



INDEPENDENTS

AUCTIONEER COMMISSION

*Executive Officer: Karen Wyant
(916) 324-5894*

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). The Board, which is composed of four public members and three auctioneers, is responsible for enforcing the provisions of the Act and administering the activities of the Commission. Members of the Board are appointed by the Governor for four-year terms. Each member must be at least 21 years old and a California resident for at least five years prior to appointment. In addition, the three industry members must have a minimum of five years' experience in auctioneering and be of recognized standing in the trade.

The Act provides assistance to the Board of Governors in the form of a council of advisers appointed by the Board for one-year terms. In September 1987, the Board disbanded the council of advisers and replaced it with a new Advisory Council. [7:4 CRLR 99]

MAJOR PROJECTS:

Commission Pursues Legal Challenge to Impending Fund Transfer. In April, the Commission filed a Petition for Temporary Restraining Order, Preliminary and Permanent Injunction, and Other Extraordinary Relief in the Third District Court of Appeal, challenging the 1991-92 Budget Act provision which requires the transfer of much of the Commission's reserve fund to the state's general fund on June 30. [12:1 CRLR 177] Previous attempts by the Commission to convince the

Department of Finance (DOF) that Commission funds should be used only to pay necessary expenses associated with the effective performance of the duties and powers of the Commission proved unsuccessful; DOF defended the Budget Act provision—which will transfer substantial portions of many occupational licensing agencies' reserve funds to the state's general fund—by opining that the transfer is valid and does not constitute a special tax on regulated business in California.

The Third District subsequently declined to review the Commission's petition; at this writing, the Commission is preparing to file a similar petition in Sacramento County Superior Court.

Commission Drops Plan to Reduce License Renewal Fees. Last October, the Board of Governors proposed to amend section 3525, Division 35, Title 16 of the CCR, to reduce its biennial renewal fee from \$265 to \$200 for auctioneer licensees, and from \$275 to \$200 for auction company licensees. [12:1 CRLR 177] However, at its February 28 meeting, the Board of Governors agreed to forego the fee reduction, based in part on the possible transfer of \$166,000 from the Auctioneer Commission Fund to the state's general fund on June 30 (*see supra*).

LEGISLATION:

AB 2734 (Peace), as amended April 13, would amend Business and Professions Code section 5730, which specifies certain types of activities for which an unexpired and otherwise valid license to operate an auction company is not required. Specifically, this bill would amend section 5730(c), which currently provides that such a license is not required for a sale of real estate, to provide that such a license is not required for a sale of real estate or a sale of real estate with personal property or fixtures or both in a unified sale pursuant to Commercial Code section 9501(4)(a)(ii). [A. Floor]

RECENT MEETINGS:

At its February 28 meeting in Sacramento, the Board of Governors continued its discussion regarding the proposal to impose apprenticeship or educational requirements on auctioneer candidates prior to licensing. [12:1 CRLR 177] Board member Steve Grove proposed that an apprenticeship or educa-

tional requirement be implemented for all new licensees, stating that such an action would encourage increased professionalism in the industry. Grove suggested that the Commission require forty hours of auctioneer school or require that an applicant conduct his/her first three auctions under the supervision of an auctioneer who has been licensed for at least three years by the Commission. The Board directed Executive Officer Karen Wyant to solicit feedback from licensees and evaluate requirements presently imposed by other states; the Board is expected to continue this discussion at a future meeting.

FUTURE MEETINGS:

November 13 in San Diego.

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 Board is currently operating with only six members, following the April 10 resignation of Peter Martin, DC. At this writing, Governor Wilson has not named a replacement to fill the vacant position.

MAJOR PROJECTS:

Board Adopts Regulation Defining "Adjustment." On April 23, BCE adopted proposed new section 310.3, Division 4, Title 16 of the CCR, to define a chiropractic adjustment and/or manipulation as "manually or mechanically moving such tissues beyond their passive physiological range of motion by applying a forceful thrust." [12:1 CRLR 179] According to BCE, no regulation currently defines a chiropractic adjustment and/or manipulation; as a result, unlicensed individuals may be performing chiropractic adjustments. The Board anticipates that section 310.3 will strengthen its ability to protect the public from unlicensed persons performing chiropractic procedures. At this



writing, the regulatory action awaits review and approval by the Office of Administrative Law (OAL).

