



various chiropractor members of BCE disagreed, suggesting that chiropractic colleges need some form of notice prior to any inspection. BCE Chair Louis Newman, DC, contended that a minimum of two weeks' prior notice is necessary in order to be fair, because BCE has not performed inspections in quite a while. Concurring with the majority of the Board members was Peter Martin, DC, who had recently resigned as a member of BCE to accept a position as president of Palmer College of Chiropractic-West. According to Dr. Martin, it would be helpful to chiropractic colleges to receive prior notice of which areas would be inspected and what documents would be scrutinized in order to better facilitate such an inspection. DAG Primes warned that such prior notice might give chiropractic colleges an opportunity to quickly correct any inadequacies before BCE could discover them, making the entire procedure less useful than an unannounced inspection. Nevertheless, the general opinion of the chiropractor members of the Board prevailed and, in the future, a minimum of two weeks' notice will be given to all California colleges of chiropractic prior to any inspection by BCE.

Also on April 23, BCE discussed a controversial new area of chiropractic known as manipulation under anesthesia (MUA), in which chiropractors perform manipulations and adjustments while patients are under varying degrees of anesthesia. Under current law, this practice is legal; however, the Board is concerned about the potential dangers of carrying out chiropractic manipulations on anesthetized patients because, while under an anesthetic, a patient has less than normal muscular resistance to chiropractic manipulations, and thus, there is a danger that the chiropractor might unintentionally manipulate the patient's joint beyond its physiologic and anatomic range, resulting in injury to the patient. Additionally, there is the distinct danger that increasing numbers of financially-strapped hospitals are looking at this relatively new procedure as a new, innovative means of selling their under-used anesthesia services and increasing their profits. Reportedly, some hospitals are aggressively marketing their anesthesia services to doctors of chiropractic, despite a lack of state guidelines necessary to ensure the public's safety, and regardless of the chiropractors' experience.

Board member John Emerzian, DC, recommended that BCE meet with representatives of chiropractic colleges as soon as possible to discuss this emerging new area in chiropractic and establish some

guidelines to ensure that chiropractors perform MUAs safely and only when necessary. Some chiropractic colleges are currently in the process of setting up pilot studies in order to determine the situations in which such anesthesia could be properly used for manipulations; however, this area is so new that it currently remains unclear just where the safety parameters lie.

DAG Primes recommended to the Board that it order a temporary prohibition on MUA in California until BCE establishes sufficient safety guidelines. However, after discussion, the Board decided to take no immediate action, but rather to have an informational hearing on MUA at its July 23 meeting, at which time BCE hopes to gather sufficient information to help establish guidelines to protect the general public.

Ironically, at this same April 23 meeting, two of the continuing education seminars approved by BCE focus on manipulation under anesthesia, with one course designed to assist the doctor of chiropractic in hospital protocol for MUA, and the other course designed "to introduce the doctor of chiropractic to the procedures and protocols as related to a chiropractic hospital practice and usage of MUA."

FUTURE MEETINGS:

October 8 in Los Angeles.
December 17 in Sacramento.
January 21 in San Diego.

HORSE RACING BOARD

Executive Secretary: Dennis Hutcheson (916) 920-7178

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 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.

On March 26, Governor Wilson appointed George Nicholaw of Hollywood to CHRB.

MAJOR PROJECTS:

CHRB Revises Trifecta Regulation.

On February 7, CHRB published notice of its intent to amend section 1979, Title 4 of the CCR, to allow racing associations to run more than one Trifecta wager per race program, and to allow Trifecta wagers to be offered on races where there are eight or more official starters.

On March 27, CHRB conducted a public hearing on the proposal. At the hearing, Cliff Goodrich of the Los Angeles Turf Club commented that his organization was concerned about the proposal to allow a minimum of eight wagering interests to run in a Trifecta race. According to Goodrich, as the number of interests in a field is reduced, the possibility of manipulation increases. Don Robbins of Hollywood Park agreed that the issue raised by Goodrich was serious, but contended that California is the only state to currently require nine entries; Robbins opined that reducing that required number to eight racing interests would still provide California consumers with more protection than many racing states currently enjoy. Following discussion, CHRB adopted the proposed amendments, which currently await review and approval by the Office of Administrative Law (OAL).

