



## 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 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, 1992 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] At that time, 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The legislature has now repealed the Auctioneer and Auction Licensing Act (see LEGISLATION).

### LEGISLATION

**SB 685 (Wright)**, as amended May 19, suspends the licensing requirement for auctioneers and auction companies until the licensing provisions of the Auctioneer and Auction Licensing Act are repealed or until a state agency or commission is designated to permit and enforce compliance with those provisions. This urgency bill took effect on July 30, the day it was signed by the Governor (Chapter 255, Statutes of 1993).

**AB 259 (Hannigan)**, as amended August 26, repeals the Auctioneer and Auction Licensing Act, and requires every auctioneer and auction company to maintain a surety bond in the amount of \$20,000 with the Secretary of State. This bill was signed by the Governor on October 11 (Chapter 1170, Statutes of 1993).

### BOARD OF CHIROPRACTIC EXAMINERS

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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—five chiropractors and two public members. In June, Governor Wilson appointed Deborah Pate, DC, of San Diego to fill a chiropractor seat on BCE; in July, the Governor appointed John Bovée of Sacramento, assistant executive director of the Western Mobilehome Association, to fill a public member seat on the Board.

### MAJOR PROJECTS

**BCE Reacts to Margolin Bill, Adopts Emergency Unprofessional Conduct Regulations.** During the summer and early fall, the Board adopted several emergency

regulations to address what has been identified by Assemblymember Burt Margolin, Chair of the Assembly Health Committee, as a state of emergency affecting public health and safety in California. The Committee became aware of a series of advertisements run by chiropractors in San Diego newspapers during 1991 and 1992; in the ads, the chiropractors indicated that spinal manipulation could be substituted for vaccinations for school-aged children. These ads, coupled with a March 1993 *Wall Street Journal* article in which ten to fifteen chiropractors were quoted as citing the effectiveness of chiropractic in treating the symptoms of ear infections in children, prompted Assemblymember Margolin to introduce AB 2294, which would prohibit chiropractors from substituting chiropractic for immunization and from using chiropractic to treat infectious diseases. However, the provisions of that bill will take effect only if the bill is passed by the legislature, signed by the Governor, and approved by the electorate (see LEGISLATION); at a May 11 Assembly Health Committee hearing on the bill, the Committee expressed concern that a state of emergency exists and urged the Board to adopt emergency regulations addressing these issues pending passage and voter approval of AB 2294.

Thus, at its June 5 meeting, BCE considered the adoption—on an emergency basis—of three amendments to section 317, Title 16 of the CCR, which defines actions which constitute unprofessional conduct. BCE first considered proposed section 317(w), which provides that it is unprofessional conduct for a chiropractor to offer to substitute, advertise that he/she will substitute, or actually substitute a spinal manipulation for a vaccination. Following discussion, BCE adopted the emergency language, which was approved by the Office of Administrative Law (OAL) on June 21.

Next, BCE considered proposed section 317(x), which provides that it is unprofessional conduct for a chiropractor to treat communicable diseases listed in Health and Safety Code section 3380, including diphtheria, hepatitis B, hemophilus influenza Type B, measles, mumps, pertussis (whooping cough), poliomyelitis, rubella, and tetanus. However, the section provides that it does not prohibit a chiropractor from treating any conditions, diseases, or injuries within the legal scope of chiropractic practice as set forth in section 302, Title 16 of the CCR, in any patient with a communicable disease. Following discussion, BCE adopted the emergency language, which was approved by OAL on June 21.

Finally, BCE considered proposed section 317(y), which—as then worded—