defined the term "estate" to mean only the property of a dead person. A violation of this definition may subject a licensee to a $500 fine. Licensees who use the term "estate" questionably are required to document the truthfulness of their advertisements. If they are unable to comply, the Board may take further disciplinary action, in addition to the $500 fine.

RECENT MEETINGS:

At its May 15 meeting in Sacramento, the Board established a two-member committee to review specified cases to determine whether a restricted license should be issued.

Also at its May 15 meeting, the Board re-elected Howard "Gus" Hall as President and Vance VanTassell as Vice-President, and elected Duayne Eppele as Secretary.

FUTURE MEETINGS:

September 14 (location to be announced).

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 January 29, the Office of Administrative Law (OAL) disapproved BCE's amendments to section 356, Chapter 4, Title 16 of the CCR. 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 be in adjustive technique. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 144 and Vol. 9, No. 2 (Spring 1989) p. 112 for background information.) OAL found that section 356 failed to satisfy the clarity and necessity standards in Government Code section 11349.1, and that the Board failed to adequately summarize and respond to all public comments. BCE plans to correct these deficiencies and resubmit the regulation to OAL.

In early March, BCE released a modified version of new section 355(c), which would now require applicants for license renewal who operate or supervise the use of a thermography unit in their practice to enroll in and complete a 48-hour certification program or post-graduate course in spinal related thermography education, twelve hours of which may be applied to the annual renewal. This requirement would commence with the renewal period for 1991. BCE accepted comments on this revised language until March 21, and submitted the rulemaking record to OAL on April 30.

On May 3, OAL rejected the Board'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. 1 (Winter 1990) p. 145; Vol. 9, No. 4 (Fall 1989) p. 127; and Vol. 9, No. 3 (Summer 1989) p. 117 for background information.) Again, OAL found that the rulemaking package failed to satisfy the clarity and necessity standards and that the Board failed to respond to all public comments; OAL also found that the Board had made substantial changes to its noticed language without giving the public an adequate opportunity to comment, and that BCE failed to comply with several technical requirements of the Administrative Procedure Act. BCE plans to correct the deficiencies and resubmit section 355(c) to OAL.

On June 5, OAL approved BCE's adoption of section 317(u), regarding "no out of pocket" advertising. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 145 and Vol. 9, No. 4 (Fall 1989) pp. 126-27 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 licensing fee from $95 to $145. (See CRLR Vol. 10, No. 1 (Winter 1990) pp. 144-45 and Vol. 9, No. 4 (Fall 1989) pp. 126-27 for background information.) However, the Board subsequently decided to withdraw that amendment pending the outcome of Proposition 113 on the June 5 ballot, which changes the annual license renewal date for chiropractors to the individual chiropractor's birthday, and raises the penalties for unlicensed chiropractic practice. That initiative was successful on the June ballot.

The Board also recently decided to withdraw from OAL consideration new section 311, regarding the registration of fictitious names. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 145 and Vol. 9, No. 4 (Fall 1989) pp. 126-27 for background information.) The Board may insert fictitious name language into section 324. BCE has also decided to withdraw section 331.11, which would establish a 3.0 grade point average in an accredited two- or four-year college in order to matriculate at a Board-approved school.

On March 8, BCE held a public hearing on two proposed amendments to section 331.1. First, the Board proposed to add a preamble to the section, which states that 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, in order to make the appropriate referrals for the overall protection of the public. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 145 for background information.)

The Board also seeks to add new subsection (d) to the section, which specifies that BCE will not approve any school, provisionally or otherwise, unless the agency accrediting that college, in addition to being recognized by the U.S. Commissioner of Education, fully accredits educational hours and coursework in all of the areas of chiropractic education as required in section 5 of the Chiropractic Initiative Act and its regulations. Because the Board members are not trained educators and must rely on accrediting agencies to evaluate course content and establish standards for measuring the quality of education, the accrediting agency must have the expertise to advise the Board in all areas of education required by California law. Following the hearing, the Board decided to take final action on the amendments at its July 26 meeting.

At its July 26 meeting, BCE was scheduled to hold a public hearing on its proposed addition of regulatory sections 306.1 and 306.2. New section 306.1 would authorize the Board to create Mid-Level Review Panels to review, education, and provide assistance to individual chiropractors, as assigned by the Board, to strengthen various aspects of their practice. The Mid-Level Review Panel shall include outside chiropractic experts chosen by BCE; chiropractors under review shall participate on a voluntary basis, and the records and proceedings shall be confidential and shall not be subject to discovery or subpoena.

