



INDEPENDENTS

AUCTIONEER COMMISSION

The Auctioneer and Auction Licensing Act, Business and Professions Code section 5700 *et seq.*, was enacted in 1982 and establishes the California Auctioneer Commission to regulate auctioneers and auction businesses in California.

The Act is designed to protect the public from various forms of deceptive and fraudulent sales practices by establishing minimal requirements for the licensure of auctioneers and auction businesses and prohibiting certain types of conduct.

Section 5715 of the Act provides for the appointment of a seven-member Board of Governors, which is authorized to adopt and enforce regulations to carry out the provisions of the Act. The Board's regulations are codified in Division 35, Title 16 of the California Code of Regulations (CCR).

During the summer of 1992, the California legislature defunded the Auctioneer Commission and its Board of Governors in retaliation for the Commission's June 15 filing of *California Auctioneer Commission v. Hayes*, No. 370773 (Sacramento County Superior Court). The petition for writ of mandate sought a court order prohibiting state budget officers from carrying out a June 30 transfer to the general fund of all but three months' worth of operating expenses from the Commission's reserve fund, in compliance with a legislative directive in the Budget Act of 1991. The Commission was attempting to prevent a loss of \$127,000 in auctioneers' licensing fees to the general fund. [12:4 CRLR 1, 214-15; 12:2&3 CRLR 248; 12:1 CRLR 177] The legislature did not repeal the Auctioneer and Auction Licensing Act, the provisions of law which establish the Commission and its Board of Governors and set forth their respective jurisdiction, or any other provision affecting the licensing of auctioneers or the conduct of auctions in California. It simply eliminated all funding for the Commission, preventing it from paying the attorneys handling its lawsuit and from functioning in any other way.

The 1993-94 legislative session may include bills attempting to re-fund the Commission, abolish the statutes creating the Commission, and/or abolish the Auctioneer and Auction Licensing Act altogether.

BOARD OF CHIROPRACTIC EXAMINERS

Executive Director:
Vivian R. Davis
(916) 739-3445

In 1922, California voters approved an initiative which created the Board of Chiropractic Examiners (BCE). Today, the Board's enabling legislation is codified at Business and Professions Code section 1000 *et seq.*; BCE's regulations are located in Division 4, Title 16 of the California Code of Regulations (CCR). The Board licenses chiropractors and enforces professional standards. It also approves chiropractic schools, colleges, and continuing education courses.

The Board consists of seven members, including five chiropractors and two public members. The terms of BCE members Barbara J. Bagwell, Ph.D., and Patricia B. Quibell, a physical therapist, expired on November 10. They may continue to serve during a one-year grace period, and Governor Wilson must name their replacements. On December 10, the Governor appointed Lloyd Boland, son of Assemblymember Paula Boland, to serve on BCE; Boland has a chiropractic practice in Simi Valley.

MAJOR PROJECTS

OAL Again Rejects BCE's Review Panel Regulations. On October 26, the Office of Administrative Law (OAL) rejected BCE's proposed adoption of sections 306.1 and 306.2, Title 16 of the CCR. Section 306.1 would have created Chiropractic Quality Review Panels, defined their responsibilities, and specified the rights of chiropractors under review by these panels. Section 306.2 would have defined the Board's obligations to outside experts who evaluate the performance of a licensee, are members of the Chiropractic Quality Review Panels, administer BCE's examinations, or perform educational evaluations. [12:4 CRLR 216]

OAL found that the rulemaking file submitted by BCE failed to comply with the clarity and necessity standards of the Administrative Procedure Act (APA). According to OAL, proposed section 306.1 is unclear because it differs from the

Board's description of its intended effect; is hard to understand; is not a complete regulatory scheme; and contains ambiguous and undefined terms. OAL found that proposed section 306.2 is also unclear because it differs from the Board's description of its intended effect. According to OAL, the problem stated in the rulemaking record which proposed section 306.2 is intended to address is that the Board's "ability to obtain expert professional opinions will be severely limited if the Board is unable to provide protection to experts against potential litigation stemming from their rendered opinions." However, OAL found that the rulemaking record contained no facts, studies, or other information supporting this statement and the need for the regulation.

This marks the third time that OAL has disapproved BCE's proposed regulatory language regarding the review panels. [12:2&3 CRLR 249] As a result, OAL offered its assistance to BCE regarding the Board's attempt to meet its rulemaking objective. BCE officials met with OAL staff in mid-December to discuss means by which the Board could meet its objective. At this writing, BCE has until March 3 to modify and resubmit proposed sections 306.1 and 306.2 to OAL for approval.

BCE Proposes Mental and Physical Illness Regulation. On November 13, BCE published notice of its intent to amend section 315, Title 16 of the CCR, which currently provides that when BCE has reasonable cause to believe that a chiropractor is mentally ill to the extent that it may affect his/her ability to conduct, with safety to the public, the practice authorized by his/her license, the Board may order the licensee to be examined by one or more physicians specializing in psychiatry designated by the Board. If the licensee is found to be mentally ill by one or more such physicians, the results of which indicates that such illness affects his/her ability to conduct, with safety, the practice authorized by his/her license, BCE may seek to place the licensee on probation, suspend his/her right to practice, revoke his/her license, or take such other action in relation to his/her license as the Board in its discretion deems proper.

BCE's proposed amendments to section 315 would also allow the Board to require an examination when a physical illness affecting the safety of a chiropractor's practice is suspected; provide that the Board may order the licensee to be examined by one or more physicians, psychologists, or chiropractors designated by the Board; and provide that a licensee's