an existing dealer to show good cause for precluding such appointment if it is to be within ten miles of the existing dealer.

In rejecting NMVB's decision, the Third District held that *BMW* is not controlling, since in *BMW*, the franchisor had reserved the unqualified power to appoint new dealers, whether in the dealer's geographical area or elsewhere; in contrast, Mazda reserved only a qualified right to establish a new dealership "near" Ri-Joyce's approved location. Although the agreement does not define the term "near," the Third District noted that the interpretation proposed by Mazda (that the term "near" should be construed consistent with section 3062 so that it corresponds with Ri-Joyce's relevant market area) and that proposed by Ri-Joyce (that the term "near" includes a neighboring community which has traditionally been served by Ri-Joyce and which produces a significant portion of its business) are both reasonable interpretations of the term as it is used in the franchise agreement. According to the court, "[t]he meaning and scope of Mazda's reservation of the power to appoint another dealer near Ri-Joyce's approved location is a matter which may be illuminated by extrinsic evidence and which Ri-Joyce must be accorded an opportunity to establish." The Third District concluded that "[w]here a franchise agreement is reasonably susceptible to the meaning urged by a franchisee, the Board must hear and consider such extrinsic evidence as the franchisee can produce in order to determine what rights were granted under the agreement....Only then can it be determined whether the franchisor's proposed action constitutes a modification of the franchise."

The court acknowledged that even if Ri-Joyce is correct in its claim that the proposed Petaluma dealership is "near" its approved location within the meaning of the contract, Mazda still cannot be precluded from establishing the Petaluma dealership. However, at a minimum, Mazda would be required to exercise good faith in deciding to do so, and could take such action only after conferring with Ri-Joyce as to any mutually agreeable alternatives.

RECENT MEETINGS:

At its April 8 meeting, NMVB elected Manning Post to serve as President of the Board, and Pete Johnston to serve as Vice-President; the terms are for a one-year period.

FUTURE MEETINGS:

To be announced.

OSTEOPATHIC MEDICAL BOARD OF CALIFORNIA

Executive Director: Linda Bergmann
(916) 322-4306

In 1922, California voters approved a constitutional initiative which created the Board of Osteopathic Examiners; 1991 legislation changed the Board's name to the Osteopathic Medical Board of California (OMBC). Today, pursuant to Business and Professions Code section 3600 *et seq.*, OMBC regulates entry into the osteopathic profession, examines and approves schools and colleges of osteopathic medicine, and enforces professional standards. The Board is empowered to adopt regulations to implement its enabling legislation; OMBC's regulations are codified in Division 16, Title 16 of the California Code of Regulations (CCR). The 1922 initiative, which provided for a five-member Board consisting of practicing doctors of osteopathy (DOs), was amended in 1982 to include two public members. The Board now consists of seven members, appointed by the Governor, serving staggered three-year terms.

MAJOR PROJECTS:

OAL Rejects Medical Board Regulation as Discriminatory Toward DOs. For over two years, the Medical Board of California's Division of Licensing (DOL) has been engaged in an attempt to revise regulations which enable it to approve alternative training programs (commonly known as "section 1324 programs") for foreign medical graduates (FMG) who are seeking licensure but having difficulty securing an ACGME-approved postgraduate training program. In proposing to amend sections 1324 and 1325.5, Division 13, Title 16 of the CCR, DOL intended to improve the quality of these programs in order to respond to criticisms by the California Medical Association and all medical schools in California that section 1324 programs are inferior to those approved by the ACGME, exploitative in that the sponsoring training facility sometimes charges the FMG a significant amount of money (up to $35,000) for the privilege of receiving the training, and unnecessary in that there are sufficient ACGME-accredited residencies in California to accommodate FMGs. *[12:1 CRLR 71; 11:4 CRLR 86–87]*

