



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*  
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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-



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mental, 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:

*CEC Adopts Intervenor Funding Program.* On August 9, CEC adopted standards and criteria for its Intervenor Funding Program (IFP) created pursuant to SB 283 (Rosenthal) (Chapter 1436, Statutes of 1988). (See CRLR Vol. 9, No. 3 (Summer 1989) p. 118 and Vol. 9, No. 1 (Winter 1989) p. 98 for background information.) The IFP is intended to encourage public participation in certain CEC proceedings by awarding financial reimbursement to organizations and individuals who apply for intervenor status, whose participation in the proceeding is determined to cause financial hardship, and who make a compensable contribution to the proceeding. The IFP applies to all CEC proceedings except those involving siting cases.

The IFP adopted by CEC on August 9 requires that those interested in becoming eligible for the program follow a series of steps. First, the applicant must apply for a determination of financial hardship. To establish financial hardship, the intervenor must show an inability to participate in qualified CEC proceedings without the funding available through this program. An inability to participate without program funding may be shown by (1) proof of an organization's status as a section 501(c)(3) nonprofit organization (creates a rebuttable presumption of financial hardship); (2) proof that an organization is a nonprofit organization, a financial statement evidencing financial hardship, and any other evidence to support a claim of financial hardship; or (3) for organizations and/or individuals that cannot prove nonprofit status, a financial statement which includes a statement of operating income, a statement as to why participation will cause a financial hardship, and any other supporting evidence. Upon a determination that the application is complete, CEC's Public Adviser will place the matter before the Commission at a regular business meeting within 30 days from the time the application is deemed complete. A determination of "financial hardship" is valid for two years.

Second, if an applicant is granted financial hardship status, the applicant must also apply for and be granted intervenor status for a particular proceeding. This is accomplished by filing a form, containing specified information, with the Committee responsible for the particular proceeding for which intervention is sought.

Third, prior to applying for compensation, a potential recipient must request a "determination of relevancy." A determination of relevancy is initiated by filing a petition for "determination of relevancy and eligibility for compensation" with the Committee assigned to the specific proceeding. The petition must include information on the viewpoint or issue to be presented by the intervenor; the hearing or meeting at which the presentation is to be made; the nature and the extent of the expenses to be incurred; and whether partial advance funding is requested. Once the petition has been reviewed and found complete by the Public Adviser, the Committee will rule on the petition, determining whether the viewpoint or issue to be expressed by the intervenor is relevant and whether the proposed presentation is compensable. In reaching its determination, the Committee will consider whether the issue or viewpoint is germane to the hearing, and whether the issue or viewpoint will be adequately presented by other parties. In addition, if the Committee determines that the viewpoint is compensable, it will also set a limit on the amount of the compensation awarded. The relevant inquiry for this determination is the average rate paid for similar services to CEC. Advance funding awards may be granted at the discretion of the Committee, provided that the advance funding is shown to be needed in the case, and that the intervenor has made relevant, compensable contributions to hearings at least once in the past. All rulings of the Committee are appealable to the full Commission.

Fourth, following a determination of relevance, the intervenor is required to make a presentation of its viewpoint or issue at the appropriate hearing.

Fifth, after the hearing, the intervenor must apply for a "recommendation for compensation" by the Committee. The recommendation for compensation, after being reviewed by the Public Adviser for completeness, is considered by the Committee. The Committee considers whether the presentation was the same as described in the relevancy proceeding, whether the presentation was competent,

whether the expenses are appropriate, and whether the claimed costs are within the limit set by the "determination of relevancy" hearing. The Committee will issue a "proposed award of compensation," whereupon the proposed award is placed on the agenda of a regular business meeting for adoption by the full Commission. The Commission will make the final determination as to the amount of the award. A petition for reconsideration of the Commission's award may be made within 30 days of the date of the decision.

*CEC Report on the Effects of Global Warming on California.* In response to AB 4420 (Sher) (Chapter 1506, Statutes of 1989), CEC is preparing a report on the manner in which the global warming trend is affecting California. On July 5, CEC's Intergovernmental Relations Committee held a public hearing to discuss its Interim Report entitled *The Impacts of Global Warming on California*. The Interim Report, a precursor to a final report which is due to the legislature and the Governor on June 1, 1990, discusses whether global warming is likely to occur in the foreseeable future, the impacts that a global warming would have on California, and comprehensive responses to the global warming issue. The full Commission adopted the Interim Report at its August 23 meeting.