Board Revises Continuing Education Regulation Following OAL Rejection. On January 9, OAL disapproved the Board's proposed amendment to section 356, Title 16 of the CCR, which would modify its continuing education (CE) requirements for the renewal of a license to practice chiropractic in California. Existing section 356 provides that licensees in active practice must complete a minimum of twelve hours of CE per year at an educational program approved by BCE, and that any twelve approved hours may be selected for relicensure credit. The proposed amendment to section 356 would require that four hours of every twelve hours selected for relicensure credit must be in adjustive technique and must be satisfied by lecture and demonstration. [12:1 CRLR 179]

In disapproving BCE's proposed amendment, OAL found the rulemaking file failed to show that BCE properly documented its consideration of comments received regarding the proposed amendment, as required by the Administrative Procedure Act; inadequately explained its purpose for requiring that four hours, instead of one or two, must be in adjustive technique; and failed to adequately define what it recognizes as "adjustive technique" under section 356.

On April 9, BCE released for a fifteen-day public comment period a modified version of amended section 356. As modified by BCE, section 356 would provide that four hours of every twelve hours selected for relicensure credit must be in adjustive technique, and that those four hours of adjustive technique may be satisfied by lecture and demonstration.

At this writing, BCE's proposed amendment to section 356 is undergoing review by OAL.

BCE Revises Proposed Unprofessional Conduct Regulation. On February 24, the Board released for a fifteen-day comment period its second modified version of proposed new section 317(v), Title 16 of the CCR. The section is compelled by the settlement agreement in *California Chapter of the American Physical Therapy Ass'n, et al. v. California State Board of Chiropractic Examiners, et al.*, Nos. 35-44-85 and 35-24-14 (Sacramento County Superior Court). [12:1 CRLR 178; 11:4 CRLR 195] BCE accepted public comments on this version of section 317(v) until March 11, but withdrew the proposed language on March 19.

On April 10, BCE published notice of its intent to adopt one of two alternative

versions of section 317(v) which were submitted by the California Medical Association (CMA). Under alternative one, new section 317(v) would provide that it is unprofessional conduct for a chiropractor to fail to refer a patient to an appropriate physician or other licensed health care provider if, in the course of a diagnostic evaluation, the chiropractor detects an abnormality that indicates that the patient has a physical or mental condition, disease, or injury that is not subject to appropriate management by chiropractic methods and techniques. This version of section 317(v) would not apply when the patient states that he/she is already under the care of such other physician or licensed health care provider who is providing the appropriate management. This section would also allow the doctor of chiropractic to accept the patient's statement.

Under alternative two, new section 317(v) would define unprofessional conduct in much the same way, except that the section would not apply when the chiropractor has knowledge that the patient is already under the care of a physician or licensed health care provider who is providing appropriate management; alternative two would require the doctor of chiropractic to obtain this knowledge.

BCE was scheduled to conduct a public hearing on these proposals on June 19 in Palm Springs.

Board Proposes Creation of Chiropractic Quality Review Panels. On April 10, BCE republished notice of its intent to adopt new sections 306.1 and 306.2, Title 16 of the CCR. Section 306.1 would create Chiropractic Quality Review Panels, define their responsibilities, and specify the rights of chiropractors under review by these panels. Section 306.2 would define the Board's obligations to those experts who conduct evaluations of the conduct of a licensee, are members of Chiropractic Quality Review Panels, administer BCE's examinations, or perform educational evaluations. These new versions of proposed sections 306.1 and 306.2 represent a revised rulemaking package in response to two OAL disapprovals of previous BCE attempts to adopt new sections 306.1 and 306.2. [12:1 CRLR 179; 11:4 CRLR 195-96] BCE was scheduled to hold a public hearing regarding the new versions of sections 306.1 and 306.2 on June 18 in Palm Springs.

BCE Modifies Out-of-State Licensee Regulatory Proposal. On March 9, BCE announced a fifteen-day public comment period on its modifications to the text of proposed new section 312.3, Title 16 of

the CCR, regarding the ability of chiropractors licensed in other states to render professional services and/or evaluate or judge any person in California. The Board's modifications follow a December 1991 OAL rejection of the new section. [12:1 CRLR 178-79] As modified, section 312.3 would provide that the rendering of professional services by chiropractors not licensed to practice chiropractic in California to persons in California constitutes the practice of chiropractic in California and a violation of section 15 of the Chiropractic Act, unless the unlicensed chiropractor actively consults with a treating chiropractor licensed in California each time professional services are rendered to a person in California. The term "professional services" includes the rendering of professional judgments or evaluations regarding any person for insurance purposes. At this writing, OAL is reviewing the rulemaking file.