Unlimited Place Sweepstakes Wagering.

On February 7, CHRB published notice of its intent to adopt section 1976.8, Title 4 of the CCR, which would establish the provisions for unlimited place sweepstakes (place pick nine) wagering in California. The unlimited place



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sweepstakes parimutuel poll consists of amounts contributed for a selection to finish first or second in each of nine races designated by the racing association. Each person placing an unlimited place sweepstakes ticket designates the horse finishing first or second in each of nine races comprising the unlimited place sweepstakes. On March 27, CHRB conducted a public hearing on the proposed adoption of section 1976.8. CHRB received no comments on the proposal, and subsequently adopted the section unanimously. At this writing, section 1976.8 awaits review and approval by OAL.

However, pursuant to AB 834 (Floyd) (Chapter 690, Statutes of 1991), an association or fair may offer any form of parimutuel wager as defined by CHRB's regulations or as defined by Chapter 9, Parimutuel Wagering, Uniform Rules of Racing, as published by the Association of Racing Commissioners International (ARCI). At its April 24 meeting, CHRB considered a request from Hollywood Park Operating Company to amend its current license application to provide for additional trifectas and a place pick nine wager; under ARCI's rules, Hollywood Park may run both types of wagers. CHRB unanimously granted the request.

CHRB to Amend Trainer Responsibility Regulation. On February 7, and again on April 10, CHRB published notice of its intent to amend section 1887, Title 4 of the CCR, which provides that the trainer is the absolute insurer of and responsible for the condition of horses entered to race, regardless of the acts of third parties. If a test sample is found to contain a prohibited substance, a trainer may be fined, have his/her license suspended or revoked, or be ruled off the enclosure. CHRB's proposed amendment would provide that if a trainer is not notified by the Board of a potential positive test within eighteen calendar days from the date the sample was taken, the trainer will not be deemed responsible unless the Board demonstrates by the preponderance of the evidence that the trainer administered the drug or other prohibited substance, or caused or had knowledge of such administration. CHRB was scheduled to conduct a public hearing on the proposed amendment on May 29.

Jockey/Driver Attire Regulations Proposed. On March 6, CHRB published notice of its intent to adopt sections 1691 and 1732, Title 4 of the CCR. Proposed section 1691 would prohibit any form of advertising—including logos, labels, or product endorsements—from appearing on a jockey's attire during the running of

a race. Similarly, proposed section 1732 would prohibit any form of advertising on harness racing drivers' racing attire. On April 24, the Board conducted a public hearing on these proposals; no public testimony was offered regarding either section. Following the hearing, CHRB unanimously adopted the proposed sections, which await review and approval by OAL.

Temporary License Regulatory Revisions Proposed. On March 6, CHRB published notice of its intent to amend section 1488, Title 4 of the CCR, which provides for the issuance of temporary occupational licenses by CHRB, and sets forth the conditions under which such licenses may become permanent. The Board's proposed amendment to section 1488 would limit to one the number of temporary licenses an individual may receive; additional temporary licenses would not be issued to an applicant without that applicant first submitting to the Board such fingerprints and completed applications as are required under Article 4, Title 4 of the CCR.

On April 24, the Board conducted a public hearing on this proposed amendment. At that time, Commissioner Manolakas noted that section 1488 currently provides that a temporary license shall be deemed permanent 120 days after its issuance; he contended that this provision seems contrary to the intent of the proposed amendment. Manolakas suggested that the section be revised to provide that a temporary license would expire at a specified time unless CHRB notifies the applicant that it would become permanent. CHRB Chair Chavez agreed that further review of the amendments was necessary, and referred the matter to the Security and Licensing Committee for reconsideration and recommendation.

