the number of agents which may be employed by the owner of the goods or the licensee to bid on behalf of the owner. Although this proposal was discussed for some time, the Board took no action on it.

FUTURE MEETINGS:
May 6 in San Diego.

BOARD OF CHIROPRACTIC EXAMINERS

Executive Director: Vivian R. Davis (916) 445-3244

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.

MAJOR PROJECTS:

Definition of "Chiropractic Adjustment" Withdrawn. At its October 18 meeting, the Board held a public hearing on the proposed addition of section 310.3 to its regulations. The proposed section states: "For the purpose of defining the unlicensed practice of chiropractic, adjustment and/or manipulation of hard tissues shall be defined as manually or mechanically moving such tissues beyond their passive physiological range of motion by applying a forceful thrust." (See CRLR Vol. 10, No. 4 (Fall 1990) p. 166 for background information.)

The Board received comments opposing the adoption of the proposed regulation from the California Chapter of the American Physical Therapy Association, the Physical Therapy Examining Committee, the California Medical Association, the Council on Technic of the American Chiropractic Association, and other interested parties. Much of the opposition centers on arguments that proposed section 310.3 lacks clarity and consistency with other laws and regulations, and that BCE lacks the authority to adopt such a regulation, because the appellate court in *CREES v. California State Board of Medical Examiners*, 213 Cal. App. 2d 195 (1963), held that the Board is not authorized to enlarge the scope of chiropractic practice. Opponents claim that the phrases "beyond their passive physiological range of motion" and "forceful thrust" are too vague; and the California Medical Association expressed concerned that the proposed definition of "manipulation" is overly broad and will be misinterpreted by the Board to prohibit permissible activities by other allied health professionals within their scope of licensure. Those in opposition also agree that the Board has proffered no scientific, medical, or other basis demonstrating the necessity of the proposed regulation.

The California Chiropractic Association (CCA) supports the adoption of proposed section 310.3, arguing that BCE is fully authorized to adopt such a rule under section 4(b) of the Chiropractic Act, and that the regulation is necessary to enable the Board to protect the public from the unlicensed practice of chiropractic. In CCA's opinion, the definition of "adjustment and/or manipulation" is clear. CCA also notes that BCE is not attempting to define the practice of chiropractic (as it did in section 302 of its regulations—*see infra* LITIGATION); rather, it is formulating a definition of the unlicensed practice of chiropractic.

At its December meeting, the Board decided to withdraw this proposed regulatory language.

Recognition of Associations. At its December meeting, the Board held a public hearing on the proposed addition of section 356.1 to its regulations. The purpose of the proposed regulation is to establish the criteria which the Board will use to approve chiropractic associations sponsoring continuing education seminars in chiropractic. These standards will assist the Board in determining what a legitimate association is, and protect the interests of the public by assuring that sponsored seminars meet these standards. Among other things, proposed section 356.1 would require a sponsoring association to be an organized body with an established membership, bylaws, and rules of conduct; in functional existence for at least one year; and which offers courses and seminars co-sponsored by a chiropractic college or previously recognized association for at least one year. The public comment period ended on December 12; the Board took no action on this proposal at its December meeting.

Out-of-State Consultants. At its December meeting, the Board held a public hearing on the proposed addition of section 312.3 to its regulations. The section would clarify that a chiropractor licensed in another state may render professional services and/or evaluate or judge any person in California only after actively consulting with a BCE-licensed treating chiropractor. The purpose of the proposed regulation is to prohibit a chiropractor not licensed in the state of California from rendering professional services to a patient in California unless he/she is consulting with a treating chiropractor who has a California license. The Board believes this regulation is necessary because insurance companies utilize out-of-state consultants to review patient records and report their findings to the insurance company as they pertain to length of treatment, type of treatment, and fees. Because the out-of-state chiropractor reviewing the claim has not seen the patient and has not necessarily reviewed the patient's X-rays, the Board believes the consultant lacks the knowledge necessary to make the evaluation. The patient may have complicating conditions which are unknown to the consultant. Further, the out-of-state consultant must conform to another state's standards of chiropractic care when evaluating the treatment, and California's high standards are not taken into consideration.

The public comment period was extended to December 17; the Board took no action on this proposal at its December meeting.

"No Out of Pocket" Billing/Advertising Regulation. On July 5, the Board's new regulation section 317(u), regarding "no out of pocket" billing and advertising, became effective. However, at its July 26 meeting, the Board decided to refrain from enforcing new section 317(u) until it could clarify the situations in which it will be applied and enforced. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 166; Vol. 10, No. 1 (Winter 1990) p. 145; and Vol. 9, No. 4 (Fall 1989) pp. 126-27 for background information on this issue.) At its September meeting, the Board approved draft language for an amendment to section 317(u), which would prohibit chiropractors from using "no out of pocket" billing as an advertising or marketing device. However, at this writing, the Board has neither noticed this proposed amendment nor scheduled it for a public hearing.

Update on Other Proposed Regulatory Changes. In November, the Office of Administrative Law (OAL) disapproved the modified version of regulatory section 356, which would specify that four hours of each licensee's annual twelve-hour continuing education requirement must be completed in adjustive technique, and must be satisfied by lecture and demonstration. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 165 and Vol. 10, No. 1 (Winter 1990) p. 144 for background information.) OAL disapproved the modified version of section 356 due to

BCE's failure to follow proper rulemaking procedures. Thus, BCE scheduled a public hearing on January 17 in Los Angeles to receive public comments on the proposed modified version.