OAL Approves BCE's Conflict of Interest Code Amendments. On April 6, OAL approved BCE's amendments to its conflict of interest code, which appears at section 375, Title 16 of the CCR. Adopted by BCE in June 1991 [11:4 CRLR 195], the amendments designate those BCE employees who must disclose certain investments, income, and interests in real property and business positions, and who must disqualify themselves from making or participating in the making of governmental decisions affecting those interests.

Board Approves Draft Language for Preceptor Regulations. At its April 23 meeting, BCE approved draft language of new sections 313.1-313.8, Title 16 of the CCR. The proposed sections concern preceptor programs, which are offsite educational programs extending the preceptee's chiropractic experience beyond completion of the curriculum requirement or date of graduation, up to one year or the date of licensure, whichever occurs first. Among other things, the proposed regulations would specify the requirements for approval of preceptor programs; requirements for preceptors; responsibilities of a preceptor; and responsibilities of a preceptee. At this writing, the Board's notice of intent to adopt the eight sections has not been published in the *California Regulatory Notice Register*.

"No-Out-of-Pocket" Expense Advertising Regulation. At this writing, BCE's proposed amendments to section 317(u), which would prohibit chiropractors from entering into agreements with patients to waive, abrogate, or rebate the deductible



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and/or co-payment amounts of any insurance policy by forgiving any of the patient's obligation or payment unless the insurer is notified in writing in each such instance, still await review and approval by OAL. [12:1 CRLR 179]

LEGISLATION:

AB 856 (Hunter), as amended May 4, would provide that the offering or performance of colonic irrigations, as defined, is unlawful and prohibited, and that the offering or performance of enemas, as defined, is unlawful and prohibited unless offered or performed, or ordered to be offered or performed, by a physician under prescribed circumstances. AB 856 fulfills a court order in a 1985 lawsuit in which the California Medical Association (CMA) sought to prevent chiropractors from offering colonics. The San Diego County Superior Court ruled that colonic irrigations are invasive procedures and, as such, may not be performed by chiropractors. A term of the decision required BCE to support limitations on colonics; BCE is co-sponsoring this bill along with CMA. [S. H&HS]

AB 2638 (Boland). Business and Professions Code section 4227 prohibits a person from furnishing any dangerous drug or device, except upon the prescription of a physician, dentist, podiatrist, or veterinarian, except under specified conditions. As amended May 13, this bill would clarify section 4227 by providing that the prohibition does not apply to the furnishing of any dangerous device upon the order of a chiropractor acting within the scope of his/her license. This bill would also provide that the prohibition does not apply to the furnishing of any dangerous device by a manufacturer or wholesaler or pharmacy to a chiropractor acting within the scope of his/her license. This bill would also provide that a medical device retailer may dispense, furnish, transfer, or sell a dangerous device to a licensed chiropractor. [A. Floor]

ACR 54 (Bentley), as amended March 17, designated the month of May 1992 as Good Posture Month and the week of May 10-16, 1992 as California Chiropractic Wellness Week. This resolution was enrolled on April 27 (Chapter 22, Resolutions of 1992).

AB 316 (Epple), as amended March 30, would provide that, notwithstanding Business and Professions Code section 650 or any other provision of law, it shall not be unlawful for a person licensed pursuant to the Chiropractic Act, or any other person, to participate in or operate a group advertising and referral service for chiropractors, under eight specified con-

ditions. The bill authorizes BCE to adopt regulations necessary to enforce and administer this provision, and would provide that it is a misdemeanor for a person to operate a group advertising and referral service for chiropractors without providing its name and address to BCE. [S. B&P]

SB 664 (Calderon). Existing law prohibits chiropractors, among others, from charging, billing, or otherwise soliciting payment from any patient, client, customer, or third-party payor for any clinical laboratory test or service if the test or service was not actually rendered by that person or under his/her direct supervision, unless the patient is apprised at the first solicitation for payment of the name, address, and charges of the clinical laboratory performing the service. As amended March 12, this bill would also make this prohibition applicable to any subsequent charge, bill, or solicitation. This bill would also make it unlawful for any chiropractor to assess additional charges for any clinical laboratory service that is not actually rendered by the chiropractor to the patient and itemized in the charge, bill, or other solicitation of payment. This bill passed both the Senate and Assembly and is currently awaiting Senate concurrence in Assembly amendments.