CHRB Proposes Animal Health Technician Regulation. On March 27, CHRB published notice of its intent to adopt section 1840.8, Title 4 of the CCR, which would outline the duties of animal health technicians (AHTs) and unregistered animal health assistants (AHAs). At the January 30 meeting of the Board's Medication Committee, industry representatives requested clarification of the duties of AHTs. It was noted that the Board of Examiners of Veterinary Medicine, not CHRB, licenses AHTs. Industry representatives noted that since persons performing medication functions may handle injectable medications, CHRB should clarify the scope of responsibility for each such category of personnel.

Proposed section 1840.8 would state that AHTs and unregistered AHAs work under the direct supervision of, and are

responsible to, a practicing veterinarian for their actions as they pertain to veterinary practice under the Board's regulations; "direct supervision" would be defined as meaning that the practicing veterinarian is on the premises or in the same general area as the technician or assistant and is quickly and easily accessible.

The section would also provide that an AHT or unregistered AHA may not administer medication to a horse by injection or any means, except for the administration of deworming paste. The regulation would provide that, in the course of his/her duties, a technician or assistant may prepare and deliver a dispensed medication to a trainer or owner which is "properly labeled," as specified, and may monitor the administration of intravenous fluid therapy to a severely ill horse requiring intensive treatment. However, the veterinarian would be responsible for placement of the intravenous catheter and supervision of the care of the horse.

CHRB was scheduled to hold a public hearing on the proposed regulation on May 29.

CHRB Proposes Revisions to Medication Regulations. On March 27, CHRB published notice of its intent to amend section 1843 and adopt new section 1843.5, Title 4 of the CCR, regarding medication, drugs, and other substances. Proposed section 1843.5 would identify those substances which may be provided to a horse after the horse has been entered to race, and establish 48 hours as entry time for the purpose of the regulation. Also, section 1843.5 would state that any drug, medication, or other substance found in a sample which is not authorized pursuant to the section shall be deemed a prohibited drug.

Section 1843 would be amended to provide that a finding by an official chemist that a test sample taken from a horse contains a drug substance or its metabolites or analogues which has not been approved by CHRB, or a finding of more than one approved non-steroidal anti-inflammatory drug substance, or a finding of a drug substance in excess of the limits established by CHRB for its use shall be prima facie evidence that the trainer and his/her agents responsible for the care of the horse have been negligent in the care of the horse, and is prima facie evidence that the drug substance has been administered to the horse.

CHRB was scheduled to conduct a public hearing on these proposals on May 29.

Revised Parentage Verification Regulation Proposed. On January 31,



CHRB conducted a public hearing regarding its proposed amendments to section 1588, Title 4 of the CCR, which states the conditions under which a horse is ineligible to race in California. CHRB's proposed amendment would have added the requirement that owners of all horses foaled in the year 1992 and thereafter provide certification of parentage verification to both sire and dam. [12:1 CRLR 181] In response to the proposal, a number of industry representatives complained that California racing—especially harness racing—depends to a great extent on horses imported from other countries such as New Zealand and Australia and that such foreign jurisdictions would probably not be willing to comply with such a requirement.

In response to such comments, CHRB withdrew its original proposal and, on March 6, published notice of its revised proposal to amend section 1588; in addition to the above amendments, section 1588 would provide that foreignbred standardbred horses are exempt from the parentage verification requirements until January 1, 1995. CHRB conducted a public hearing on the proposal on April 24, at which time the Board adopted the amendments. At this writing, the rulemaking file awaits review and approval by OAL.

Regulatory Update. The following is a status update on regulatory proposals which were described in detail in recent issues of the *Reporter*:

—Controlling Authority Regulation. Following a January 31 public hearing, CHRB adopted proposed amendments to 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. CHRB's amendments to section 1402 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 was changed to the

Arabian Horse Registry of America. On March 24, OAL approved the amendments.

—Communication of Race Results. On January 31, CHRB conducted a public hearing regarding 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, CHRB contended the section is no longer useful and repealed it. [12:1 CRLR 181] Following the January 31 public hearing, the Board unanimously adopted the proposal; the rulemaking file was approved by OAL on March 16.

—Identification Regulation. On January 31, CHRB conducted a public hearing on its proposed amendment to 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 amendment would grant the Board authority to permit exemptions to this requirement. [12:1 CRLR 181] Following the public hearing, CHRB adopted the amendment, which was approved by OAL on April 24.

