licensee's chiropractic practice; further investigation; refer the case to Office of Attorney General for preparation of formal disciplinary action; close the case with a warning; close the case without a warning; or dismiss the complaint.

Section 306.1 also provides that the report and recommendations shall go directly to BCE's Executive Director; all panel recommendations are subject to approval by the Executive Director without further input from the licensee. The Exec-

utive Director shall prepare a final report, which shall include all approved recommendations, and send a copy of the final report to the licensee and panel members. The evidence presented at the panel hearing shall be submitted to BCE's office; all evidence used by the panel is admissible in any subsequent disciplinary proceeding against a licensee.

Section 306.1 also provides the procedures for appealing the final CQRP report to a BCE committee consisting of no more than three members. If the committee grants the appeal, a final decision shall be prepared and returned to the Executive Director for distribution to the licensee and panel members. If the committee denies the appeal, the final report becomes a final decision after thirty days. The licensee may appeal the final decision by filing a petition for writ of mandate under Code of Civil Procedure section 1094.5 in San Diego, Los Angeles, San Francisco, or Sacramento.

As modified, section 306.2 provides that if a person, not a regular BCE employee, is hired or is under contract to provide expertise to BCE in the evaluation of the conduct of a licensee or administration of a Board examination, and such person is named as a defendant in a civil action for defamation directly resulting from opinions rendered, statements made, or testimony given to a CQRP, the Board, or its representatives, BCE shall provide for representation required to defend the defendant in that civil action; BCE shall not be liable for any judgment rendered against that person; and the Attorney General shall be utilized in those civil actions as provided in Section 4(h) of the Chiropractic Initiative Act.

As part of its January 8 modifications, BCE also amended section 305, Title 16 of the CCR, to provide that all proceedings relating to the refusal to grant, suspension, or revocation of a license to practice chiropractic, or for the reissuance or reinstatement of a license which has been suspended or revoked, or for the disciplining of licensees in any manner other than by a CQRP, shall be conducted in accordance with the provisions of Government Code section 11500 *et seq.*

**BCE Modifies Mental/Physical Illness Regulatory Proposal.** On January 7, BCE conducted a public hearing on its proposed amendments to section 315, Title 16 of the CCR, which would provide that the Board may require an examination when a mental or physical illness affecting the safety of a chiropractor's practice is suspected; the Board may order the licensee to be examined by one or more physicians, psychologists, or chiropractors des-



igned by the Board; and a licensee's failure to comply with a disciplinary order issued pursuant to section 315 constitutes grounds for the suspension or revocation of his/her license. [13:1 CRLR 126] At the hearing, the Board reviewed written testimony submitted by the California Medical Association (CMA), objecting to BCE's proposed language providing that if a licenseholder has been found to be mentally or physically ill by one or more physicians and surgeons, psychologists, or doctors of chiropractic designated by the Board, the results of which indicates that such illness affects his/her ability to safely conduct the practice authorized by his/her license, BCE may take specified action. CMA noted that the language authorizing chiropractors to examine a licensee's mental fitness is beyond the scope of chiropractic practice and that, in whole, the language conflicts with Business and Professions Code section 820, which provides that whenever it appears that any person holding a license, certificate, or permit under Division 2 of the Business and Professions Code or under any initiative act referred to in Division 2 may be unable to practice his/her profession safely because the licentiate's ability to practice is impaired due to mental illness or physical illness affecting competency, the licensing agency may order the licentiate to be examined by one or more physicians or psychologists designated by the agency.

At its February 18 meeting, BCE agreed to modify the proposed amendments to clarify the language; at this writing, the revisions await adoption by BCE and review and approval by OAL.

**Rulemaking Update.** The following is a status update on other BCE rulemaking proposals reported in recent issues of the *Reporter*:

• **Exam Appeal Process Regulation.** At its January 7 public hearing, the Board received comments on its proposed adoption of section 353, Title 16 of the CCR; this new section would implement an appeals process for those applicants who fail BCE's practical examination. [13:1 CRLR 127] A representative from the California Chiropractic Association (CCA) indicated that the proposal lacked clarity, and that various terms and phrases in the section should be defined. CCA also questioned the provision requiring BCE to review only the exams of licensees who score 65% or better; CCA contended that this number appears to be very arbitrary. In response, Deputy Attorney General (DAG) Joel Primes stated that a line must be drawn somewhere. In spite of these comments, BCE adopted proposed sec-

tion 353 at its February 18 meeting without any changes to the language. At this writing, the rulemaking file has yet to be submitted to OAL for review and approval.

