



# REGULATORY AGENCY ACTION

Missouri—have been looking into the issue of whether a state certification program is preempted by federal law.

## LEGISLATION:

*AB 1104 (Torres)* would require that new motor vehicle dealers be charged fees sufficient to fully fund NMVB's activities other than the certification of third party dispute resolution processes. The Board would be authorized to recover the direct cost of those activities by charging BAR. This bill is pending in the Senate Appropriations Committee.

The following is a status update of bills described in detail in CRLR Vol. 9, No. 2 (Spring 1989) at page 116:

*AB 552 (Moore)*, which, as amended, would give buyers of a motor vehicle pursuant to a conditional sales contract or purchase order the right to cancel the contract or purchase order, without penalty or obligation, until midnight of the first business day after the day on which the contract was signed, is pending in the Assembly Committee on Governmental Efficiency and Consumer Protection.

*SB 582 (Green)*, which would delete the separate provisions relating to lessor-retailers, and provide instead for their licensing and regulation under the same provisions which apply to dealers, has become a two-year bill.

*SB 587 (Doolittle)*, which would make it unlawful for any person to lease unsafe, improperly equipped, or unsafely loaded vehicles to a highway carrier or to hire a highway carrier to transport the same, is pending in the Assembly Transportation Committee.

## FUTURE MEETINGS:

To be announced.

## BOARD OF OSTEOPATHIC EXAMINERS

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In 1922, California voters approved a constitutional initiative which created the Board of Osteopathic Examiners (BOE). BOE regulates entry into the osteopathic profession, examines and approves schools and colleges of osteopathic medicine and enforces professional standards. The 1922 initiative, which provided for a five-member Board consisting of practicing osteopaths, 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.

The Board's licensing statistics as of September 1988 include the issuance of 1,330 active licenses and 498 inactive licenses to osteopaths.

In March, Governor Deukmejian re-appointed to the BOE William E. Huffman of Gold River, a senior engineering specialist for a Sacramento area aerospace company, and Ronald E. Kaldor of Sacramento, who maintains his own law firm.

## MAJOR PROJECTS:

*Proposed Regulatory Changes.* BOE recently published its proposal to adopt numerous changes in its regulations, which appear in Chapter 16, Title 16 of the California Code of Regulations (CCR). Section 1621 presently sets forth the requirements for an approved written examination for reciprocity licensure. The proposed amendment to section 1621 would specify that in lieu of an approved state written examination, BOE will accept National Boards I, II, and III and National Board Parts I and II and the Federation of State Medical Boards Licensing Examination (FLEX) substituted for Part III. Under the proposed amendment, BOE will also accept the Special Purpose Examination (SPEX) for the Federation of State Medical Boards.

BOE also proposed new sections 1660-1662, Article 12.5, Chapter 16, Title 16 of the CCR, which concern BOE's Impaired Physicians' Diversion Program. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 103 for background information.) As proposed, section 1660 sets forth criteria for acceptance into the program, which include that the applicant be a licensed California resident subject to substance abuse who voluntarily agrees to be evaluated and follow a required treatment program, so long as the applicant has not been convicted of a crime involving substance abuse and has not been previously disciplined by BOE for substance abuse.

Proposed section 1660.2 sets forth the criteria for denial of acceptance into the program, including failure to meet the requirements of section 1660; disciplinary action by any state medical licensing authority; violation of any provision of the Medical Practice Act, excluding those relating to substance abuse; or a finding that the applicant will not substantially benefit from participation or that his/her participation would create too great a risk to public safety.

Proposed section 1660.4 lists the criteria for termination from the program,

which include successful completion; failure to comply with the treatment program; failure to meet the acceptance requirements; establishment of any cause for denial of entry into the program; or a finding that the physician has not substantially benefited from participation or that his/her continued participation would create too great a risk to public safety.

Proposed section 1661 establishes a Diversion Evaluation Committee comprised of three California licensed osteopathic physicians with experience in the treatment and diagnosis of drug and alcohol abuse, who will serve at the pleasure of the BOE. Proposed section 1661.2 requires the Committee to consider the recommendations of the program manager and any consultant to the Committee, and further requires the Committee to set forth a written treatment program for the impaired physician in addition to the statutory mandated duties and responsibilities.

Proposed section 1661.4 requires that Diversion Evaluation consultant(s) be approved by BOE and further requires the consultant(s) to conduct a fully competent medical and/or psychiatric examination of the applicant.

Proposed section 1662 sets forth the procedure for the review of applicants and requires consultant interview of each applicant, along with the medical and psychiatric evaluation of the applicant with appropriate authorization and releases necessary for program participation. Additionally, the regulation notes that the decision of the Committee on acceptances and applicable treatment plan is final.

BOE also proposed amendments to section 1676(a), which would allow the BOE to register fictitious name containing the designations "Medical Corporation," "Medical Associates," "Medical Center," or "Medical Office," in addition to the presently authorized designations of "Medical Group" and "Medical Clinic."

Finally, BOE proposed amendments sections of Title 16: 1690(f), 1690(g), 1690(i), and 1690(j). These amendments would lower the existing annual tax and registration fee from \$200 to \$175; lower the inactive certificate fee from \$200 to \$250; lower the medical corporation renewal fee from \$50 to \$25; and lower the fictitious name permit renewal fee from \$50 to \$25. (See CRLR Vol. 9, No. 2 (Spring 1989) p. 116 and Vol. 9, No. 1 (Winter 1989) p. 103 for background information.)