—Ambulance Service Regulatory Revision. On January 31, CHRB conducted a public hearing on its proposed 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; section 1468 also allows alternative emergency medical procedures for authorized training facilities that are not designated as auxiliary stables for a host track and requires those training facilities to submit to CHRB a written plan of emergency procedures to be followed in the event an accident occurs. CHRB's amendments require a facility to submit a revised emergency plan to the Board within ten working days of the date the facility is notified of CHRB's disapproval of its plan. The amendments also provide that CHRB's Executive Secretary or a designated repre-

sentative shall approve or disapprove the revised plan within ten working days from the receipt of the resubmitted plan. [12:1 CRLR 181] Following the public hearing, CHRB unanimously adopted the proposed changes, which were approved by OAL on March 24.

—Wagering on Competing Horses. On January 27, OAL approved CHRB's 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. [12:1 CRLR 181] The amendment, which clarifies existing section 1970, clearly prohibits the listed persons from wagering on any horse, other than their own, to win; it also allows Pick (n)-type wagers by those persons only if, in the race their horse is entered, that horse is wagered to win.

—Trifecta Regulation. On January 27, OAL approved CHRB's amendments to section 1979, Title 4 of the CCR, which provides for trifecta wagering in California. [12:1 CRLR 182] Specifically, the amendments repeal section 1979(l), which provided for a one-year experimental period for trifecta wagering, and section 1979(m), which mandated a sunset date of June 30, 1992 for section 1979.

Parimutuel Employees Guild and Racetrack Management Settle Differences. At its April 24 meeting, CHRB discussed the ongoing labor negotiations between Service Employees International Union (SEIU) Local 280—Parimutuel Employees Guild and various tracks. Union representative David Rosenfield informed the Board that the contract for Local 280 would expire on April 27, and that two issues—wages and job protection—still had not been settled. Rosenfield also contended that current law requires that a satellite wagering facility have a contract with the union in order to operate, and questioned whether such facilities would be allowed to operate on and after April 28 if no agreement is reached; in support of its position, SEIU presented a Legislative Counsel opinion which concludes that Business and Professions Code section 19608.4 provides that such facilities may not operate without a labor contract in place.

On May 6, with no agreement having been reached, the union commenced picketing the tracks. Although CHRB initially took the position that the parties should work out their disputes without Board interference, a number of legislators requested that CHRB intervene; as a result, CHRB scheduled a special meeting on May 11 to consider a request from the



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union to enforce section 19608.4 and cease satellite wagering. The parties reached a tentative agreement on May 10, signed an agreement on May 11, and the union workers went back to work on May 13.

LEGISLATION:

AB 3480 (Costa). Existing law requires a racing association that authorizes a betting system located outside California to accept wagers on a race to deduct certain amounts from the amount handled and from those amounts to pay a license fee equal to 10% of the total amount received by the association from the out-of-state betting system, unless the out-of-state betting system is a parimutuel betting system, in which case the association is required to pay a license fee equal to 10% of the total amount received by the association, or .5% of the handle, whichever is greater. As amended April 9, this bill would revise the formula for distributing the amount remaining after payment of the license fee. [S. GO]

SB 1950 (Russell), as amended March 26, would provide that on wagers made in the counties of Orange and Los Angeles on thoroughbred races conducted in either of those counties, excluding the 50th District Agricultural Association, the amount deducted for promotion of the satellite wagering program at satellite wagering facilities shall be .5%. [A. GO]

AB 3720 (Eaves). Under existing law, of the total amount handled by a satellite wagering facility in the central and southern zone, 0.1% is required to be distributed to the Equine Research Laboratory, School of Veterinary Medicine, University of California at Davis (UCD). As amended April 27, this bill would instead require the first \$1.2 million to be distributed pursuant to those provisions annually to the Equine Research Laboratory, and any funds to be distributed in excess of that amount annually to be divided equally between the Equine Research Laboratory at UCD and the Equine Research Center at the California State Polytechnic University at Pomona. [S. GO]