RECENT MEETINGS:

At BCE's January 9 meeting, Executive Director Vivian Davis reported that, in November, Board staff mailed license renewal notices to 10,207 doctors of chiropractic for their 1992 license renewal, and by mid-December approximately 2,000 chiropractors had replied. Davis emphasized that all renewals had to be postmarked no later than March 2 to avoid forfeiture. This year, because of the Board's switch to a cyclical renewal system, license renewal fees are prorated based on the actual number of months for which the license is renewed, because some licenses will expire in seven months while others expire in eighteen months, depending on when the licensee's birthdate falls. After this initial license renewal cycle is complete, all chiropractors will renew their licenses each year for a twelve-month period.

Also at its January 9 meeting, BCE reelected Louis E. Newman, DC, as Board Chair, Mathew Snider, DC, as vice-chair, and Barbara Bagwell, Ph.D., as secretary.

At BCE's February 13 meeting, Executive Director Vivian Davis reported that Board staff had mailed the results of the November 1991 California chiropractic licensure examination to the 394 candidates who took the examination. BCE

granted licenses to practice chiropractic in California to 242 of the 394 candidates.

The Board also noted that all five California chiropractic colleges responded favorably to a recent BCE query about the possibility of holding the chiropractic licensure examination three times per year in the future, instead of the current practice of holding the examination only twice per year. [12:1 CRLR 180] Under such a system, examinations would be conducted in February, June, and October; many hope that three examinations per year would enable doctors of chiropractic to start earning a living relatively soon after graduation, which in turn would allow them to begin repaying student loans and avoid loan defaults. Furthermore, an additional examination each year would reduce the number of examinees at each examination session, possibly making it easier for BCE to manage the examination, and providing examiners with more quality time with examinees.

However, BCE is still questioning whether the process of compiling examination results and administering appeals could be accomplished in what would be a reduced four-month interval between each examination. While simply adding a third examination each year would require no regulatory action by BCE, other plans the Board is exploring, such as streamlining the examination format and allowing students to take the licensure examination in their final year of college, would require BCE to make regulatory changes. BCE will continue to consider its alternatives on these issues before making any final decision.

At its April 23 meeting, BCE discussed the possible resumption of periodic inspections of chiropractic colleges in California to ensure their compliance with state laws. Executive Director Vivian Davis noted that BCE's last inspection of a California college of chiropractic took place in 1989. Concerned that it does not currently know whether every chiropractic college is being administered in complete accordance with state standards, the Board discussed various ways of performing the inspections. Supervising Deputy Attorney General (DAG) Joel Primes recommended to the Board that inspections be unannounced, in order to encourage chiropractic colleges to comply with standards at all times, rather than just complying at the time of inspections. Board member Barbara Bagwell, Ph.D., one of the two public members of BCE, agreed with Primes, emphasizing that chiropractic colleges already know what the state standards are, and thus should be following them at all times. However,



various chiropractor members of BCE disagreed, suggesting that chiropractic colleges need some form of notice prior to any inspection. BCE Chair Louis Newman, DC, contended that a minimum of two weeks' prior notice is necessary in order to be fair, because BCE has not performed inspections in quite a while. Concurring with the majority of the Board members was Peter Martin, DC, who had recently resigned as a member of BCE to accept a position as president of Palmer College of Chiropractic-West. According to Dr. Martin, it would be helpful to chiropractic colleges to receive prior notice of which areas would be inspected and what documents would be scrutinized in order to better facilitate such an inspection. DAG Primes warned that such prior notice might give chiropractic colleges an opportunity to quickly correct any inadequacies before BCE could discover them, making the entire procedure less useful than an unannounced inspection. Nevertheless, the general opinion of the chiropractor members of the Board prevailed and, in the future, a minimum of two weeks' notice will be given to all California colleges of chiropractic prior to any inspection by BCE.

Also on April 23, BCE discussed a controversial new area of chiropractic known as manipulation under anesthesia (MUA), in which chiropractors perform manipulations and adjustments while patients are under varying degrees of anesthesia. Under current law, this practice is legal; however, the Board is concerned about the potential dangers of carrying out chiropractic manipulations on anesthetized patients because, while under an anesthetic, a patient has less than normal muscular resistance to chiropractic manipulations, and thus, there is a danger that the chiropractor might unintentionally manipulate the patient's joint beyond its physiologic and anatomic range, resulting in injury to the patient. Additionally, there is the distinct danger that increasing numbers of financially-strapped hospitals are looking at this relatively new procedure as a new, innovative means of selling their under-used anesthesia services and increasing their profits. Reportedly, some hospitals are aggressively marketing their anesthesia services to doctors of chiropractic, despite a lack of state guidelines necessary to ensure the public's safety, and regardless of the chiropractors' experience.