• **Preceptor Program Regulation.** In December 1992, BCE submitted its rulemaking file to OAL regarding its proposed adoption of new section 313.1, Title 16 of the CCR, which would provide for the implementation of preceptor programs in approved chiropractic institutions. [13:1 CRLR 127] OAL raised some questions which BCE failed to address in its rulemaking file. For example, OAL noted the need for the regulation to comply with the Permit Reform Act by stating the minimum and maximum timeframes within which a college applying for approval could anticipate a response from the Board; recommended that the preceptor and preceptee be required to carry malpractice insurance; and suggested that the section be reorganized for clarity reasons. In response, to OAL's concerns, BCE withdrew the proposal from OAL and intends to revise it in conformity with OAL's suggestions and renotice it in the future.

• **Diversion Program Regulation.** On January 7, BCE held a public hearing on proposed new section 315.1, Title 16 of the CCR, which would create a voluntary diversion program for substance-abusing chiropractors. [13:1 CRLR 127; 12:4 CRLR 217] Following the hearing, BCE made minor modifications to the proposal and released the revised text for an additional public comment period commencing on January 20. Among other things, the revisions provide that the section would become effective in January 1995, dependent upon available funding. The proposed section awaits review and approval by OAL.

• **HIV Prevention Course Requirement.** At its February 18 meeting, BCE approved draft language of its proposed amendments to sections 355 and 356, Title 16 of the CCR, which would require licensed chiropractors to complete an approved continuing education (CE) seminar in human immunodeficiency virus (HIV) transmission prevention, and specify that the Board recommends that special attention in CE seminars be given to—among other things—HIV prevention. [13:1 CRLR 127] At this writing, BCE has not yet published notice of its intent to pursue this action in the *California Regulatory Notice Register*.

## ■ LEGISLATION

**AB 179 (Snyder).** Existing law provides that it is unlawful for any person licensed as a chiropractor to charge, bill,

or otherwise solicit payment from any patient, client, or customer for any clinical laboratory test or service if the test or service was not actually rendered by that person or under his/her direct supervision, unless the patient, client, or customer is apprised at the first, or any subsequent, solicitation for payment of the name, address, and charges of the clinical laboratory performing the service. As amended April 20, this bill would require this provision to apply to a clinical laboratory of a health facility, as defined, or a health facility when billing for a clinical laboratory of the facility only if the standardized billing form used by the facility requires itemization of clinical laboratory charges.

Existing law provides that it is unlawful for a chiropractor to charge additional charges for any clinical laboratory service that is not actually rendered by the licensee to the patient and itemized in the charge; existing law prohibits that provision from being construed to prohibit any itemized charge for any service actually rendered to the patient by the licensee. This bill would also provide that the prohibition against additional charges is not to be construed to prohibit any summary charge for services actually rendered to a patient by a clinical laboratory of a health facility, if the standardized billing form used by the facility requires a summary entry for clinical laboratory charges. [A. Floor]

**AB 667 (Boland).** The Pharmacy Law regulates the use, sale, and furnishing of dangerous drugs and devices. Existing law prohibits a person from furnishing any dangerous device, except upon the prescription of a physician, dentist, podiatrist, or veterinarian. However, this prohibition does not apply to the furnishing of any dangerous device by a manufacturer or wholesaler or pharmacy to each other or to a physician, dentist, podiatrist, or veterinarian, or physical therapist acting within the scope of his or her license under sales and purchase records that correctly give the date, the names and addresses of the supplier and the buyer, the device, and its quantity. As amended March 29, this bill would provide that the prohibition does not apply to the furnishing of any dangerous device by a manufacturer or wholesaler or pharmacy to a chiropractor acting within the scope of his/her license.

Existing law authorizes a medical device retailer to dispense, furnish, transfer, or sell a dangerous device only to another medical device retailer, a pharmacy, a licensed physician and surgeon, a licensed health care facility, a licensed physical therapist, or a patient or his or her personal representative. This bill would addition-



ally authorize a medical device retailer to dispense, furnish, transfer, or sell a dangerous device to a licensed chiropractor. [A. Health]

**AB 2294 (Margolin).** The Chiropractic Act provides that a license to practice chiropractic does not authorize the practice of medicine, surgery, osteopathy, dentistry, or optometry, nor the use of any drug or medicine now or hereafter included in materia medica. As amended April 20, this bill would also provide that a license to practice chiropractic does not authorize the treatment of infectious disease. This bill would provide for the submission of the Act to the electors and that the Act shall become effective only when approved by the electors. [A. Floor]

## RECENT MEETINGS

At its January 7 meeting, BCE discussed requiring licensees to successfully complete the National Board exam, thus eliminating the Clinical Competency practical exam and the physiotherapy exam; the Board also discussed implementing an ethics and jurisprudence examination on California laws and regulations. CCA Executive Director Gary Cuneo asked for clarification on whether an applicant would still take BCE's exam after failing part of the National Board exam. Board member Louis E. Newman explained that the regulation governing an applicant's choice between using the National Board examination or taking BCE's written exam is out of date, and that the Board is considering issuing a policy statement on adding Part III of the National Board examination until the regulation can be formally changed. Dr. Jim Badge of the National Board of Chiropractic Examiners reported that 42 states require Part III of the National Board exam before licensure, and 93% of all students nationally take Part III and pass it prior to graduation. BCE directed its staff to determine what changes could be legally made without regulation and legislation, ascertain what changes might require regulation and legislation, and coordinate this information with a validation study that is currently under way (see below). Executive Director Vivian Davis reported that such a change would not be likely until 1995, and stated that the Board should inform students and chiropractic colleges of any change at least one year prior to the change.