SB 1605 (Kopp), as amended April 6, would permit any county fair, district agricultural association, or citrus fruit fair in the northern zone to operate a satellite wagering facility with the approval of the Department of Food and Agriculture and the authorization of CHRHB on leased premises within the boundaries of that fair or district agricultural association. The bill would permit a racing association or any existing satellite wagering facility in the northern zone to consent to the location of

another satellite wagering facility within twenty miles of the facility or track. [A. GO]

AB 2671 (Floyd), as amended April 20, would require all funds not distributed to horsemen as purses or as breeder awards within 180 days after the conclusion of a licensed harness race meet or a portion of a split harness meet to be deposited into the account for the California standardbred sires stakes program. [A. W&M]

AB 2864 (Floyd). Under existing law, CHRHB may authorize an association licensed to conduct a racing meeting in the southern zone to operate a satellite wagering facility at certain locations approved by CHRHB pursuant to specified provisions of law. As amended April 6, this bill would permit CHRHB to approve a location to conduct a racing meeting in the central zone pursuant to those provisions if the location is at least 45 air miles from a location where a thoroughbred meeting is conducted. [A. Floor]

AB 2714 (Floyd), as introduced February 13, would prohibit the furnishing to or use by any person of a tape of any thoroughbred horse race occurring in this state for any commercial purpose without first securing the consent of the racing association conducting the meeting, the organization representing horsemen participating in the meeting, and CHRHB. [S. GO]

AB 2716 (Floyd), as amended April 6, would require CHRHB to hold not less than three of its monthly meetings each year in Sacramento. [S. GO]

SB 1433 (Maddy). Existing law requires any racing association, if it authorizes betting systems located outside of this state to accept wagers on a race, to pay a license fee to the state in a specified amount. As amended March 26, this bill would exempt from the license fee a thoroughbred association that hosts the series of races known as the "Breeder's Cup," and would require amounts received by the association from out-of-state betting systems to be distributed as specified. [A. GO]

AB 2551 (Mountjoy). Existing law requires an association accepting wagers on out-of-state feature races having a gross purse of at least \$100,000 to deduct a percentage equal to the percentage deducted by the entity conducting the out-of-state racing, and to distribute the amount as specified. As amended April 9, this bill would permit a racing association to deduct that percentage amount with the permission of CHRHB. Otherwise, the bill would require an association conducting wagering on out-of-state feature races to

deduct a percentage equal to the percentage deducted from the amount handled by the association in its parimutuel pools at its racing meetings. [S. GO]

SB 1269 (Maddy), as amended March 24, would change the name of the California Poultry and Livestock Disease Diagnostic Laboratory System to the California Veterinary Diagnostic Laboratory System. Also, the bill would authorize the construction of an equine drug testing laboratory at UCD, as part of the California Veterinary Diagnostic Laboratory System, and amend existing law to require that one-third of the samples taken be sent to that Laboratory System. [S. Appr]

The following is a status update on bills reported in detail in CRLR Vol. 12, No. 1 (Winter 1992) at pages 182-83:

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. [S. GO]

AB 832 (Floyd) would prohibit CHRHB from granting a trainer's license unless the applicant's liability for workers' compensation is secured. [S. GO]

AB 1786 (Floyd). 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 1786 would repeal the provision which became operative on January 1, 1992, and continue the pre-existing law. [S. GO]

SB 729 (Maddy) would permit CHRHB 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. [S. Appr]

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. [S. GO]

SB 204 (Maddy), as amended January 27, would delete an existing provision which states that no California State Lottery game may include a horse racing theme. [A. GO]

AB 159 (Floyd) would require CHRB to adopt regulations to eliminate the druging 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. [S. GO]

The following bills died in committee: **AB 1219 (Costa)**, which would have permitted 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; **AB 520 (Floyd)**, which would have required the Board to include licensees' telephone numbers in its current listing of temporary and permanent licensees; **AB 1441 (Cortese)**, **AB 1623 (Kelley)**, and **AB 1887 (Harvey)**, which would have re-enacted a repealed provision of law which distributed the funds deducted from wagers at satellite wagering facilities in the northern zone in a different manner than in the central and southern zones; and **SB 168 (Hill)**, which would have made 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.