After two rejections by the Office of Administrative Law (OAL), DOL's amendments to section 1324 were finally approved on May 7. However, OAL rejected for a third time DOL's proposed amendments to section 1325.5, which would have required that a medical director of a section 1324 program have an MD degree. DOL insisted upon this requirement over numerous objections that it violates Business and Professions Code section 2453, which prohibits discrimination between MDs and DOs on the basis of the degree. OAL rejected section 1325.5 and DOL's arguments that it does not discriminate against DOs: "As a state agency [subject to section 2453], the [Medical] Board is attempting to prohibit osteopathic physicians from being employed as a medical doctor. To imply that such employment is not part of the physician's professional service is misleading." DOL plans to appeal OAL's rejection to the Governor.

Continuing Medical Education. At its February 15 meeting, OMBC discussed concerns raised by osteopathic specialists regarding OMBC's continuing medical education (CME) requirement which must be satisfied to maintain DO certification. Pursuant to section 1635, Division 16, Title 16 of the CCR, OMBC currently requires 150 hours of CME during each three-year period, including a minimum of sixty hours of CME in Category 1-A as defined by the American Osteopathic Association (AOA). OMBC instead decided to pursue the adoption of AOA's standard, which requires a minimum of sixty hours of osteopathic CME in either Category 1-A or 1-B of AOA's CME program. Category 1-A consists of formal education programs sponsored by recognized osteopathic institutions which meet the definition of "osteopathic" CME; Category 1-B allows credit for alternative projects such as preparing scientific papers and publications, engaging in osteopathic medical teaching, and conducting osteopathic hospital inspections. OMBC is expected to initiate rulemaking and hold a public hearing on the proposal to modify its CME regulation in the near future.

DOs as Physician Assistant Supervisors. At its February 15 meeting, OMBC discussed the creation of a follow-up program to ensure that DOs who serve as physician assistant (PA) supervisors are complying with their submitted protocols regarding their PAs. Although PAs are licensed by the Physician Assistant Examining Committee of the Medical Board of California, they have limited authority and must work under the direction of a supervising physician. DOs who want a PA to work for them must first submit to OMBC for review and approval a protocol which describes the procedures that the PA will be required to perform. Currently, once OMBC approves a DO to supervise a PA, the Board does not follow up to

ensure that the physician is following the approved protocols. OMBC discussed the possibility of sending an affidavit with the physician's annual license renewal and requiring the DO to confirm that he/she is complying with the appropriate protocols. OMBC formed a committee to research appropriate legal authority and draft such a document; the proposed draft is expected to be presented to the Board at its next meeting.

HIV/HBV Policy Statement. The Federation of State Medical Boards recently sent OMBC its October 1991 formal policy statement on prevention of the transmission of the human immunodeficiency virus (HIV) and hepatitis B virus (HBV) between health care worker and patient. (*See* agency report on MEDICAL BOARD OF CALIFORNIA for related discussion.) At its February 15 meeting, OMBC reviewed the policy statement and decided to establish its own guidelines tailored to osteopathic physicians. OMBC will study the Federation's policy statement and discuss appropriate modifications, as well as ways to communicate the appropriate guidelines to DOs, at its next meeting.

LEGISLATION:

AB 2743 (Lancaster), as amended April 9, would provide that except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before OMBC, the Board may request the administrative law judge to direct the licentiate found to have committed a violation of the Board's licensing act, to pay to OMBC a sum not to exceed the reasonable costs of the investigation and enforcement of the case. *[A. Floor]*

AB 2372 (Frizzelle). Section 2453 of the Business and Professions Code expresses state policy that physicians holding MD and DO degrees be accorded equal professional status, and prohibits discrimination by health facilities and other specified entities on the basis of the type of degree held by the physician. Existing law further requires that when health facility staffing requirements mandate that a physician be certified by an appropriate American medical specialty board, the position shall be available on an equal basis to osteopathic physicians certified by an appropriate osteopathic specialty board; existing law also prohibits the adoption of bylaws by a health facility that would circumvent these provisions. As amended March 30, this bill would revise these provisions to also prohibit entities that contract with physicians to provide managed care or risk-based care from discriminating on this basis, and require any contract offered by those entities to be offered on an equal basis. This bill would also prohibit those entities from adopting bylaws that would circumvent the policy of nondiscrimination. *[A. Health]*

