



REGULATORY AGENCY ACTION

ratory test or service if the test or service was not actually rendered by that person or under his/her direct supervision, except as specified. This bill is pending in the Senate Business and Professions Committee.

RECENT MEETINGS:

At its October 17 meeting, the Board approved sixteen out of twenty continuing education (CE) seminars seeking recognition by BCE. The Board refused to approve two separate CE seminars entitled *Surface Electromyography in Chiropractic Practice* and sponsored by Life Chiropractic College and National College of Chiropractic, stating that electromyography is currently an experimental area in the field of chiropractic. Citing this same reluctance to approve CE courses covering experimental areas in the field of chiropractic, the Board also refused to approve a course entitled *Standards of Care for Intact Spinal Column-Pelvic-Meningeal Unit Integral System Disorders*, sponsored by Life Chiropractic College-West. Furthermore, the Board refused to approve a course entitled *Chiropractic Philosophy*, sponsored by Sherman College Straight Chiropractic, because this course would review philosophical rather than practical aspects of the field of chiropractic care.

Also at the October 17 meeting, Dr. Keith Wells of the Los Angeles College of Chiropractic appeared before the Board to request that BCE consider administering its examinations three times each year, as opposed to its current practice of holding the exams twice each year. Stating that chiropractic college graduates currently have difficulty obtaining a license to practice chiropractic within six months after graduation and incur financial hardship, Dr. Wells asserted that a third exam, preferably in February, would allow recent graduates from chiropractic colleges to take the state examination and obtain a license within four months after graduation. Furthermore, an additional exam administration each year would reduce the number of examinees at each session, making it easier for BCE to manage the examination and providing examiners with more quality time with examinees. An additional examination date would increase the cost of the application fee, but Dr. Wells said that, based on an informal survey, students might be willing to pay a reasonable increase in the application fee which would accompany the addition of a third examination. The Board agreed to address the possibility of offering a third examination date at a future Board meeting.

At its December 5 meeting, BCE discussed whether any regulatory action is necessary to allow out-of-state chiropractors to participate at a planned Olympic Training Center (OTC) in San Diego. Presently, an effort is being made to establish a chiropractic room within the facility and to allow chiropractic access to this facility in the same manner as is presently being done at OTC locations in Colorado Springs and Lake Placid. Section 16 of the Chiropractic Act of California allows a chiropractor licensed in another state or territory to practice chiropractic in California so long as he/she consults with a licensed chiropractor in California, and so long as the out-of-state chiropractor does not open an office or place to receive patients within the limits of the state. However, the Olympic Training Committee may not allow a consulting California chiropractor onsite every time a sports chiropractor from another state is selected to work at the OTC.

Among the solutions which the Board is considering is the possible creation of a committee of licensed certified sports chiropractors, who would act as consultants to out-of-state chiropractors at the OTC in San Diego. One of the consultants would be notified each time an out-of-state chiropractor attends the OTC, and the consultant would be available by telephone and fax machine for the out-of-state chiropractor for the duration of his/her stay at the OTC. The Board is currently investigating whether regulatory or legislative action will be necessary in order to implement this proposal, and will address this subject at future meetings.

FUTURE MEETINGS:

- April 23 in Sacramento.
- June 9 in San Diego.
- August 27 in Sacramento.
- October 8 in Los Angeles.
- December 17 in Sacramento.

HORSE RACING BOARD

Executive Secretary: Dennis Hutcheson
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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 hav-

ing 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 positions, 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.

At its December 13 meeting, CHRB reelected Henry Chavez and William Lansdale for another one-year term as Chair and Vice-Chair, respectively.

MAJOR PROJECTS:

Board Proposes Amendments to Controlling Authority Regulation. On December 6, CHRB published notice of its intent to amend section 1402, Title 4 of the CCR, which provides that the Board's laws, rules, and orders govern thoroughbred, harness, quarter horse, Appaloosa, Arabian, paint, and mule racing. Section 1402 also authorizes stewards to enforce rules or conditions of breed registry organizations if those rules or conditions are not inconsistent with the Board's rules. These organizations are The Jockey Club for thoroughbred racing, the United States Trotting Association for harness racing, the Appaloosa Horse Club for appaloosa racing, the Arabian Horse Registry of America for arabian racing, the American Paint Horse Association for paint racing, and the American Mule Association for mule racing.