Also at its January meeting, the Board attempted to elect new officers. After several unsuccessful attempts, the Board agreed that the current officers will retain their offices until new members are added to the Board or until there are enough votes for a new election of officers.

At BCE's February 18 meeting, Executive Director Davis reported that Coop-

erative Personnel Services (CPS) has undertaken the initial steps in BCE's examination validation study; CPS is sending contact letters to those members of the profession indicating an interest in identifying the skills and tasks inherent in the practice of chiropractic.

Also at BCE's February meeting, DAG Joel Primes explained that any meeting of three or more Board members is considered a Board action and is required to be conducted in public, pursuant to the Bagley-Keene Open Meeting Act; closed sessions are limited to specific exemptions provided by the Act.

At its April 8 meeting, the Board discussed possible regulations defining appropriate subjects for continuing education (CE) approval. DAG Joel Primes indicated that section 356, Title 16 of the CCR, appears to be quite broad in addressing this issue; Primes suggested that the Board amend the regulation if it wants to emphasize or de-emphasize certain subject matters. The Board also discussed adopting certain criteria for speakers at the CE seminars.

## FUTURE MEETINGS

September 9 in Sacramento.

October 15 in Los Angeles.

## CALIFORNIA HORSE RACING BOARD

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The California Horse Racing Board (CHRB) is an independent regulatory board consisting of seven members. The Board is established pursuant to the Horse Racing Law, Business and Professions Code section 19400 *et seq.* Its regulations appear in Division 4, Title 4 of the California Code of Regulations (CCR).

The Board has jurisdiction and power to supervise all things and people having to do with horse racing upon which wagering takes place. The Board licenses horse racing tracks and allocates racing dates. It also has regulatory power over wagering and horse care. The purpose of the Board is to allow parimutuel wagering on horse races while assuring protection of the public, encouraging agriculture and the breeding of horses in this state, generating public revenue, providing for maximum expansion of horse racing opportunities in the public interest, and providing for uniformity of regulation for each type of horse racing. (In parimutuel betting, all

the bets for a race are pooled and paid out on that race based on the horses' finishing position, absent the state's percentage and the track's percentage.)

Each Board member serves a four-year term and receives no compensation other than expenses incurred for Board activities. If an individual, his/her spouse, or dependent holds a financial interest or management position in a horse racing track, he/she cannot qualify for Board membership. An individual is also excluded if he/she has an interest in a business which conducts parimutuel horse racing or a management or concession contract with any business entity which conducts parimutuel horse racing. Horse owners and breeders are not barred from Board membership. In fact, the legislature has declared that Board representation by these groups is in the public interest.

## MAJOR PROJECTS

**DOJ's Clenbuterol Investigation Prompts CHRB to Fire Executive Secretary.** At its February 26 meeting, CHRB reviewed the long-awaited report from the state Department of Justice (DOJ) regarding its investigation of the Board's dismissal of four cases involving positive tests for the illegal drug clenbuterol. [13:1 CRLR 128; 12:4 CRLR 219] Under CHRB policy, a trainer is notified of a positive test result and may select an independent lab to test the split sample. However, CHRB Executive Secretary Dennis Hutcheson dismissed three positive clenbuterol cases before the second sample could be tested; the Board subsequently dismissed a fourth positive clenbuterol case. Hutcheson then had all four split samples tested; all four came back positive. According to Hutcheson, he dismissed the cases primarily because he had doubts about the Board's testing lab; however, he failed to inform CHRB about his concerns prior to dismissing any of the positive test results.

Among other things, DOJ's report strongly criticized Hutcheson for violating "his responsibilities to the Board" by failing to follow Board policy regarding the testing procedure. After reviewing DOJ's findings, the Sacramento County District Attorney declined to file criminal charges against Hutcheson, finding that "the available evidence does not show that he acted with the necessary criminal intent." However, the DA also stated that DOJ's investigation "clearly shows that Mr. Hutcheson's conduct was in violation of stated CHRB policies and regulations in the area of drug-testing procedures.... There is a valid question concerning why Hutcheson took the action he did, but this