New section 306.2 would provide legal representation by the Attorney General's office in the event that a per-

son hired or under contract to provide expertise to BCE, including the evaluation of the conduct of a licensee by Mid-Level Review, 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.

The Board has been discussing the Mid-Level Review concept for some time. BCE considers mid-level review as a non- disciplinary, non-adversarial discussion between professional representatives of the Board and members of the profession. The purpose of the discussion is to address identified practices which may have a potential for resulting in disciplinary action if continued. The Mid-Level Review Committee's role is to allow the chiropractor to discuss the practice in question and arrive at alternatives which will eliminate the problem. BCE sees Mid-Level Review as a preventive step in the more formal disciplinary process. However, some critics question both the authority of the Board to establish such a process, and the validity of replacing the formal discipline process with regional groups of peers and/or competitors who are delegated authority to influence the practice of another licensee.

Also in July, BCE was scheduled to hold a hearing on proposed section 318(c), which will specify the procedures a chiropractor must follow when accepting payment in advance for treatment not yet rendered. Money entrusted to a chiropractor, including advances for costs of examination and treatment, must be held in trust (in an identifiable office bank account) and must be applied only to that purpose. Money and other property coming into the hands of a chiropractor are not subject to counterclaim or setoff for chiropractic fees, and a refusal to account for and deliver such money and property upon demand shall be deemed a conversion; except for the valid retention of money/property upon which the chiropractor has a valid lien for services. Controversies as to the amount of fees are not grounds for disciplinary proceedings, unless the amount demanded is fraudulent.

LEGISLATION:

AB 4088 (Friedman), as amended May 25, would provide that it is a crime for any licensed chiropractor who has undertaken the care of a dependent person, or whose duties of employment include an obligation to care for a dependent person, or to directly supervise others who provide direct patient care, who intentionally or with gross negligence, under circumstances or conditions which cause great bodily harm, serious physical or mental illness, or death, fails to provide for the dependent person's care or commits an act or omission which causes great bodily harm, serious physical illness, mental illness, or death.

This bill would also provide that whenever a person is convicted of violating these provisions, the court shall immediately send notice of that conviction identifying the dependent person by name and supplying the license number of the convicted person to the appropriate licensing board, which shall then conduct a full and timely investigation of the matter to determine what disciplinary action is deemed appropriate. This bill is pending in the Senate Judiciary Committee.

AB 4216 (Isenberg). Under the Knox-Keene Health Care Services Plan Act of 1975, a health care service plan which negotiates and enters into certain contracts with professional providers is required to give reasonable consideration to timely written proposals for affiliation by licensed or certified professional providers, including chiropractors. As amended April 5, this bill would prohibit any health care service plan which offers or provides one or more chiropractic services as a specific chiropractic plan benefit, when those services are not provided pursuant to a contract as described above, from refusing to give reasonable consideration to affiliation with chiropractors for provision of services solely on the basis that they are chiropractors. This bill is pending in the Senate Committee on Insurance, Claims and Corporations.

AB 3324 (Hunter), as amended May 15, would amend section 13401.5 of the Corporations Code, to permit licensed chiropractors to be shareholders, officers, directors, or professional employees of medical corporations, podiatry corporations, psychological corporations, nursing corporations, marriage, family and child counseling corporations, licensed clinical social worker corporations, and optometric corporations, so long as the shares owned to not exceed 49% of the total shares, and so long as the number of those persons does not exceed the number of persons licensed by the governmental agency regulating the corporation. This bill would also permit certain licensees to be shareholders, officers, directors, and professional employees of chiropractic corporations, subject to the same restrictions. This bill is pending in the Senate Committee on Insurance, Claims and Corporations.

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 status conference is scheduled for August 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.)

On February 7, the U.S. Court of Appeals for the Seventh Circuit upheld a 1987 ruling that the American Medical Association (AMA) violated antitrust laws by trying to destroy the profession of chiropractic, and permanently barred the AMA from boycotting chiropractors. (See CRLR Vol. 7, No. 4 (Fall 1987) p. 100 for background information.) In the lawsuit, plaintiffs (four chiropractors in different states) alleged that AMA policy prevented physicians from referring patients to chiropractors or taking referrals from them. The doctors were also accused of preventing chiropractors from treating patients at hospitals controlled by physicians.

