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:

Commission Statistics. The Commission recently released its statistical overview for the seven years ending on June 30, 1990. Over the last five years, the total licensee population has increased an average of 6% each year to a total licensee population of 1,234. The number of complaints against licensees as well as unlicensed persons has generally declined, from a high of 285 in 1984-85 to 152 during 1989-90. Other highlights include the Commission's collection of $350,942 in revenues in 1989-89, down $3,500 from a similar license renewal period two years ago (the Commission operates on a two-year cycle). In the last year, the Commission has revoked ten licenses and suspended four. The Commission also issued 178 new licenses during 1989-90.

RECENT MEETINGS:

At its September 14 meeting in San Diego, the Commission reviewed the issued of whether sealed bid auctions are subject to its jurisdiction. The Commission concluded that a sealed bid auction in which (1) bidders submit sealed bids to the seller, (2) at the end of a specified period, the bids are revealed, and (3) the item is sold to the highest bidder, is not subject to its jurisdiction. The Commission reasoned that, in this situation, there does not appear to be a series of invitations made by an auctioneer; in fact, there is no actual "auctioneer" as defined in section 5701(b) of the Business and Professions Code.

Also at its September meeting, Board and audience members raised questions regarding other governmental entities which require auctioneers to be licensed by them in addition to the Commission. The Commission stated that it is the only entity, besides the city or county in which an auctioneer has his/her principal place of business, which has the authority to license auctioneers, and that it will look into ways to stop other agencies from duplicating its licensing process. However, the Commission noted that cities are able to tax auctioneers so long as they don't call the tax a "licensing fee."

FUTURE MEETINGS:

January 11 (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:

Update on Proposed Regulatory Changes. In January, the Office of Administrative Law (OAL) disapproved BCE's amendments to section 356, Chapter 4, Title 16 of the CCR, which 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.) At its July 26 meeting, the Board approved a modified version of section 356, which specifies that the four hours in adjustive technique must be satisfied by lecture and demonstration. The modified version now awaits approval by OAL.

In May, 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, Nos. 2 & 3 (Spring/Summer 1990) p. 198; Vol. 10, No. 1 (Winter 1990) p. 145; and Vol. 9, No. 4 (Fall 1989) p. 127 for background information.) At its September meeting, the Board considered proposed language modifications, which state that chiropractors who intend to operate or supervise the use of a thermography unit must complete 48 hours in thermography or in "a spinal related thermography course." The Board approved this language; at this writing, the proposal is pending at OAL.

At its July 26 meeting, BCE approved two proposed amendments to section 331.1, which had been the subject of a March 8 public hearing. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 198 for background information.) First, the Board added 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. The Board also added 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. This regulatory change package awaits review and approval by OAL.

Also at its July 26 meeting, BCE held a public hearing on the 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 the work of and provide assistance to individual chiropractors, as assigned by the Board, to strengthen various aspects of their practice. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 198-99 for background information.) The Mid-Level Review Panel shall include outside chiropractic experts chosen by BCE; chiropractors under review shall participate on a voluntary basis. 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.

Following the hearing, BCE amended the language of proposed section 306.1

to delete a provision that would have specified that all records and proceedings of a Mid-Level Review Panel are confidential and shall not be subject to discovery or subpoena. This modified language was released for a 15-day public comment period ending August 15; BCE approved it at its September 13 meeting. This regulatory action awaits approval by OAL.

Also in July, the Board approved final regulatory language for section 349, which was the subject of a public hearing in July 1989. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 127 for background information.) Section 349 states that, effective January 1, 1992, all applicants for licensure must submit proof of successful completion of the national board examination, including a written clinical competency examination, prior to being eligible to sit for the California practical examinations. Also, the national board examination Parts I, II, and III will serve as the written portion of the California licensure examination. This regulatory change awaits OAL approval.

Also in July, BCE was scheduled to hold a hearing on proposed section 318(c), to specify the procedures a chiropractor must follow when accepting payment in advance for treatment not yet rendered. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 199 for background information.) Following the July hearing, the Board decided this provision should be added as new section 317(v) instead of section 318(c). However, the Board subsequently decided not to adopt the proposal as drafted; it may rewrite the proposed regulation and renotice it for another hearing.

At its October 18 meeting, the Board was scheduled to hold a public hearing on the proposed addition of section 310.3 to its regulations, to define the term "chiropractic adjustment" for purposes of provisions which prohibit the practice of chiropractic without a license. "Adjustment" and/or "manipulation" of hard tissues would be defined as "manually or mechanically moving such tissues beyond their passive physiological range of motion by applying a forceful thrust."

"No Out Of Pocket" Regulation. On July 5, the Board's new regulatory section 317(u), regarding "no out of pocket" billing and advertising, became effective. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 145 and Vol. 9, No. 4 (Fall 1989) pp. 126-27 for background information.) The section makes it unprofessional conduct for a chiropractor to waive, abrogate, or rebate an insurance deductible and/or co-payment without disclosing that fact to the insurer on each such occasion, or to advertise such a practice without the required disclosure on each occasion.

During the early part of July, BCE received over 400 telephone calls from licensees confused about the meaning and application of the new regulation. Many of the calls concerned whether disclosure is required where (1) fees are written off due to hardship or as uncollectible bad debts, (2) the chiropractor is affiliated with the insurer and waiver of co-payments has already been agreed to, and (3) the chiropractor is waiving a Medicare co-payment. Others complained that none of the other health care professions are required to make such a disclosure, and wondered why the Board decided it is necessary to adopt this disclosure regulation.

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. 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. The Board plans to formally notice this proposed amendment and hold a public hearing on it in the near future.

