



INDEPENDENTS

AUCTIONEER COMMISSION

Executive Officer: Karen Wyant
(916) 324-5894

The Auctioneer and Auction Licensing Act was enacted in 1982 (AB 1257, Chapter 1499, Statutes of 1982) and established the California Auctioneer Commission to regulate auctioneers and auction businesses in California.

The Act was 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.

The Auctioneer and Auction Licensing Act provided for the appointment of a seven-member Board of Governors, composed of four public members and three auctioneers, to enforce the provisions of the act and to administer the activities of the Auctioneer 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).

Paula Higashi, former Executive Officer of the Commission, has been appointed to fill a vacancy on the Commission's Disciplinary Review Committee (DRC). The DRC hears appeals from licensees who have been administratively fined by the Board. (See CRLR Vol. 7, No. 2 (Spring 1987) p. 98; Vol. 7, No. 1 (Winter 1987) p. 90; and Vol. 6, No. 4 (Fall 1986) for background information.)

MAJOR PROJECTS:

Private Investigators Hired. The Commission awarded ten contracts to various investigative firms throughout California

to conduct inspections and investigations of licensees. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 97; Vol. 8, No. 4 (Fall 1988) p. 114; and Vol. 7, No. 4 (Fall 1987) p. 99 for background information.) Inspections will occur on a random basis, while investigations will result from complaints filed with the Commission which cannot be adequately investigated by the Executive Officer.

Monitoring of Advertisements. The Commission will monitor licensee advertising and investigate those which may be false or misleading to the public. The focus of its attention will be on "estate" auctions, the use of such terms as "minimum" and "reserves", and the advertisement of reproduced artworks in a manner indicating that they are—or may be—original works. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 97; Vol. 8, No. 4 (Fall 1988) p. 111; Vol. 8, No. 2 (Spring 1988) p. 113; and Vol. 7, No. 4 (Fall 1987) p. 100 for background information.)

Receivership Program Proposed. Executive Officer Wyant has proposed that the Commission review the possibility of setting up a receivership program in which the Board would petition the court to appoint a receiver to preserve the assets of an auctioneer or auction company and decide how these assets would be distributed. Potentially, such a program would alleviate the problem of auctioneers who do not pay consignors and who, during the period of the Commission's investigation, continue to take on new consignments and harm additional individuals.

Commissioners Eppele, Hall, and Van Tassell expressed concern over a measure which would drive away business at a time when it is badly needed. Wyant will continue to explore the alternatives and report back to the Board.

Biennial Report. As required by section 5724 of the Business and Professions Code, the Commission drafted its biennial report for the period of January 1, 1987 through December 31, 1988. During this period, the Commission ordered payment of \$127,714 to consumers from license bonds—up from \$72,079 for the previous year. Money recovered from complaint mediation rose to \$112,828, over the

previous year's \$18,395. The Commission also suspended ten licensees for failure to pay administrative fines totalling \$19,500 and revoked eleven licenses following formal disciplinary action.

FUTURE MEETINGS:

To be announced.

BOARD OF CHIROPRACTIC EXAMINERS

Acting Executive Director:

Vivian Davis
(916) 445-3244

In 1922, California voters approved an initiative which created the Board of Chiropractic Examiners (BCE). 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:

Chiropractic College Attrition Rate Survey. At its January meeting, the BCE reviewed a proposed survey form that will be used in an ongoing BCE effort to determine whether educational requirements for entrance to or continued enrollment in chiropractic college should be increased. Board members B. Jackie Bartels, Louis Newman, Patricia Quibell, and John Emerzian have formed a committee to address the issue of educational improvements.

The survey will be sent to the presidents of every California chiropractic college. It will seek detailed information concerning the number of students entering and graduating from a college, and the number of students placed on academic probation. The survey spans five years (1981-1985). The results will be used by the Board to determine whether to propose new regulations or modify existing regulations.

Use of Thermography by Chiropractors. Also in January, the Board voted to go forward with a previous proposal to adopt regulations concerning the use of thermography by chiropractors. (See CRLR Vol. 8, No. 4 (Fall 1988) p. 111 for background information.) Deputy Attorney General Joel Primes suggested that the Board delay proceeding on the regulatory action until the current litigation with the California Physical Therapy Association is settled. (See *infra* LITIGATION; see also CRLR Vol. 9, No. 1 (Winter 1989) p. 97 and Vol. 8, No. 4



REGULATORY AGENCY ACTION

(Fall 1988) p. 112 for background information.)