RECENT MEETINGS:

At its March 27 meeting, CHRB discussed the possibility of renewing its contract with Truesdail Laboratories for one year; although the Board entered into a two-year contract with Truesdail last May, the second year is contingent upon satisfactory performance. [12:1 CRLR 188] CHRB Commissioner Ralph Scurfield noted that the Medication Committee recommended that the Board renew the contract, provided that Truesdail agree to meet specified time constraints. Following discussion, CHRB unanimously agreed to renew its contract with Truesdail.

FUTURE MEETINGS:

August 28 in Del Mar.
September 25 in Foster City.
October 30 in Monrovia.
November 30 in Los Angeles.

NEW MOTOR VEHICLE BOARD

Executive Officer: 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.

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.

LEGISLATION:

The following is a status update on bills reported in detail in CRLR Vol. 12, No. 1 (Winter 1992) at page 184:

AB 126 (Moore) would enact the "One-Day Cancellation Law" which would provide that, in addition to any other right to revoke an offer or rescind a contract, the buyer of a motor vehicle has the right to cancel a motor vehicle contract or offer which complies with specified requirements until the close of business of the first business day after the day on which the buyer signed the contract or offer. [S. Jud]

The following bills died in committee: **SB 1113 (Leonard)**, which would have imposed a \$25 fee on the purchase of new automobiles and new light-duty trucks that do not meet, and provide specified rebates to the purchasers of those vehicles that do meet, prescribed standards relative to low-emission vehicles and safety; **SB 760 (Johnston)**, which would have—among other things—required every applicant for a vehicle dealer's license and every managerial employee, commencing July 1, 1992, to take and complete a written examination prepared by DMV concerning specified matters; and **SB 1164 (Bergeson)**, which would have provided

that, for purposes of vehicle license fees, the market value of a vehicle shall be determined upon the first sale of a new vehicle to a consumer and upon each sale of a used vehicle to a consumer, but the market value shall not be redetermined upon the sale of a vehicle to specified family members.

LITIGATION:

In *Ri-Joyce, Inc. v. New Motor Vehicle Board*, No. C008797 (Jan. 7, 1992), the Third District Court of Appeal affirmed a trial court judgment directing NMVB to set aside its dismissal of a protest submitted by Ri-Joyce, Inc., a Mazda dealer in Santa Rosa, regarding the establishment by Mazda Motors of America, Inc., of a new Mazda dealership in Petaluma, more than ten miles from Ri-Joyce's dealership. Ri-Joyce protested the action to NMVB, claiming that in its franchise agreement, Mazda reserved for itself only a qualified right to appoint new dealers within Ri-Joyce's specific area of primary responsibility. Specifically, the agreement provided that if Mazda determined it to be in the best interest of customers or Mazda to do so, Mazda may elect to appoint another dealer to promote, sell, and service Mazda products near Ri-Joyce's approved location; prior to doing so, however, Mazda would have to give Ri-Joyce sixty days' written notice for the purpose of enabling the parties to discuss whether there exist any mutually agreeable alternatives to the proposed action.

In dismissing the Ri-Joyce's protest, NMVB concluded that the Third District's decision in *BMW of North America, Inc. v. New Motor Vehicle Board*, 162 Cal. App. 3d 980 (1984), was controlling and mandated the dismissal of the protest. *BMW* concerned—among other things—an interpretation of Business and Professions Code section 3062, which provides that an existing dealer may file a protest of the franchisor's decision to establish or relocate another dealership within the same relevant market area; the term "relevant market area" is defined as any area within a radius of ten miles from the site of a potential new dealership. Upon a protest, NMVB may preclude the franchisor from establishing or relocating the proposed new dealership if the existing dealer can establish good cause for not permitting the dealership within its relevant market area. In *BMW*, the Third District stated that section 3062 not only restricts the right of a franchisee to object to the appointment of a new dealer to the ten-mile radius, but it also implicitly recognizes the right of a franchisor to appoint new dealers, subject to the right of