SB 664 (Calderon). Existing law prohibits osteopaths, among others, from charging, billing, or otherwise soliciting payment from any patient, client, customer, or third-party payor 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 is apprised at the first solicitation for payment of the name, address, and charges of the clinical laboratory performing the service. As amended March 12, this bill would also make this prohibition applicable to any subsequent charge, bill, or solicitation. This bill would also make it unlawful for any osteopath to assess additional charges for any clinical laboratory service that is not actually rendered by the osteopath to the patient and itemized in the charge, bill, or other solicitation of payment. This bill passed both the Senate and the Assembly and is currently awaiting Senate concurrence in Assembly amendments.

AB 819 (Speier). Existing law generally provides that it is not unlawful for prescribed health professionals to refer a person to a laboratory, pharmacy, clinic, or health care facility solely because the licensee has a proprietary interest or co-ownership in the facility. As amended January 29, this bill would instead provide that it shall be unlawful for these licensed health professionals to refer a person to any diagnostic imaging center, clinical laboratory, physical therapy or rehabilitation facility, or psychometric testing facility which is owned in whole or in part by the licensee or in which the licensee has a proprietary interest, and would provide that disclosure of the ownership or proprietary interest does not exempt the licensee from the prohibition. It would, however, permit specified licensed health professionals to refer a person to such a facility which is owned in whole or in part by the licensee or in which the licensee has a proprietary interest if the person referred is the licensee's patient of record, there is no alternative provider or facility available, and to delay or forego the needed health care would pose an immediate health risk to the patient. *[S. B&P]*

AB 1691 (Filante), which would have required every health facility operating a postgraduate training program to develop and adopt written policies governing the working conditions of resident physicians, died in committee.

FUTURE MEETINGS:

To be announced.

PUBLIC UTILITIES COMMISSION

Executive Director: Neal J. Shulman
President: Daniel Wm. Fessler
(415) 703-1487

The California Public Utilities Commission (PUC) was created in 1911 to regulate privately-owned utilities and ensure reasonable rates and service for the public. Today, under the Public Utilities Act of 1951, Public Utilities Code section 201 *et seq.*, the PUC regulates the service and rates of more than 43,000 privately-owned utilities and transportation companies. These include gas, electric, local and long distance telephone, radiotelephone, water, steam heat utilities and sewer companies; railroads, buses, trucks, and vessels transporting freight or passengers; and wharfingers, carloaders, and pipeline operators. The Commission does not regulate city- or district-owned utilities or mutual water companies.

It is the duty of the Commission to see that the public receives adequate service at rates which are fair and reasonable, both to customers and the utilities. Overseeing this effort are five commissioners appointed by the Governor with Senate approval. The commissioners serve staggered six-year terms. The PUC's regulations are codified in Chapter 1, Title 20 of the California Code of Regulations (CCR).

The PUC consists of several organizational units with specialized roles and responsibilities. A few of the central divisions are: the Advisory and Compliance Division, which implements the Commission's decisions, monitors compliance with the Commission's orders, and advises the PUC on utility matters; the Division of Ratepayer Advocates (DRA), charged with representing the long-term interests of all utility ratepayers; and the Division of Strategic Planning, which examines changes in the regulatory environment and helps the Commission plan future policy. In February 1989, the Commission created a new unified Safety Division. This division consolidated all of the safety functions previously handled in other divisions and put them under one umbrella. The Safety Division is concerned with the safety of the utilities, railway transports, and intrastate railway systems.

MAJOR PROJECTS:

PUC ALJ Rejects Caller ID. On January 21, PUC Administrative Law