According to the Board, section 1402 is currently written in general terms and



does not specify that the rules and conditions by breed registry organizations are enforceable by Board representatives. It also incorrectly lists the International Arabian Horse Association as the Arabian horse breed registry. CHRБ's proposed amendment to section 1402 would clarify that rules and conditions other than the Board's, for purposes of this section, will be made by breed registry organizations as specified in this regulation for each type of racing. In addition, the reference to the International Arabian Horse Association would be changed to the Arabian Horse Registry of America. The Board was scheduled to hold a public hearing on the proposed changes on January 31.

Parentage Verification Regulation Proposed. On December 6, CHRБ published notice of its intent to amend section 1588, Title 4 of the CCR, which states the conditions under which a horse is ineligible to race in California. CHRБ's proposed amendment would add the requirement that owners of all horses foaled in the year 1992 and thereafter provide certification of parentage verification to both sire and dam. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 200 for background information.)

At its December 13 meeting, the Board discussed the proposed amendment, noting that the proposal allows two years for breed registries to set up parent verification programs if they do not already have them. However, Alan Horowitz of the California Harness Horsemen's Association stated that harness racing in California depends on horses imported from New Zealand and Australia for up to 40% of the standardbreds that race; Horowitz doubted whether foreign jurisdictions would be willing to comply with such a requirement. CHRБ Commissioner Ralph Scurfield responded that the Board's responsibility is to protect California breeders and fans, and opined that, over a period of time, foreign racing jurisdictions should be able to comply with the Board's requirements.

CHRБ was scheduled to conduct a public hearing on the proposed amendments on January 31.

Board Proposes Repeal of Obsolete Regulation. On November 8, CHRБ published notice of its intent to repeal section 1904, Title 4 of the CCR, which provides that no person, other than one involved in a live broadcast of any radio or television station or private-line telephone communications used for press coverage of the racing program, shall communicate the results of any race or the parimutuel payoffs of such a race to any person outside the racing enclosure

until at least fifteen minutes after the race has been declared official. Originally, the section was meant to prevent early dissemination of information to bookmakers. However, because of simultaneous transmissions to satellite facilities around the country, CHRБ contends that section 1904 is no longer useful and should be repealed. The Board was scheduled to hold a public hearing on the proposal on January 31.

Board to Amend Identification Regulation. On November 8, CHRБ published notice of its intent to amend section 1922, Title 4 of the CCR, which provides that a license, visitor's pass, or other identification issued by the Board or the racing association shall be visibly displayed by any person within any restricted area. The proposed amendment would grant the Board authority to permit exemptions to this requirement. (See CRLR Vol. 11, No. 4 (Fall 1991) pp. 198-99 for background information.) The Board was scheduled to hold a public hearing on the proposed amendment on January 31.

Ambulance Service Regulatory Revisions. On October 8, the Office of Administrative Law (OAL) approved CHRБ's amendments to section 1468, Title 4 of the CCR, which requires that the services of an onsite ambulance and qualified medical personnel be provided at all times during the running of races and during the hours an association permits the use of its race course for training purposes. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 197; Vol. 11, No. 3 (Summer 1991) pp. 184-85; and Vol. 11, No. 2 (Spring 1991) p. 171 for background information.) The amendments allow alternative emergency medical procedures for authorized training facilities that are not designated as auxiliary stables for a host track and require those training facilities to submit to CHRБ a written plan of emergency procedures to be followed in the event an accident occurs.

During review, OAL informed CHRБ staff that section 1468 does not contain a provision for submitting a revised emergency plan in the event a facility's initial plan is disapproved by CHRБ, and indicated that the omission should be addressed by the Board. On December 6, CHRБ published notice of its intent to amend section 1468 to permit a facility to submit a revised emergency plan to the Board within ten working days of the date the facility is notified of the disapproval. The amendments would also provide that CHRБ's Executive Secretary or a designated representative shall approve or disapprove the revised plan within ten working days from the receipt of the resubmitted plan.

The Board was scheduled to hold a regulatory hearing on the proposed amendments on January 31.