Continuing Education Rule Change. In March, the BCE published notice of proposed amendments to section 356, Chapter 4, Title 16 of the California Code of Regulations (CCR), which establishes course content requirements for continuing education (CE) courses. Current section 356 allows chiropractors to take CE courses at any educational institution recognized by the California Department of Education, thereby allowing doctors of chiropractic to attend seminars which are often unrelated to the practice of chiropractic. The proposed changes would require CE courses to be sponsored by chiropractic colleges having or pursuing status with the Council on Chiropractic Education. Section 356 would also be amended to provide that four out of every twelve hours of CE must be in adjustive technique.

The Board accepted written comments on these proposed changes until April 27.

No-Out-of-Pocket-Expense (NOOPE) Regulation. At its January meeting, BCE approved draft language for a future regulatory change which will categorize certain billing practices by chiropractors as unprofessional conduct. (See CRLR Vol. 8, No. 4 (Fall 1988) p. 111 for background information.) Under proposed section 317(u), Chapter 4, Title 16 of the CCR, unprofessional conduct would include billing an insurance company without informing that carrier "on each specific service billed that the chiropractor will accept as full payment that received from the insurance company and will waive the patient's co-payment."

LITIGATION:

In *California Chapter of the American Physical Therapy Ass'n, et al. v. Board of Chiropractic Examiners et al.*, (consolidated case Nos. 35-44-85 and 35-24-14), the BCE's private counsel filed a petition for writ of mandate in the Third District Court of Appeal, in an attempt to appeal the Sacramento Superior Court's grant of a motion for summary judgment on the proper scope of chiropractic practice filed by intervenors Board of Medical Quality Assurance and Physical Therapy Examining Committee. The Third District denied the writ, finding that BCE's appeal right once the case concludes is an adequate remedy. At this writing, BCE is seeking reconsideration of the summary judgment ruling from the trial court. A status conference in the case was scheduled for May 26. (See CRLR Vol. 9, No. 1 (Win-

ter 1989) p. 97; Vol. 8, No. 3 (Summer 1988) p. 119; and Vol. 8, No. 2 (Spring 1988) p. 30 for background information on this case.)

RECENT MEETINGS:

At its January 5 meeting in Sacramento, Acting BCE Chair Jackie Bartels announced the resignation of BCE's Executive Director Edward J. Hoeffling. Vivian Davis will serve as Acting Executive Director. The Board set a March 1 deadline for applications for the vacant position.

Also at the January meeting, attorney Carol Rader from the Department of General Services spoke to the Board regarding its obligations in reviewing and approving all contracts. Under existing regulations, the Board must consider each contract separately and delegate specific authority for approval at a public meeting. At the meeting, the Board considered and subsequently authorized BCE Chair Bartels to enter into several contracts on its behalf, including the payment of up to \$300,000 to private counsel for purposes of defending BCE in the litigation over section 302 of BCE's regulations (see *supra* LITIGATION).

At the Board's February meeting, Jackie Bartels, Bruce Reyes, and Patricia Quibell were elected BCE Chair, Vice-Chair, and Secretary, respectively.

Also in February, BCE decided that chiropractic examination commissioners must attend at least one training session before serving at an examination.

FUTURE MEETINGS:

June 29 in northern California.
August 17 in northern California.
October 5 in northern California.
December 7 in northern California.

CALIFORNIA ENERGY COMMISSION

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

In 1974, the legislature created the State Energy Resources Conservation and Development Commission, better known as the California Energy Commission (CEC). 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.

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 other interested groups are adequately represented at all Commission proceedings.

The five divisions within the Energy Commission are: (1) Conservation; (2) Development, which studies alternative energy sources including geothermal, wind and solar energy; (3) Assessment, responsible for forecasting the state's energy needs; (4) Siting and Environmental, which does evaluative work in connection with the siting of power plants; and (5) Administrative Services.

The 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:

Data Collection Regulation Amendment Adopted. Following a public hearing on February 1, the Commission adopted amendments to its regulation for the collection of data on energy use in California. (See CRLR Vol. 7, No. 3 (Summer 1987) p. 127 for background information.) The amendments—the product of over three years of work by the CEC staff—entirely replace existing section 1344, Title 20 of the California Code of Regulations. The new provisions require specified utilities to submit data collection plans for CEC approval; collect detailed and reliable data on energy use by surveying consumers and metering consumption; and analyze and report the data to the CEC in a manner which will be useful for energy demand forecasting.

Under the existing regulation, the CEC has struggled to fulfill its statutory obligation to forecast the state's energy needs. The brief and generalized wording of section 1344 fails to ensure that detailed, reliable, useful, or even accurate data is available to the CEC. Data collection by utilities has not been carefully planned or coordinated with the CEC. As a result, the data presently submitted