plinary action against several licensees for participating in false bidding practices which include "shill" or "ghost" bids, as well as false advertising. The Commission plans to revoke the licenses of the involved licensees, and may further refer the cases for possible civil or criminal action. The current focus of the investigators has shifted from inspections to investigations, and all investigators are watching the newspapers for auction advertisements.

For the new fiscal year (as of October), three licenses have been revoked, one license has been suspended, and actions are pending against two auction companies and eight auctioneers for failure to pay consignors an alleged amount totalling over $258,000. The number of complaints filed with the Commission has increased 23% over the last fiscal year. The most common complaints concern the practice of people in the audience bidding on behalf of the owner simply to raise prices (shill) and the misrepresentation of goods. Major problem areas continue to include failure to post an 18" x 24" sign at the main entrance (see CRLR Vol. 9, No. 3 (Summer 1989) p. 117 for background information); failure to enter into a written contract which meets the requirements of Business and Professions Code section 5776(k) before the auction between the auctioneer and the consignor; failure to post or distribute the terms and conditions of the auction; and failure to disclose minimums or the fact that the owner of an item reserves the right to bid to the audience.

Monitoring of Advertisements. The Commission continues to address problems associated with misleading advertisements regarding "estate sales." (See CRLR Vol. 9, No. 2 (Spring 1989) p. 111 for background information.) At its August 4 meeting, the Board voted to define the term "estate sale" to mean a sale of goods belonging to a deceased person. At a future meeting, the Board will discuss whether this definition must be adopted through rulemaking in order to be enforceable, and restrictions on use of the term in auction advertising. Executive Officer Karen Wyant plans to look in part to the South Carolina statute for guidance; that statute provides that if the term "estate sale" is used, advertising must specify whose estate, and any items not a part of the estate must be specifically listed.

RECENT MEETINGS:

The Board addressed the problem of owner bidding and reserves at its May 19 meeting. The Commission's current view is that a general statement at the beginning of an auction that the sale of some items is subject to owner bidding and/or a reserve constitutes sufficient disclosure to the audience of these sale conditions. The problem is that the audience does not know which of the items is on reserve, making the disclosure meaningless. Executive Officer Wyant stated her opinion that owner bidding, without specific disclosure, is fraudulent and should be prohibited. The Board decided to consider a new interpretation which would require an auctioneer to disclose, prior to the sale of an item, whether the sale of that item is subject to owner bidding or a reserve.

Also in May, the Board was informed that several surety bond companies have recently cancelled numerous bonds and/or have increased the cost of bonds. The Commission will attempt to compile a list of bonding companies and insurance brokers, but will not endorse any specific company since this would be a conflict of interest.

At its August 4 meeting, the Board continued its discussion on the use of the terms "minimum" and "reserve" by licensees. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 97; Vol. 8, No. 4 (Fall 1988) p. 111; and Vol. 8, No. 2 (Spring 1988) p. 113 for complete background information.) Executive Officer Wyant explained there is agreement on the following issues: (1) the terms "minimum" and "reserve" mean basically the same thing to the public—that is, the item will not be sold below an established price; (2) a licensee may not impose a minimum or reserve on an item without the consent of the owner of that item; (3) if a minimum or reserve is imposed, it must be announced prior to the beginning of the auction; and (4) a licensee may not announce an item as "sold" unless it has in fact been sold to a new owner. Wyant also restated the unresolved issues discussed at the May 4 meeting—whether a general announcement at the beginning of an auction that the owner has reserved the right to bid is a meaningful disclosure, and whether owners should be allowed to bid on their own items at all.

Ms. Wyant presented a draft regulation for the Board's consideration: "Pursuant to Section 5776(o), when an item is offered for sale at an auction with reserve pursuant to section 2328 of the Uniform Commercial Code, the auctioneer shall disclose to the bidding audience that the owner has reserved the right to bid on that item immediately prior to requesting or receiving the first bid on that item. When a bid is made by or on behalf of the owner of such items, the licensee shall clearly disclose at the time that the bid is made and before acknowledging the next bid that such bid has been made by or on behalf of the owner of the item."

Licensees in the audience objected to the draft regulation, stating that problems might occur if numerous items at a particular auction are subject to reserve. For example, the auction would take much longer to complete, and the auctioneer might have difficulty in keeping track of all the items. The Board made no motions on the draft proposal; thus, discussion on this matter will continue at future Board meetings.

Also on August 4, the Board discussed storage auctions—a prominent advertisement displays the name of a major moving and storage company and gives the reader the impression that abandoned goods will be auctioned. In actuality, the goods are not abandoned but have been brought into a leased site for the auction. The Commission may address this problem at future meetings.