The BOE was scheduled to hold a public hearing on these proposed regula-



tory changes on June 23 in Irvine.

## LEGISLATION:

*AB 1180 (Leslie)* would (1) provide that each applicant for an original or reciprocity BOE certificate shall pay a fee not to exceed \$200; if the applicant's credentials are insufficient or he/she does not take the examination or fails to receive a certificate, BOE may retain \$150 and refund the remainder; (2) make BOE's annual tax and registration fee not more than \$200 and not less than \$25; (3) increase the penalty for failure to pay the annual tax and registration fee to \$100; and (4) add an oral and practical examination fee not to exceed \$200 nor less than \$50.

This bill would also provide that BOE shall hold one meeting during the first quarter of each calendar year at a time and place designated by the BOE and would delete an existing requirement that the Board publish notice of its meetings in newspapers, as specified. (See CRLR Vol. 9, No. 2 (Spring 1989) pp. 116-17 for background information.) AB 1180 is pending in the Senate Business and Professions Committee.

*AB 1249 (Bader)*. Existing law provides that any regularly matriculated student undertaking a course of professional instruction in a medical school approved by the BOE is eligible for enrollment in elective clerkships or preceptorships in any medical school or clinical training program in this state. This bill would provide that no medical school or clinical training program shall discriminate with respect to offering elective clerkships or preceptorships in any medical school or clinical training program in this state against osteopathic medical students enrolled in an approved school. The district attorney would be authorized to enjoin a violation of this provision. AB 1249 is pending in the Senate Business and Professions Committee.

## RECENT MEETINGS:

At its April 1 meeting in Pomona, BOE briefly discussed the Center for Public Interest Law's report critiquing the physician discipline system of the Board of Medical Quality Assurance (BMQA). (See CRLR Vol. 9, No. 1 (Winter 1989) p. 1 for background information.) Board members emphasized the fact that BOE's disciplinary process is completely separate and distinct from that of BMQA, and therefore no statistics or assertions made in the report were based on BOE files or past history.

**FUTURE MEETINGS:**  
August 26 in San Jose.

## PUBLIC UTILITIES COMMISSION

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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 the PUC regulates the service and rates of more than 25,000 privately-owned utilities and transportation companies. These include gas, electric, local and long distance telephone, radio-telephone, 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.

In late 1987, the PUC renamed three of its organizational units to clarify their roles and responsibilities. The former Evaluation and Compliance Division, which implements Commission decisions, monitors utility compliance with Commission orders, and advises the PUC on utility matters, is now called the Commission Advisory and Compliance Division. The former Public Staff Division, charged with representing the long-term interests of all utility ratepayers in PUC rate proceedings, is now the Division of Ratepayer Advocates. The former Policy and Planning Division is now the Division of Strategic Planning.

The PUC is available to answer consumer questions about the regulation of public utilities and transportation companies. However, it urges consumers to seek information on rules, service, rates, or fares directly from the utility. If satisfaction is not received, the Commission's Consumer Affairs Branch (CAB) is available to investigate the matter. The CAB will take up the matter with the company and attempt to reach a reasonable settlement. If a customer is not satisfied by the informal action of the CAB staff,

the customer may file a formal complaint.

## MAJOR PROJECTS:

*SCE's Proposed Acquisition of SDG&E*. The PUC's consideration of Southern California Edison's proposed acquisition of San Diego Gas and Electric Company continues in the prehearing stage. (See CRLR Vol. 9, No. 2 (Spring 1989) p.117 for background information.) A second administrative law judge, Edward O'Neal, has been assigned to the proceeding. Formal hearings are not expected to begin until April 1990.

The Federal Energy Regulatory Commission (FERC) is scheduled to begin hearings on the proposed acquisition at approximately the same time as the PUC hearings begin. The PUC will intervene in the FERC proceedings to represent the interests of Californians. Because the PUC's decision on the acquisition will not be final, its role in the FERC hearings will be limited to monitoring the proceedings.

A conflict may exist since the PUC cannot "advocate" a position to the FERC before its own decision is final, yet it is required to represent the interests of Californians. One possible resolution would be to allow the PUC's Division of Ratepayer Advocates (DRA) to represent Californians before the FERC, just as it represents the ratepayers before the PUC. However, DRA is currently prohibited from appearing before any agency except the PUC. Only the PUC itself may appear before the FERC.

Opponents of the acquisition feel California ratepayers may not be adequately represented before the FERC. They may explore ways to ensure that the PUC is an "advocate" rather than a "monitor" before the FERC.

In other merger action, consumer groups UCAN and TURN filed an emergency motion on April 15 protesting SDG&E's mailing of a pamphlet entitled "The Truth about SDG&E and Government Takeover in Black and White" to the utility's customer list. (See *supra* report on UCAN for further information.) UCAN/TURN also objected to the use of billing inserts to deliver a message opposing "government takeover" of SDG&E. The motion asserts that SDG&E's merger advocacy is an improper use of the mailing list and should be prohibited. At this writing, the PUC has not acted on the motion.

*Alternative Regulatory Framework Hearings*. During April and May, the PUC conducted public hearings throughout the state. The hearings are part of Phase II of the Alternative Regulatory