Pick Seven Wagering Regulations. On October 10, OAL approved new section 1959.7, Title 4 of the CCR, which establishes provisions for Pick Seven wagering in California. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 197 and Vol. 11, No. 3 (Summer 1991) p. 188 for background information.) In Pick Seven, a separate parimutuel pool is established from amounts contributed by patrons who select winning horses in each of seven designated races.

Pick (n) Wagering Regulations. On October 10, OAL approved new section 1976.9, Title 4 of the CCR, which establishes provisions for Pick (n) wagering in California. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 197 and Vol. 11, No. 3 (Summer 1991) p. 188 for background information.) In Pick (n), a separate parimutuel pool is established from amounts contributed by patrons who select winning horses in each of a specified number of races designated by the relevant racing association. According to CHRБ, section 1976.9 will enable California horse racing associations and the public to participate in national wagers. The first such wager was the National Pick 7 on Breeders' Cup Day at Churchill Downs (Kentucky) on November 2. Although some industry representatives had projected a pool of \$20 million, the actual gross pool was under \$9 million; of 29 winning tickets nationwide, 16 were from California.

Thoroughbred and Appaloosa Regulation. On October 23, OAL approved new section 1743, Title 4 of the CCR, which establishes conditions for entering thoroughbred and Appaloosa horses in five-furlong or shorter quarter horse races at quarter horse meetings, mixed breed meetings, and fair meetings. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 197 for background information.)

Wagering on Competing Horse Regulatory Amendment. At its November 15 meeting, the Board adopted amendments to section 1970, Title 4 of the CCR, which generally prohibits owners, agents, trainers, employees, and representatives from wagering on a competing horse when they have a horse entered in the same race. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 198 for background information.) The amendment, which clarifies existing section 1970, clearly prohibits the listed persons from wagering on any horse, other than their own, to win. It would allow Pick (n)-type wagers by those persons only if, in the race their horse is entered,



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that horse is wagered to win. In late December, CHRB submitted the rulemaking file to OAL for review and approval.

Trifecta Regulation. At its December 13 meeting, the Board adopted two amendments to section 1979, Title 4 of the CCR, which provides for trifecta wagering in California. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 198; Vol. 11, No. 2 (Spring 1991) p. 168; and Vol. 11, No. 1 (Winter 1991) p. 141 for background information.) Specifically, the amendments would repeal section 1979(l), which provides for a one-year experimental period for trifecta wagering, and section 1979(m), which mandates a sunset date of June 30, 1992 for section 1979. The Board separated out from this regulatory package the proposed repeal of section 1979(k), which limits associations to one trifecta race per day; that proposal will be re-noticed by the Board in early 1992. In late December, the Board submitted the rulemaking package to OAL for review and approval.

Equine Substance Abuse Research Update. At its October 25 meeting, the Board adopted the recommendations of the Equine Substance Abuse Research and Advisory Committee (ESARAC) relative to positive cocaine test results. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 198 for background information.) ESARAC recommended that CHRB policies and procedures for drug testing be modified so that (1) tests reporting the presence of cocaine and/or metabolites be quantified; (2) trainers are made aware of positive test results in a timely manner; (3) guidelines are established to ensure more uniformity in handling such cases; (4) stewards are provided continuing education to ensure implementation of the guidelines; (5) a panel of stewards is appointed to hear cocaine cases (with one steward selected by trainers); and (6) a thorough study of the pharmacokinetics and pharmacodynamics of cocaine is undertaken immediately. Consistent with these recommendations, the Board approved amendments to CHRB Directive 02-91, Policies and Procedures for Test Results Reporting Prohibited Substances in Race Horses consistent with ESARAC's recommendations; the directive is intended to provide an effective, efficient, and consistent system of dealing with positive test results.

Rent Expense Issue. As a license condition, racing associations are required to provide charity racing days, the proceeds from which go to charities; currently, the industry generates about \$2 million annually for charity.