LEGISLATION:

Proposition 113 was successful on the June ballot. The initiative amended section 12 of the Chiropractic Initiative Act, to allow the annual renewal of chiropractic licenses to fall on the last day of the month of the chiropractor's birth. Regulations to implement this renewal cycle change must be adopted by July 1991, and the prorated renewals will begin in January 1992. The initiative also amended section 15 of the Act, to increase the monetary penalties for unlicensed practice so they are consistent with other unlicensed practice penalties.

The following is a status update on bills reported in detail in CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) at page 199:

AB 4216 (Isenberg) would have prohibited 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 specified contract, from refusing to give reasonable consideration to affiliation with chiropractors for provision of services solely on the basis that they are chiropractors. This bill was vetoed by the Governor on September 25.

AB 3324 (Hunter), as amended June 20, amends 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 do 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 also permits certain licensees to be shareholders, officers, directors, and professional employees of chiropractic corporations, subject to the same restrictions. This bill was signed by the Governor on September 30 (Chapter 1691, Statutes of 1990).

AB 4088 (Friedman) would have provided 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 died in the Senate inactive file.

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 extensive settlement negotiations. A status conference scheduled for August 2 was postponed until October 5. (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 its July meeting, the Board discussed a request by some hospitals and physicians in the San Diego area that it adopt a policy with regard to chiroprac-

tic adjustment on a patient who is under anesthesia. After a further discussion of this issue at its September 13 meeting, the Board—in a 4-2 vote—approved the following policy statement: "A proper chiropractic adjustment, if within the scope of [regulatory] section 302, is not made illegal simply because the patient is under anesthesia." The Board does not plan to adopt this policy as a regulation; Board members noted that hospitals with chiropractors on staff should establish protocols to implement this new policy.

At its September meeting, the Board discussed the application of Dean D. Wieben, D.C., a Missouri chiropractor, for a California license by reciprocity. Wieben had called the Board prior to moving to California, and was assured that Missouri and California routinely grant reciprocity licensure to each other's licensees, so long as all credentials are satisfactory. Thus, Wieben invested money in a practice here and moved to California. Although the Board has apparently granted reciprocity licensure to Missouri chiropractors on four prior occasions, it recently learned that Missouri requires one year of licensed practice to be eligible for reciprocity licensure in Missouri. Because BCE does not impose a similar requirement, the Board does not consider this "reciprocity," and initially voted to deny Weiben a reciprocity license. However, upon reconsideration, the Board decided to grant the license on a one-time basis, due to Weiben's detrimental reliance upon the information given to him by a BCE staff member.

FUTURE MEETINGS:

January 17 in southern California.
March 7 in northern California.
April 18 in southern California.
June 20 in northern California.

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 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:

Harbor Generating Station Repowering Project Decision. CEC recently reaffirmed its July 25 decision that the Los Angeles Department of Water and Power's (LADWP) Harbor Generating Station Repowering Project comes within CEC's jurisdiction, over LADWP's vigorous objection. The ruling is a significant one, since "repowering projects"—now the subject of both litigation and legislation (*see infra* LEGISLATION)—are expected to constitute a majority of utility construction projects in the upcoming decade.

The Harbor Generating Station occupies approximately twenty acres of land in Wilmington. Nine generating units are located on this parcel. The generating units all use natural gas as the primary fuel. Units 1 through 5—each of which consist of a steam boiler operated in conjunction with a steam turbine—were commissioned in the 1940s. Their unrestricted generating capacities are as follows: Unit 1—72 megawatts (MW); Unit 2—67 MW; Unit 3—62 MW; Unit 4—86 MW; and Unit 5—86 MW. Units 6 through 9—which are simple cycle gas turbine generators with a capacity of 19 MW—were commissioned in the early 1970s. Units 6 through 9 do not constitute part of the Repowering Project.

LADWP is required to engage in the Repowering Project under Rule 1135 adopted by the South Coast Air Quality Management District, which establishes a decreasing scale of District-wide daily allowable emission rates and a schedule for achieving such rates for LADWP. Rule 1135 requires, in part, that "[the LADWP]...system shall repower at least 240 megawatts of existing steam boilers by December 31, 1993, with repowered capacity such that NOx [oxides of nitrogen] emissions from the repowered unit do not exceed 0.25 pound of NOx per net megawatt hour."

The proposed Repowering Project will be built on the existing Harbor Generating Station site, and will involve a change from the existing boiler and steam turbine combination to a two-stage combined cycle configuration. As part of the Project, the existing boilers and steam turbine generators for both Units 1 and 2 will be physically removed. In the vacated space, two new combustion turbines (Units 1A and 2A) with a design generating capacity of 80 MW net each and two heat recovery steam generators (HRSG) will be installed. The existing boilers for Units 3, 4, and 5, as well as the existing steam turbine for Unit 3, will be permanently removed from service. The existing steam turbine generators from Units 4 and 5 will remain, with that from Unit 5 serving as the primary receptor of steam from the new HRSGs, and that from Unit 4 serving as the back-up for Unit 5. The steam turbine generator from Unit 5 will receive sufficient steam from the HRSGs installed in conjunction with Units 1A and 2A to generate 80 MW.

Section 25500 of the Public Resources Code (PRC) states that CEC "shall have the exclusive power to certify all sites and related facilities in the state, whether a new site and related facility or a change or addition to an existing facility," and that "no construction of any facility or modification of any existing facility shall be commenced without first obtaining certification for any such site and related facility by the commission...." The term "modification of an existing facility" is defined in PRC section 25123 and is limited to projects that result "in a 50-megawatt or more increase in the electric generating capacity of an existing thermal powerplant."