



wagering mentioned above, CHRB has discussed additional methods for expanding parimutuel wagering opportunities in southern California. Ideas such as the teletrack theatres currently used in Connecticut and New York, telephone account wagering, and interactive cable television systems were debated at the Board's December meeting. CHRB recommends to the Governor and to the legislature that it be given the statutory authorization to proceed with the controlled expansion of parimutuel wagering in California.

Regulations. The Office of Administrative Law (OAL) has approved CHRB's amendments to sections 1959 and 1977 of Title 4 of the California Administrative Code. OAL also approved CHRB's adoption of section 1976.5 regarding Special Unlimited Sweepstakes. All of these amendments are now effective. (See CRLR Vol. 6, No. 4 (Fall 1986) p. 87.)

On November 6, OAL disapproved CHRB's proposed amendment to section 1976 of the Code, relating to the carry-over provision of monies bet on Unlimited Sweepstakes horse races. As its reasons for disapproval, OAL stated that the change is regulatory in effect and thus fails to comply with the requirements of Title 1, section 100 of the California Administrative Code, and that it violates the "clarity" standard set forth in Government Code section 11349.1(a)(3).

Section 100(b)(3) of Title 1 allows state agencies to make regulatory changes without adhering to the procedural and substantive requirements of Articles 5 and 6 of Title 2, Division 3, Chapter 3.5 of the Government Code (see Government Code sections 11346-11349.11), so long as the changes do not "alter the requirements, rights, responsibilities, conditions or prescriptions contained in the existing regulation." By changing the maximum carry-over pool amount from \$5,000,000 to "\$5,000,000 or a maximum amount to be specified in the association's license application," CHRB has, according to OAL, significantly altered the rights of the racing associations because some of them could be restricted to amounts less than \$5,000,000.

OAL found the proposed amendment to violate the clarity requirement because, while section 1976(1) would refer to amounts specified in the racing association's license application, section 1976(2) would still refer only to amounts exceeding \$5,000,000. Without changes to both sections, the regulation would be unclear.

LEGISLATION:

SB 1499 (Maddy) was supported by CHRB, signed by the Governor, and became effective January 1, 1987. The bill allows for the expansion of inter-track simulcast wagering to all fairs in the northern zone as well as to fairs in the counties of Kern, Santa Barbara, and San Luis Obispo.

SB 1511 (Maddy), effective immediately, attempts to adjust perceived inequities in the distribution of intertrack revenues among the state, the horsemen, and the racing associations. The bill requires that 1.5% of the amount handled by a satellite wagering facility at a fair enclosure, or an amount to be determined by CHRB as equal to actual expenses (whichever is less), be distributed to the association which incurs expenses related to satellite wagering prior to the distribution for license fees, commissions, and purses.

AB 604 (Papan) was approved by the Governor on September 26, 1986 and filed with the Secretary of State on September 29, 1986. Under previously-existing law, the license fees for all racing associations were based on the total amount handled in the parimutuel pool at each association. AB 604 now excludes monies wagered at satellite wagering facilities from that amount. The bill also increases the number of weeks which may be allocated for thoroughbred racing in the northern zone from 16 to 22 weeks, and incorporates the changes in revenue distribution made by SB 1511.

AB 195 (Cortese), introduced January 6, would require any county fair, district agricultural association fair, or citrus fruit fair in the northern zone, or in the counties of Kern, San Luis Obispo, or Santa Barbara, which conducts satellite wagering to make a specified deduction from its total parimutuel wagers for distribution to the city or county where the meeting is located.

LITIGATION:

In *Nelson Jones v. CHRB and Hollywood Park Operating Co.*, 2 Civ. B015580 (September 23, 1986), the Second District Court of Appeal held that a thirty-day statute of limitations applies to bar a race track patron's petition for writ of administrative mandamus filed 85 days after his exclusion from two race tracks. In May 1984, Hollywood Park removed the petitioner from its premises for unauthorized presence in the winner's circle and for associating with bookmakers in the clubhouse area. Jones appealed to CHRB for a hearing on his expulsion

and while that hearing was pending, he attended another race track owned by Hollywood Park. He was again removed, this time for improperly entering the parking and clubhouse areas. CHRB then issued a decision upholding the exclusions. Eighty-five days after the decision, Jones petitioned the superior court for a writ of mandate. The lower court granted the writ, but the appellate court reversed, stating that the relevant statute had been amended to include a thirty-day statute of limitations applicable to "any...final administrative decision of the board," and therefore the lower court erred in granting the writ.

RECENT MEETINGS:

At the October 24 meeting Assemblymember Jim Costa presented Assembly Concurrent Resolution 159 to CHRB. The resolution provides that one race per day at each association facility be limited to California-bred horses. Assemblymember Costa stated that in his opinion this was not occurring, and he urged the Board to act to ensure compliance with this requirement. Commissioner Seeley stated that he was in full agreement, and Chairperson Felton promised to personally see that it was enforced.

Commissioner Paul Deats was unanimously elected Chairperson for the year 1987 after being nominated by Commissioner Landsdale. Commissioner Leslie Liscom was unanimously elected Vice-Chairperson for 1987 after being nominated by Commissioner Seeley.