According to Business and Professions Code section 19553, an association may deduct, from the gross income generated on charity days, only the expenses incurred because of the conduct of racing on such days, but no deduction will be allowed for overhead or expenses of the licensee which would be incurred irrespective of the conduct of charity day racing. Although some associations treat rent as an overhead item and do not deduct it from net charity day racing proceeds, several racing associations negotiated rental agreements based on a percentage of handle; those associations contend that if no races were held on charity days, there would be no handle and no rent due. Therefore, those associations include rent as a deductible expense. Board staff and counsel originally took the position that rent is an overhead expense which may not be deducted. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 198 for background information.)

However, after considerable discussion at its October meeting, the Board agreed to accept the racing associations' view that rent calculated as a percentage of handle should be a deductible expense, although noting that this may cause an industrywide shift to base rent on handle at all tracks. Members also noted that expenses-based-on-handle is only acceptable for rent and not for individual compensation; *i.e.*, racing association personnel may not receive a percentage in lieu of salary and have that deducted from charity day proceeds. Commissioner Manolakas requested that the Board draft and adopt a new rule to clearly define what is deductible; at its December 13 meeting, the Board sent the matter to the Benevolent Programs Committee for further discussion. One proposal under Committee consideration is to base charitable contributions as a percentage of a meeting's total handle instead of handle on particular days.

LEGISLATION:

AB 1219 (Costa) would permit CHRB, until January 1, 1994, with the approval of the Department of Food and Agriculture, to authorize satellite wagering located at prescribed fairgrounds to receive the audiovisual signal from the northern, southern, or central zone, or from more than one of these zones at the same time. This two-year bill is pending in the Assembly Governmental Organization Committee.

AB 507 (Floyd) would create the California Horseracing Industry Commission and prescribe its membership; the Commission would be responsible

for promoting the horse racing industry and for conducting market research related to horse racing. This two-year bill is pending in the Senate Governmental Organization Committee.

AB 520 (Floyd) would require the Board to include licensees' telephone numbers in its current listing of temporary and permanent licensees. This bill would also require the Board to provide a copy of the listing to various governmental entities or racing associations, and require the Board to require reimbursements for its costs of providing the information. This two-year bill is pending in the Assembly Governmental Organization Committee.

AB 832 (Floyd) would prohibit CHRB from granting a trainer's license unless the applicant's liability for workers' compensation is secured. This two-year bill is pending in the Senate Governmental Organization Committee.

AB 1441 (Cortese), AB 1623 (Kelley), AB 1786 (Floyd), and AB 1887 (Harvey). A provision of law repealed on January 1, 1992, distributes the funds deducted from wagers at satellite wagering facilities in the northern zone in a different manner than in the central and southern zones. Upon the repeal of these provisions, another provision became operative, which requires that the total percentage deducted from wagers at satellite wagering facilities in all zones be distributed in the same manner.

AB 1441, AB 1623, AB 1786, and AB 1887 would each repeal the provision which became operative on January 1, 1992, and continue the pre-existing law. **AB 1441, AB 1623, and AB 1887** are all pending in the Assembly Governmental Organization Committee; **AB 1786** is pending in the Senate Governmental Organization Committee.

SB 729 (Maddy), as amended April 30, would permit CHRB to authorize associations licensed to conduct racing meetings in the northern or southern zones to operate satellite wagering facilities at not more than three sites within each zone in which the association is licensed to conduct racing meetings, other than fairgrounds which are located within those zones, if specified conditions are met; require these associations to accept an audiovisual signal; and prohibit the Board from approving this additional satellite wagering at any site which is located within 35 air miles of a fair that conducted satellite wagering prior to January 1, 1991, without the consent of the board of directors of that fair. This two-year bill is pending in the Senate inactive file.

SB 168 (Hill) would make it unlawful for any person to sell or offer



for sale any horse or foal bred for horse racing if the person knows or has reason to know that steroids have been administered to the horse or foal, and that the horse or foal is or will be entered in a horse race. This two-year bill is pending in the Senate Governmental Organization Committee.

AB 244 (Floyd) would authorize an association to revise its estimate for the aggregate handle during the meeting only if CHRHB determines that the revision is necessary. This two-year bill is pending in the Senate Governmental Organization Committee.

SB 204 (Maddy) would delete an existing provision which states that no California State Lottery game may include a horse racing theme. This two-year bill is pending in the Senate inactive file.