In November, OAL rejected for the second time BCE's adoption of new section 355(c), which would require certain chiropractors to complete a minimum of 48 hours of a thermography course. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 165; Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 198; and Vol. 10, No. 1 (Winter 1990) p. 145 for background information.) At this writing, the Board has not determined whether it will resubmit the new section to OAL for a third time.

In July, the BCE adopted two proposed amendments to section 331.1. First, a preamble was added to the section, which obliges chiropractors to diagnose and recognize conditions and diseases beyond their scope of practice. BCE also added new subsection (d), relating to the approval of chiropractic schools. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 165 and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 198 for background information.) The Board had until January 19, 1991, to submit the amendments to the OAL.

In September, the Board adopted final language for new sections 306.1 and 306.2. New section 306.1 would authorize the Board to create Mid-Level Review Panels to review the work of and provide assistance to individual chiropractors, as assigned by the Board, to strengthen various aspects of their practice. New section 306.2 would provide legal representation by the Attorney General's Office in the event that a person hired or under contract to provide expertise to BCE, including one who provides an evaluation of the conduct of a licensee as a Mid-Level Review Panel member, is named as a defendant in a civil action. The section also states that BCE shall not be liable for a judgment rendered against such person. (See CRLR Vol. 10, No. 4 (Fall 1990) pp. 165-66 for background information.) At this writing, the Board has not yet submitted these changes to OAL; it has until March 1, 1991 to do so.

LITIGATION:

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), petitioners and intervenors challenge BCE's adoption and OAL's approval of section 302 of the Board's rules, which defines the scope of chiropractic practice. Following the court's August 1989 ruling preliminarily permitting chiropractors to perform physical therapy, ultrasound, thermography, and soft tissue manipulation, the parties have engaged in extensive settlement negotiations. An October 5 status conference was postponed indefinitely. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 127; Vol. 9, No. 3 (Summer 1989) p. 118; and Vol. 9, No. 2 (Spring 1989) p. 112 for background information on this case.)

FUTURE MEETINGS:

May 2 in San Diego.
June 20 in Sacramento.
July 25 in Los Angeles.
September 5 in Oakland.
October 17 in San Diego.

CALIFORNIA ENERGY COMMISSION

Executive Director: Stephen Rhoads
Chairperson: Charles R. Imbrecht
(916) 324-3008

In 1974, the legislature enacted the Warren-Alquist State Energy Resources Conservation and Development Act, Public Resources Code section 25000 *et seq.*, and established the State Energy Resources Conservation and Development Commission—better known as the California Energy Commission (CEC)—to implement it. The Commission's major regulatory function is the siting of powerplants. It is also generally charged with assessing trends in energy consumption and energy resources available to the state; reducing wasteful, unnecessary uses of energy; conducting research and development of alternative energy sources; and developing contingency plans to deal with possible fuel or electrical energy shortages. CEC is empowered to adopt regulations to implement its enabling legislation; these regulations are codified in Division 2, Title 20 of the California Code of Regulations (CCR).

The Governor appoints the five members of the Commission to five-year terms, and every two years selects a chairperson from among the members. Commissioners represent the fields of engineering or physical science, administrative law, environmental protection, economics, and the public at large. The Governor also appoints a Public Adviser, whose job is to ensure that the general public and interested groups are adequately represented at all Commission proceedings.

There are five divisions within the Energy Commission: (1) Administrative Services; (2) Energy Forecasting and Planning; (3) Energy Efficiency and Local Assistance; (4) Energy Facilities Siting and Environmental Protection; and (5) Energy Technology Development.

CEC publishes *Energy Watch*, a summary of energy production and use trends in California. The publication provides the latest available information about the state's energy picture. *Energy Watch*, published every two months, is available from the CEC, MS-22, 1516 Ninth Street, Sacramento, CA 95814.

MAJOR PROJECTS:

SDG&E Powerplant Proceeding Suspended. On November 30, CEC issued an order granting San Diego Gas & Electric Company's (SDG&E) November 28 request for an immediate, indefinite suspension of its Notice of Intention (NOI).

In December 1989, SDG&E filed an application with CEC for construction of a 460-megawatt (MW) combined cycle project. The project will consist of two combustion generators, two heat recovery steam generators, and one steam turbine generator. SDG&E proposes to locate the project at one of five alternative sites. In March 1990, CEC accepted SDG&E's NOI to seek certification for the project, and commenced the twelve-month NOI process. (See CRLR Vol. 10, No. 4 (Fall 1990) pp. 168-70; Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 200-01; and Vol. 10, No. 1 (Winter 1990) p. 147 for background information.)

Effective November 30, the processing of the NOI was suspended until SDG&E requests a reinstatement. Pursuant to CEC's order, SDG&E must inform the proceeding's hearing officer every 90 days, in writing, of its intention to continue the suspension. Any motion by SDG&E to reinstate the proceeding must be filed with CEC at least 90 days prior to the intended reinstatement date.

SDG&E South Bay Unit 3 Augmentation Project AFC. In January 1990, SDG&E filed an Application for Certification (AFC) with CEC for a baseload demonstration augmentation project to be located within the confines of SDG&E's existing South Bay Power Plant in Chula Vista. The plant is currently a four-unit station which was built during the 1960s and early 1970s. The proposed project consists of a new combustion turbine generator, heat recovery steam generator, and associated equipment as well as modification to existing Unit 3. Natural gas will be the primary fuel used, with low sulphur No. 2 fuel oil serving as a back-up.

On October 5, SDG&E requested an indefinite suspension of the project, which CEC granted on October 10. The