



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 Chapter 3.5, 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 (see CRLR Vol. 7, No. 4 (Fall 1987) p. 99 for background information).

MAJOR PROJECTS:

Enforcement Program. According to Executive Officer Karen Wyant's report at the January 4 Board meeting, 67 field investigations were initiated in the last half of 1989. Forty-one of these investi-

gations were concluded, resulting in two fines and one notice. The Commission believes these statistics indicate better compliance by licensees. Also, Wyant noted that recent emphasis has been on inspecting rather than investigating. (See CRLR Vol. 9, No. 4 (Fall 1989) pp. 125-26 for background information.)

In 1989, the Board revoked three licenses, and anticipates the revocation of seven more by the end of 1990. The basis for the revocations will most likely be bond claim actions.

Monitoring of "Estate Sale" Advertisements. At its January 4 meeting, the Board decided to enforce its definition of "estate sale", which means the sale of goods belonging to a deceased person, through investigations. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 126 and Vol. 9, No. 2 (Spring 1989) p. 111 for background information.) Once violations are discovered through investigations and complaints, the Board will prosecute the licensee for false advertising.

RECENT MEETINGS:

The Board addressed two issues at its January 4 meeting. The first was whether the Board should reduce the 1990 renewal fee for licensees. The current fee is \$265; the Board discussed a proposal to reduce this fee to \$200. Karen Wyant pointed out that costs for prosecuting disciplinary cases will increase in the future because of the increase in investigations. Therefore, if the renewal fees were reduced to \$200, the Auctioneer Commission would most likely be operating at a deficit by 1992. The Board decided it should wait until it has more experience and data on prosecuting "shill" cases before reducing the licensee renewal fee.

The Board also discussed the renewal of its private investigator contracts. Currently, the private investigator contracts are awarded to ten firms throughout California, with a specific dollar amount allocated to each area. (See CRLR Vol. 9, No. 2 (Spring 1989) p. 111 and Vol. 9, No. 1 (Winter 1989) p. 97 for background information.) A problem arises when one area experiences a lot of activity and requires numerous investigations. If the area runs out of

money, the Board may not be able to investigate a specific complaint within that area. This occurs even though the Board has surplus monies allocated for investigations to other areas. To alleviate this problem, the Board approved two proposals. The first proposal modifies the existing areas, and establishes new boundary lines based on the amount of work flowing from specific geographical locations. The second proposal gives the Executive Officer the flexibility to move any of the investigation monies to different areas. In other words, so long as she stays within the investigation budget, the EO may move money allocated in one area to another area.

FUTURE MEETINGS:

May 11 in Sacramento.

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 Chapter 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:

Regulatory Changes. On December 20, BCE finally submitted its amendments to section 356, Chapter 4, Title 16 of the CCR, to the Office of Administrative Law (OAL) for approval. This change would require Board-approved continuing education (CE) courses to be sponsored by chiropractic colleges having or pursuing status with the Council on Chiropractic Education; and would require that four out of every twelve hours of CE to be in adjustive technique. (See CRLR Vol. 9, No. 2 (Spring 1989) p. 112 for background information.)

On December 29, BCE submitted to OAL its proposed amendment to section 355(a), which would (among other things) raise the annual renewal licens-



ing fee from \$95 to \$145. (See CRLR Vol. 9, No. 4 (Fall 1989) pp. 126-27 for background information.)

The Board has also adopted new sections 311 (registration of fictitious names), 331.11 (minimum grade point average requirement in order to enter chiropractic school), and 317(u) ("no out of pocket" advertising). BCE decided not to adopt proposed section 313.1 (preceptor program for unlicensed students). At this writing, the Board is preparing the rulemaking package on these regulations for submission to OAL. (See CRLR Vol. 9, No. 4 (Fall 1989) pp. 126-27 for background information on these changes.)

At its October 12 meeting, the Board decided to modify the language of its proposed amendment to section 335(c), which would require 48 hours of post-graduate work in thermography before one may operate or supervise the use of a thermography unit, to include an effective date. The Board must now decide whether it is necessary to renotice the regulation and provide an additional opportunity for public comment.

During its December 7 meeting, the Board approved draft language of a proposed amendment to section 331.1. The amendment would read as follows: "Doctors of Chiropractic accept patients who may be initially entering the health care system in California. Therefore, chiropractic doctors have a legal obligation to diagnose and recognize even those diseases and conditions which may be beyond their scope of practice to treat. The purpose for their knowledge of diagnosis and their trained ability to recognize all manner of health problems is to make those appropriate referrals for the overall protection of the public." BCE planned to hold a public hearing on this proposed change at its March meeting.

LEGISLATION:

SB 1608 (Stirling) would have required an attorney representing a plaintiff in an action arising out of the professional negligence of a physician, dentist, podiatrist, or chiropractor to file a certificate stating that the attorney has reviewed the facts of the case, consulted with a health care provider of equivalent experience, obtained a statement from the licensee consulted that the defendant's conduct fell below the ordinary skill exercised by similar professionals, and that the attorney has concluded that there is a reasonable and meritorious cause for filing the action. This bill died in committee.

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 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 engaged in settlement negotiations. A January 5 status conference was postponed until March 2. (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.)

RECENT MEETINGS:

At a public meeting on November 16, the Board withdrew its approval of Southern California College of Chiropractic, effective December 16. The Board had issued an order to show cause due to the financial instability of the college, and took action pursuant to regulatory sections 331.14 and 331.15(b). This action means that graduates of the school will be ineligible to take the California licensing exam. The school has indicated it may petition for reconsideration.

FUTURE MEETINGS:

To be announced.

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 power plants. 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 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:

CEC Amends Regulations On Appliance Efficiency Standards. In September, CEC published a notice of proposed action in order to increase the clarity and workability of its regulations pertaining to appliance efficiency standards, update its regulations to reference test methods and standards adopted by national organizations, and to bring the regulations in line with recent amendments to federal law.

Specifically, CEC proposed the following: (1) amend sections 1602-04 and 1606-08, Title 20 of the CCR; (2) adopt new regulations to replace portions of existing sections 1601-03 and 1608(d); (3) eliminate the "infrared gas space heaters" exception in subsections 1601(d)(5) and (9); (4) adopt standard 90.1 of the American Society of Heating, Refrigerating, and Air-Condition Engineers into section 1604; (5) adopt the standards of the National Appliance Energy Conservation Act into sections