AB 159 (Floyd) would require CHRHB to adopt regulations to eliminate the drugging of horses entered in horse races, and to adopt regulations on the medication of racehorses sold at horse sales or horse auction sales sufficient to protect the horses, owners, and the general public. This two-year bill is pending in the Senate Governmental Organization Committee.

RECENT MEETINGS:

At CHRHB's October 25 meeting, track representatives indicated that on-track attendance and handle were down considerably from 1990. Although the economy is in recession, some critics blame the lower attendance on SB 944 (Maddy) (Chapter 424, Statutes of 1991), which allowed expansion of satellite wagering into Los Angeles and Orange counties. The Oaktree Racing Association reported an almost 50% decline in its average daily on-track handle, and a decline in total handle of almost 25%. Initial reports from Hollywood Park indicated a decline of 34% on-track handle, and an 8% increase in total handle. Originally, proponents thought that SB 944 would attract more fans by making racing more accessible; according to industry representatives, it merely shifted the wagering dollar from on-track to off-track.

At CHRHB's October and November meetings, representatives from Caliente (Mexico) Race Track addressed the Board. Racing has recently been reactivated at that track, and the representatives claimed that 90% of the horses raced there are from California. Although they did not specify what they hoped to accomplish, the representatives apparently want the Board to be aware of the facility and lay foundation for possible future agreements.

At its December meeting, the Board postponed until a future meeting a discussion of proposed delegation of authority to its Legislative Committee. Because the Board meets only monthly, it cannot always present opinions and respond to legislative action in a timely manner. By delegating authority to its Legislative Committee, the Board may be able to make its positions known and more actively participate in the legislative process.

At its December 13 meeting, the Board discussed its contract with the University of California at Davis (UCD) for the services of an Equine Medical Director; since fiscal year 1989-90, the Board has contracted with UCD for such services. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 200 for background information.) At the December meeting, CHRHB's Medication Committee recommended that the Board continue its relationship with UCD by extending the current contract, which expires in June, through June 1993. Dr. Fred Murphy, Dean of UCD's School of Veterinary Medicine, talked to the Board about his plans for the Equine Medical Director, noting that the Director would be involved in several activities, including the development of CHRHB's equine drug testing program. Dr. Murphy reported that the position of Director had been offered to Dr. A.C. "Woody" Asbury. Dr. Asbury subsequently declined the offer; UCD staff will provide the necessary services until a new Director has been named.

Also at its December meeting, the Board approved a request from Southern California Off-Track Wagering, Inc. (SCOTWINC) to reduce the amount deducted from satellite wagering on thoroughbred races for the reimbursement of offsite vaning and stabling from .78% to .66% of handle. The vaning and stabling fund is used to pay for transportation and housing of horses forced to stay at tracks other than where racing is taking place. For instance, 3,853 stalls are required to conduct a meet at Santa Anita, but there are only 1,950 stalls onsite; the rest of the stalls are provided by other tracks. Because there has been a large increase in the amount of satellite wagering, the smaller percentage will provide the same total amount for vaning and stabling.

FUTURE MEETINGS:

May 29 in Cypress.
June 26 in Sacramento.
July 30 in La Jolla.

NEW MOTOR VEHICLE BOARD

*Executive Officer: Sam W. Jennings
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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.

The Board consists of four dealer members and five public members. The Board's staff consists of an executive secretary, three legal assistants and two secretaries.

MAJOR PROJECTS:

Board Pursues Regulatory Changes. On November 18, the Board conducted a public hearing on proposed amendments to sections 553(b) and 564, Title 13 of the CCR. Section 553(b) currently provides that "every new motor vehicle manufacturer and distributor shall pay to the Board an annual fee of \$.45 per new motor vehicle distributed by the manufacturer or distributor which was sold, leased, or otherwise distributed in California to a consumer of such new motor vehicles during the preceding calendar year." NMVB's proposed amendment would retain the \$.45 per vehicle charge, but establish a minimum annual fee of \$300 to be paid by every new motor vehicle manufacturer and distributor who sells, leases, or otherwise distributes new motor vehicles during the preceding calendar year. According to the Board, such an amendment would "attain a more equitable treatment of members of the regulated community."

Section 564 provides that petition decisions of NMVB "shall be in writing. Copies of the decision shall be served on the parties personally or sent