RECENT MEETINGS:

At its April 26 meeting, BCE decided that students from Southern California College of Chiropractic (SCC) who graduated after Board approval was withdrawn from that school in November 1989 would not be eligible to take the May licensing examination. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 145 for background information.) BCE also voted that students who received credits from that school during its period of suspension must make them up at an accredited chiropractic college. Subsequently, a Los Angeles bankruptcy court (where SCC's petition is pending) placed a temporary restraining order on the Board, requiring it to admit SCC graduates to take the May exam and freeing them of the requirement to make up units accrued during the school's suspension period. At this writing, it has not been determined what will happen upon the expiration of the TRO.

The Board's June 14 meeting was cancelled.

FUTURE MEETINGS:
September 13 in San Diego.
October 11 (location undecided).

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.

In February, Governor Deukmejian appointed Ardavast (Art) Kevorkian of Fresno to the Commission. Kevorkian replaces Warren Noteware of Stockton, whose term expired.

MAJOR PROJECTS:

Data Collection Regulations. On October 6, CEC published a notice of proposed action to amend sections 1301-11, Title 20 of the CCR. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 146 for background information.) These regulations address the collection and analysis of data for the *Quarterly Fuels and Energy Report*. CEC asserted that the proposed amendments would improve the data collection process and accuracy of forecasts. On November 29, CEC adopted the proposed action, and submitted the rulemaking action to OAL for approval on January 2. On February 1, OAL disapproved the proposed regulations on numerous grounds. OAL held that CEC failed to follow required rulemaking procedures, and failed to meet the necessity, authority, clarity, and reference standards in Government Code section 11349.1. CEC revised the regulations to meet OAL's objections; OAL subsequently approved the amendments.

Appliance Efficiency Regulations Approved by OAL. On January 19, CEC submitted to OAL proposed regulatory amendments to sections 1601-08, Title 20 of the CCR, relating to appliance efficiency standards. (See CRLR Vol. 10, No. 1 (Winter 1990) pp. 145-46 for background information.) On February 20, OAL disapproved these proposed regulatory changes because the clarity and necessity standards were not met. CEC revised the regulations to meet OAL's objections; OAL subsequently approved the amendments.

Proposed Solar Energy Tax Credit Regulations. On March 30, CEC published notice of its intent to both repeal and adopt regulations regarding solar energy tax credits. SB 227 (Chapter 1291, Statutes of 1989) created a new solar energy tax credit, and the proposed regulations will reinstitute a process for obtaining the solar tax credit in California for tax years 1990 through 1993, inclusive, with different criteria than the past credit. The amendments would also repeal the current solar tax credit regulations (sections 2601-07, Title 20 of the CCR), as the enabling legislation for those regulations was repealed when the new credit was created. Following a May 23 public hearing, CEC is in the process of revising the proposed amendments, and expects to re-release the regulations for public comment in September.

Residential Building Energy Efficiency Standards. On January 12, CEC published notice of its intent to amend its residential building energy efficiency standards, relating to water heater insulation and furnace pilot lights. Regarding water heater insulation, the amendments eliminate the mandatory requirement for the R-12 external wrap for all storage type water heaters except those used in solar water heating systems. The R-16 insulation option would be eliminated as well. Regarding furnace pilot lights, the amendments would eliminate the ban on continuously burning pilot lights for two types of gas appliances, fan-type central furnaces, and fan-type wall furnaces.

At a February 28 public hearing, CEC adopted the proposed changes, which were subsequently approved by OAL.

SDG&E Power Plant Proposal. On December 18, San Diego Gas & Electric Company (SDG&E) filed an application with CEC for construction of a 460-megawatt combined cycle project. (See CRLR Vol. 10, No. 1 (Winter 1990) at page 147 for background information.) The project will consist of two combustion turbine generators, two heat recovery steam generators, and one steam turbine generator. SDG&E proposes to locate this project at one of five alternative sites. (*See supra* agency report on COASTAL COMMISSION for related information.)

On February 14, CEC unanimously rejected SDGE's application on the grounds that the utility failed to explain the project's effect on air quality and community land use plans. Prior to the meeting, the Commission received objections to the new project from the communities in San Diego County nearest to three of the proposed sites and from San Diego's Air Pollution Control District. These objections concerned the endangerment of rare animal species near the proposed sites, the destruction of archaeological resources, the violation of local land use plans, and degradation of air quality. Those opposed also noted that the new plant would require the shipment and storage of an additional seven million gallons of fuel and that the electromagnetic fields generated by the new transmission lines could pose a health hazard for nearby residents.

On March 14 and March 28, SDG&E filed supplements to its Notice of Intention (NOI) in attempts to satisfy the technical areas determined data deficient by CEC. On March 28, CEC accepted SDG&E's NOI, and the twelve-month NOI review process commenced.

On April 13, CEC announced its intention to hold a series of public informational presentations and site visits