



struct a racetrack in Riverside County, which would be operated by the Golden Empire Racing Association. It is estimated that the new facility, which would conduct quarter horse and harness racing, could handle annual wagering of approximately \$120 million.

Also at its June 22 meeting, Chairman Chavez directed staff to document when a horse tests positive for high levels of Butazolidin; this documentation will assist CHRB and its staff in identifying trainers who may be over-medicating their horses.

Also at its June 22 meeting, the Board authorized staff to enter into an Interagency Agreement with UC Davis for the services of CHRB Equine Medical Director Dr. Rick Vulliet. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 131 for background information.)

At its July 26 meeting, CHRB concluded its nationwide search for a new Executive Secretary to replace Leonard Foote, who retired in April after serving fourteen years as CHRB's Executive Secretary. After considering 42 applicants for the \$74,500-per-year position, the Board selected Acting Executive Secretary Dennis Hutcheson as new Executive Secretary. Hutcheson served as Assistant Executive Secretary under Foote since 1988.

At the August 24 meeting, the Board approved a simulcasting agreement between Bay Meadows Racing Association and the California Exposition and State Fairs.

#### FUTURE MEETINGS:

To be announced.

#### NEW MOTOR VEHICLE BOARD

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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 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 man-

ufacturer. 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:

*Proposed Regulations.* At an October 17 public hearing, NMVB was scheduled to consider several proposed changes to its regulations in Title 13 of the CCR, to restructure the manner in which fees are charged of dealers, manufacturers, distributors, and representatives subject to the jurisdiction of the Board. These fee adjustments are mandated by AB 1104 (Torres) (Chapter 193, Statutes of 1989), which requires that NMVB licensees be charged fees sufficient to fully fund the Board's activities. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 132 for background information on AB 1104.)

Currently, the Board collects \$200 annually from every applicant seeking issuance or renewal of a license as a new motor vehicle dealer, dealer branch, manufacturer, manufacturer branch, distributor, distributor branch, or representative, paid to the DMV in behalf of the Board. The proposed regulatory amendments will increase that annual fee to \$300 for new motor vehicle dealers and dealer branches, while eliminating the flat fee requirement for manufacturers, manufacturer branches, distributors, distributor branches, and representatives.

Instead, the proposed amendments would assess an annual fee of \$0.45 per vehicle distributed by manufacturers and distributors which are in turn sold, leased, or otherwise distributed in the state. Unlike the flat fee above, this fee is to be paid directly to the Board. Manufacturers and distributors will also be required to file a written statement on or before May 1 of each year to enable the Board to calculate the fee to be charged. Where this statement is not submitted, the proposed regulations suggest a system of accounting by reviewing the new motor vehicle registration records of the DMV.

#### LEGISLATION:

The following is a status update on bills reported in detail in CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) at pages 205-06:

*AB 3515 (Bane)*, as amended August 22, requires substantial justification for

the failure to comply with discovery procedures associated with a hearing on a petition to terminate a franchise, and authorizes the secretary of the Board to require a party who fails to comply with discovery procedures, authorized by the Board, to pay the attorneys' fees and costs of the party who successfully makes or opposes a motion to compel enforcement of discovery. This bill was signed by the Governor on September 25 (Chapter 1325, Statutes of 1990).

*AB 3796 (Bane)*. Existing law, with specified exceptions, makes residence addresses in the records of the DMV confidential, and restricts the release of mailing addresses in those records. As amended August 9, this bill exempts from those provisions, under specified conditions, licensed vehicle manufacturers and dealers, and persons who provide advance adequate written assurance that the information will be used solely for statistical research or reporting purposes. This bill was signed by the Governor on September 30 (Chapter 1635, Statutes of 1990).

The following bills died in committee: *AB 2604 (Moore)*, which would have provided 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, as specified, until midnight of the first business day after the day on which the buyer signs a motor vehicle contract or offer which complies with specified requirements; and *AB 3190 (Tanner)*, which would have required a specified disclosure to the buyer of a new vehicle by both the manufacturer and the dealer regarding the ability of the vehicle to be operated with tire chains.

#### FUTURE MEETINGS:

To be announced.

#### BOARD OF OSTEOPATHIC EXAMINERS

*Executive Director: Linda Bergmann*  
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In 1922, California voters approved a constitutional initiative which created the Board of Osteopathic Examiners (BOE). Today, pursuant to Business and Professions Code section 3600 *et seq.*, BOE 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; BOE's regulations



are codified in Chapter 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:

**Regulatory Changes.** At its June 22 meeting in Irvine, BOE approved numerous amendments to its regulations in Chapter 16, Title 16 of the CCR. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 206 for detailed background information on these changes.) The revisions include the replacement of the four-year continuing medical education requirement (CME) with a three-year CME requirement (section 1635(b)); the revision of CME requirements pertaining to hourly allocation of required instruction (section 1635(c)); and standards for the commencement of the CME responsibility for new licensees (section 1635(d)). Additional changes include the revision of grounds for the refund of application fees (sections 1610(b), 1615(b), and 1690(a) and (b)); the creation of a formula for fees for delinquent license renewal (section 1690(h)); and the deletion of section 1690(1) pertaining to the Board's transition to a birth-month licensing renewal system. Several technical, nonsubstantive amendments to sections 1635(e), 1638(b), 1641(a), 1646(b), and 1646(d) were also approved at BOE's June meeting.