The state of Alabama has requested reciprocity from the Commission. The California statute allows reciprocity if another state's requirements for licensing are at least as stringent as those in effect in California. The Commission determined that Alabama's license requirements are much more stringent than California's and that a reciprocity agreement should be set up with Alabama. At the same time, the Commission will request reciprocity from Alabama for California licensees.

FUTURE MEETINGS:

January 5 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). 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 July 20, the

Board held a regulatory hearing to solicit testimony on proposed changes to several sections of its regulations, which appear in Chapter 4, Title 16 of the California Code of Regulations (CCR). Specifically, BCE proposed to add new section 331.17 to clarify the term "accreditation agency"; amend section 355(a) to state and raise the annual renewal fee from $95 to $145; adopt new section 355(c) to require 48 hours of postgraduate work in thermography before one may operate or supervise the use of a thermography unit; add section 317(u) to clarify "no out of pocket" advertising and define the manner in which it may be used; and add section 349 to state that BCE will accept the national board examination in lieu of a state-administered written exam, but will continue to administer its own practical exam. (See CRLR Vol. 9, No. 3 (Summer 1989) p. 117 and Vol. 9, No. 2 (Spring 1989) pp. 111-12 for background information.)

Following the July 20 hearing, the Board adopted sections 355(a) and 317(u); at this writing, the rulemaking files on these changes have not yet been submitted to the Office of Administrative Law (OAL) for approval. The Board deferred action on section 331.17 until August; at its August meeting, BCE decided to withdraw that proposed action. The Board received testimony on sections 355(c) and 349, and decided to defer action on these proposals until a future meeting.

In June, the Board published but set no public hearing on the following proposed regulatory changes: the addition of section 311 to define the circumstances under which a chiropractor may practice under a fictitious name and specify the procedures for registering that name with the Board; the addition of section 313.1 to specify that unlicensed students are able to obtain practical experience in a chiropractic office by participating in a preceptor program, establish the criteria for their practice and supervision, and assign responsibility for their conduct; and the addition of section 331.11 to establish a minimum 3.0 grade point average in an accredited two- or four-year college in order to matriculate at a Board-approved school. The public comment period on these proposed changes ended on July 24. At this writing, the Board has not yet taken action on any of the proposals.

LEGISLATION:

SB 1672 (Campbell) authorizes the superior court of any county to issue an injunction or other appropriate order restraining any act or practice which constitutes an offense against the Chiropractic Act upon the application of BCE or of ten or more persons licensed under the Act. This bill was signed by the Governor on August 30 (Chapter 288, Statutes of 1989).

AB 1729 (Chandler) makes it a misdemeanor for any person to subvert or attempt to subvert any licensing examination. This bill provides that a person found guilty of violating this bill is liable for costs incurred by an agency in an amount not to exceed $10,000 and for the costs incurred for the prosecution, in addition to any other penalties. This bill was signed by the Governor on September 29 (Chapter 1022, Statutes of 1989).

AB 1891 (Isenberg) would have prohibited a health care service plan which offers or provides one or more chiropractic services as a specific chiropractic plan benefit 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 26.

SB 1608 (Stirling). Existing law does not require, for actions arising out of the professional negligence of a physician, dentist, podiatrist, or chiropractor, that the plaintiff's attorney file a certificate stating that the attorney has reviewed the facts of the case, has consulted with a health care provider of equivalent experience, has 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 would require that an attorney file such a statement on or before filing such a cause of action, except as specified. This bill is a two-year bill pending in the Senate Judiciary 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 the Office of Administrative Law's approval of section 302 of the Board's rules, which defines the scope of the chiropractic practice. In January 1989, the court preliminarily invalidated provisions of section 302 permitting chiropractors to perform colonics and enemas, pre- and post-natal obstetric care, physical therapy, ultrasound, thermography, and soft tissue manipulation. However, on August 1, the court granted in part the Board's motion for reconsideration of the previous ruling, and preliminarily reinstated the provisions allowing chiropractors to perform physical therapy, ultrasound, thermography, and soft tissue manipulation. In light of this ruling, petitioner California Medical Association has indicated its intent to file an amended complaint which will substantially narrow the issues in the case; that filing was expected by mid-November. A status conference is scheduled for January 5. (See CRLR Vol. 9, No. 3 (Summer 1989) p. 118 and Vol. 9, No. 2 (Spring 1989) p. 112 for background information.)

FUTURE MEETINGS:

To be announced.

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 Environ-