Board member John Emerzian, DC, recommended that BCE meet with representatives of chiropractic colleges as soon as possible to discuss this emerging new area in chiropractic and establish some

guidelines to ensure that chiropractors perform MUAs safely and only when necessary. Some chiropractic colleges are currently in the process of setting up pilot studies in order to determine the situations in which such anesthesia could be properly used for manipulations; however, this area is so new that it currently remains unclear just where the safety parameters lie.

DAG Primes recommended to the Board that it order a temporary prohibition on MUA in California until BCE establishes sufficient safety guidelines. However, after discussion, the Board decided to take no immediate action, but rather to have an informational hearing on MUA at its July 23 meeting, at which time BCE hopes to gather sufficient information to help establish guidelines to protect the general public.

Ironically, at this same April 23 meeting, two of the continuing education seminars approved by BCE focus on manipulation under anesthesia, with one course designed to assist the doctor of chiropractic in hospital protocol for MUA, and the other course designed "to introduce the doctor of chiropractic to the procedures and protocols as related to a chiropractic hospital practice and usage of MUA."

FUTURE MEETINGS:

October 8 in Los Angeles.

December 17 in Sacramento.

January 21 in San Diego.

HORSE RACING BOARD

Executive Secretary: Dennis Hutcheson (916) 920-7178

The California Horse Racing Board (CHRB) is an independent regulatory board consisting of seven members. The Board is established pursuant to the Horse Racing Law, Business and Professions Code section 19400 *et seq.* Its regulations appear in Division 4, Title 4 of the California Code of Regulations (CCR).

The Board has jurisdiction and power to supervise all things and people having to do with horse racing upon which wagering takes place. The Board licenses horse racing tracks and allocates racing dates. It also has regulatory power over wagering and horse care. The purpose of the Board is to allow parimutuel wagering on horse races while assuring protection of the public, encouraging agriculture and the breeding of horses in this state, generating public revenue, providing for maximum expansion of horse racing opportunities in the public interest, and providing for uniformity of regulation for each type of

horse racing. (In parimutuel betting, all the bets for a race are pooled and paid out on that race based on the horses' finishing positions, absent the state's percentage and the track's percentage.)

Each Board member serves a four-year term and receives no compensation other than expenses incurred for Board activities. If an individual, his/her spouse, or dependent holds a financial interest or management position in a horse racing track, he/she cannot qualify for Board membership. An individual is also excluded if he/she has an interest in a business which conducts parimutuel horse racing or a management or concession contract with any business entity which conducts parimutuel horse racing. Horse owners and breeders are not barred from Board membership. In fact, the legislature has declared that Board representation by these groups is in the public interest.

On March 26, Governor Wilson appointed George Nicholaw of Hollywood to CHRB.

MAJOR PROJECTS:

CHRB Revises Trifecta Regulation.

On February 7, CHRB published notice of its intent to amend section 1979, Title 4 of the CCR, to allow racing associations to run more than one Trifecta wager per race program, and to allow Trifecta wagers to be offered on races where there are eight or more official starters.

On March 27, CHRB conducted a public hearing on the proposal. At the hearing, Cliff Goodrich of the Los Angeles Turf Club commented that his organization was concerned about the proposal to allow a minimum of eight wagering interests to run in a Trifecta race. According to Goodrich, as the number of interests in a field is reduced, the possibility of manipulation increases. Don Robbins of Hollywood Park agreed that the issue raised by Goodrich was serious, but contended that California is the only state to currently require nine entries; Robbins opined that reducing that required number to eight racing interests would still provide California consumers with more protection than many racing states currently enjoy. Following discussion, CHRB adopted the proposed amendments, which currently await review and approval by the Office of Administrative Law (OAL).

Unlimited Place Sweepstakes Wagering.

On February 7, CHRB published notice of its intent to adopt section 1976.8, Title 4 of the CCR, which would establish the provisions for unlimited place sweepstakes (place pick nine) wagering in California. The unlimited place