The rulemaking package on these proposed changes was submitted to the Office of Administrative Law (OAL) on August 8. On September 7, OAL rejected the rulemaking file for its failure to demonstrate that the Board had in fact voted to approve the changes; its failure to include several documents incorporated by reference; and several minor technical errors. The Board corrected the deficiencies and resubmitted the file to OAL, which approved it on September 28.

**Enforcement.** On June 22, BOE revoked the license of Dr. Stanley Eugene Asbury. The circumstances surrounding Dr. Asbury's case would appear to raise serious questions as to the adequacy of BOE's licensing and disciplinary processes.

Dr. Asbury was first licensed by the California Board of Osteopathic Examiners in 1974. In 1980, due to gross negligence and incompetence leading to the stillbirth of a patient's twins, BOE put

Asbury on probation. His license was subsequently revoked in 1982 when he failed to comply with the terms and conditions of his probation.

Dr. Asbury then moved to Arizona, and received a license to practice in that state. During 1982 and 1983, Dr. Asbury was accused of sexually abusing four female patients under the guise of relaxation treatments. In 1983, he was convicted of two felonies for sexual abuse of two of those patients. He was placed on three years' probation and ordered to begin psychiatric treatment. Asbury was later diagnosed as having a "manic-depressive illness." In 1984, the Arizona osteopath board revoked his license.

In January 1987, Asbury returned to California and petitioned for reinstatement of his osteopath's license. In March 1987, the Board—aware of his felony convictions—granted his petition, subject to his passing certain written and oral practical examinations, and a ten-year probationary period upon certain terms and conditions. Two of those terms were (1) an express requirement that while on probation, he may examine or treat female patients only in the presence of a third-party adult female, and (2) a prohibition on performing examinations of female genitalia.

During 1987, while Asbury was in the process of completing his educational requirements and other procedures required for license reinstatement, he was approached by BOE member Dr. Donald Dilworth. Asbury and Dilworth had a personal and professional relationship dating back to the 1970s. Dilworth was preparing to retire, and suggested that Asbury purchase his Escondido practice. Dilworth even assisted Asbury in preparing his petition for reinstatement.

Asbury started working in Dilworth's office in the first week of July 1988. However, he had not yet passed the exams required of him in the Board's March 1987 order. It was not until July 18, 1988, that BOE agreed to revise its March 1987 order, permitting Asbury to substitute a different exam for the one it had previously required, and allowing him to commence his ten-year probation period as of that date. (Dr. Dilworth disqualified himself from the July 1988 reinstatement proceedings.) Asbury's purchase of Dilworth's practice became effective on August 1, 1988. Also effective August 1, Dilworth agreed to serve as Asbury's supervising physician probation monitor.

On at least three occasions between August 1, 1988 and April 21, 1989, Asbury violated the terms of his probation requiring him to have a third-party

female adult present while he examined or treated female patients, and prohibiting him from examining the genitalia of female patients. On all three occasions, he inappropriately touched female patients without their consent.

Following an evidentiary hearing on May 1-4, 1990, before Administrative Law Judge Stephen E. Hjelt, Judge Hjelt recommended that the Board revoke Asbury's California license once again, for his failure to comply with the terms of his probation and general unprofessional conduct under section 2234 of the Business and Professions Code. On June 22, the Board adopted the ALJ's recommendation, and revoked Asbury's license. Asbury had until July 23 to appeal the revocation, but failed to do so.

The Board has no plans to further investigate any aspect of this matter. Dr. Dilworth is still a Board member.

## LEGISLATION:

The following is a tatus update on bills reported in detail in CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) at page 206:

**AB 4361 (Leslie)**, as amended June 6, states that an osteopathic physician and surgeon may employ an aide to assist him/her in the rendering of osteopathic manipulative treatment, as specified. This bill was signed by the Governor on September 12 (Chapter 873, Statutes of 1990).

**SB 1312 (B. Greene)** would have prohibited group policies of disability insurance, group nonprofit hospital service plans, and group health care service plans from denying access to the contracting process to osteopathic hospitals to provide covered services. This bill died in the Assembly Finance and Insurance Committee.

**AB 4088 (Friedman)** would have provided that it is a crime for any licensed osteopath who has undertaken the care of a dependent person, or whose duties of employment include an obligation to care for a dependent person, or to directly supervise others who provide direct patient care, who intentionally or with gross negligence, under circumstances or conditions which cause great bodily harm, serious physical or mental illness, or death, and fails to provide for the dependent person's care or commits an act or omission which causes great bodily harm, serious physical or mental illness, or death. This bill died in the Senate inactive file.

## FUTURE MEETINGS:

February 23 in Anaheim.

June 14 (location undecided).