FUTURE MEETINGS:

February 20 in Arcadia.
March 20 in Albany.
April 24 in Los Angeles.
May 22 in Los Angeles.

NEW MOTOR VEHICLE BOARD

Executive Officer: Sam W. Jennings
(916) 445-1888

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. Most licensees deal in cars or motorcycles.

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 manu-



REGULATORY AGENCY ACTION

facturer'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.

LITIGATION:

In *American Isuzu Motors, Inc. v. NMVB*, 186 Cal. App. 3d 464 (October 16, 1986), the Second District Court of Appeal upheld the California legislature's 1985 amendments to Vehicle Code sections 3050 and 3066, which preclude any Board member who is a new motor vehicle dealer from participating in, hearing, commenting upon, advising other members upon, or deciding any matter before the Board involving a dispute between a franchisee and a franchisor. In this regard, the Second District apparently disagrees with the Fourth District's holding in *University Ford Chrysler-Plymouth, Inc. v. NMVB*, 179 Cal. App. 3d 796 (1986), by equating the 1985 amendments with the Board's voluntary recusal policy, under which it operated prior to the 1985 amendments and when it administratively decided petitioner Fladeboe's protest against American Isuzu. Thus, American Isuzu's challenge to the constitutionality of the NMVB was rejected, and the Board's decision in favor of Mr. Fladeboe was affirmed.

RECENT MEETINGS:

The New Motor Vehicle Board did not meet between February 1986 and the end of the year.

At its January 12, 1987 meeting, the Board considered the administrative law judge's (ALJ) recommendation in a disciplinary matter involving Pittsburg Ford, Inc. In December 1986, the ALJ recommended the assessment of a five-year probation period against Pittsburg, a Bay area dealership, for price misrepresentation to consumers. Mr. Daus, majority shareholder of Pittsburg, expressed concern regarding one of the terms of the probation, which required that a Ford Motor Company employee supervise the dealership on a daily basis. Mr. Daus stated that Ford has refused to provide a manager; he offered to manage the dealership himself and to pay an independent auditor to review all dealership accounts and reimburse any overcharges to customers charged by the dealership. The Department of Motor Vehicles, which had investigated the fraud claim, objected to any amendments to the terms of the recommended

probation, and called for revocation of Pittsburg's license. The Board met in executive session regarding the matter, and plans to issue a decision in the near future.

FUTURE MEETINGS:

To be announced.

BOARD OF OSTEOPATHIC EXAMINERS

Executive Director:

Linda Bergmann
(916) 322-4306

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.

MAJOR PROJECTS:

Regulation Changes. The Board reviewed all of its regulations in accordance with AB 1111 at its November 21 meeting in Sacramento. The Board ratified the regulations, which must now be approved by the Office of Administrative Law. (See CRLR Vol. 6, No. 4 (Fall 1986) p. 88 for details.)

LEGISLATION:

SB 1888 (Stiern) was signed and chaptered on September 29 (Chapter 1274). (See CRLR Vol. 6, No. 4 (Fall 1986) p. 88.)

AB 3033 (Floyd) died in committee. (See CRLR Vol. 6, No. 4 (Fall 1986) p. 89.)

AB 3043 (Tucker), which was supported by the Board, died in committee, and would have specifically prohibited physician's assistants from dispensing drugs.

RECENT MEETINGS:

Under Business and Professions Code section 2185, an applicant for a physicians and surgeons certificate who fails to pass the oral exam or any part of the written exam after two attempts is not eligible to be reexamined until the applicant presents evidence that he/she has completed additional appropriate medical instruction. Two students who failed the licensing exam twice have petitioned

the Board to review their exams and the entire examination process. The Board established a subcommittee to review the current exam, modify and update its sections, prepare study materials for persons who have failed the exam twice, and establish new guidelines for eligibility to retake the exam.

The Board established a committee to investigate the College of Osteopathic Medicine of the Pacific (COMP). On March 19 and 20, the committee will study and review the curriculum and facilities of COMP to ensure the adequacy of its clinical instruction.

The Board discussed physical disability as a condition warranting waiver of CME requirements to maintain an active license. When presented with a dozen hardship cases, the Board reiterated its goal to promote and ensure medical quality while recognizing those examiners who have devoted their lives to the health profession but are unable to fulfill the CME requirements due to a physical condition. The Board plans to develop a policy which would require medical documentation and substantiation when petitioning for a waiver. Each request will be analyzed on a case-by-case basis.

The Board rejected a proposal which would require osteopathic examiners to be subject to drug testing. The Board reasoned that no statute exists which gives a licensing board authority to pass or enforce such a resolution.

FUTURE MEETINGS:

April 11 in Pomona.

June 12 in Pomona.

August 14 in Sacramento.

PUBLIC UTILITIES COMMISSION

Executive Director: Victor Weisser
President: Stanley W. Hulett
(415) 557-1487

The California Public Utilities Commission (PUC) was created in 1911 and strengthened in 1946 to regulate privately-owned utilities and ensure reasonable rates and service for the public. The Commission oversees more than 1,500 utility and transport companies, including electric, gas, water, telephone, railroads, buses, trucks, freight services and numerous smaller services. More than 19,000 highway carriers fall under its jurisdiction.

Overseeing this effort are five commissioners appointed by the Governor with Senate approval. The commissioners