*CEC Releases Quarterly Oil Report for Fourth Quarter 1988.* During the summer, CEC released its 1988 fourth quarter oil report. The report surveys and summarizes oil market activities, price trends, refinery activities, production, and petroleum company financial statements for the October-December 1988 period. According to the report, petroleum fuels volume and refinery activities increased in California over the same period from the previous year. Price trends decreased, except for self-serve retail gasoline prices, which increased slightly. Production and oil company revenues also declined compared to one year ago.

*CEC Orders Hearings on The Geysers KGRA.* CEC was scheduled to hold an informational hearing on September 21 to discuss the declining generation of The Geysers Known Geothermal Resource Area (KGRA), which has been attributed to declining steam resources. CEC is holding the hearing to determine the impact of such a decline. Additionally, CEC seeks information on the extent of the decline as well as remedial measures that can be taken to arrest the decline.

*CEC Accepting Applications for Geothermal Grant and Loan Program.* In



the month of August, CEC began its tenth funding cycle for the Geothermal Grant and Loan Program. Through this program, CEC provides funding to various public agencies for geothermal-related projects. The projects eligible for funding are: (1) projects which develop geothermal resources (e.g., exploration, assessment, drilling, design and construction); also included in this category this year are projects that assist CEC in addressing problems associated with the decline in The Geysers KGRA (see discussion above); (2) projects that identify and mitigate impacts on the environment caused by geothermal development; and (3) projects that develop plans, policies, and ordinances relating to geothermal development.

*CEC Publishes Draft Petroleum Fuels Set-Aside Program Handbook.* On August 28, the Commission's Contingency Planning Group released a publication entitled the *Draft Petroleum Set-Aside Program Handbook*. The handbook was written to provide a working description of the Fuels Set-Aside Program, a program instituted pursuant to the 1988 California Energy Shortage Contingency Plan and Public Resources Code sections 25216.5(b) and 25700 *et seq.* The handbook contains explanations and descriptions of Petroleum Set-Aside staff operations, procedures for approval, appeals, audits, reports to the Governor and legislature, and the application process for allocation of fuel supplies in the event of an energy shortage. Single copies of the handbook are available at no cost by contacting CEC's Publications Unit. CEC is interested in receiving oral and written comments on the draft handbook. Comments should be directed to Susan J. Brown, Manager, CEC Contingency Planning Group, Attention: Docket No. 88-CPR-1.

## LEGISLATION:

The following is a status update on bills reported in detail in CRLR Vol. 9, No. 3 (Summer 1989) at pages 119-20:

*AB 1107 (Moore)*, as amended September 7, requires CEC to provide technical assistance and support for the development of petroleum diesel fuels which are as clean or cleaner than alternative clean fuels and clean diesel engines. The bill specifies that technical assistance and support may include the creation of research, development, and demonstration programs. This bill was signed by the Governor on September 26 (Chapter 940, Statutes of 1989).

*AB 1499 (Sher)* deletes the authority of a superior court, in reviewing a deter-

mination by CEC, to review any relevant facts to determine the validity of the decision. This bill recasts the court's authority to require that the decision of the Commission be sustained unless the court makes specified findings. This bill was signed by the Governor on September 7 (Chapter 101, Statutes of 1989).

*AB 2008 (Farr)*, as amended September 11, authorizes CEC to make repayable research contracts and provide primary research contracts, as defined, for the purpose of making energy technologies more efficient and cost-effective and to develop cost-effective alternative sources of energy. This bill was signed by the Governor on September 29 (Chapter 1107, Statutes of 1989).

*AB 2151 (W. Brown)*, as amended August 24, would have required CEC to include in its biennial electricity report an analysis and evaluation of the means by which noncriteria greenhouse gas emissions and criteria air emissions from existing powerplants may be reduced, as specified, and policies to reduce air pollution and greenhouse gas generation. This bill would have also required the report to include, in addition to other factors dealing with potential adverse social, economic, or environmental impacts which might be imposed by continuation of present energy consumption and production trends, the generation of carbon dioxide and other greenhouse gases that contribute to global warming. This bill was vetoed by the Governor on September 25.

*AB 286 (Assembly Committee on Transportation)*, which requires the California Highway Patrol to determine eligibility criteria for replacement schoolbuses, was signed by the Governor on July 20 (Chapter 182, Statutes of 1989).

*AB 361 (Vasconcellos)*, which extends the termination date of a program which encourages third-party financing of energy projects at state-owned sites, was signed by the Governor on July 26 (Chapter 216, Statutes of 1989).

*SB 1527 (Hart)*, as amended August 22, would have required CEC, in considering the cost effectiveness of residential and nonresidential building standards, to consider the environmental costs to society of fossil fuel consumption. This bill was vetoed by the Governor on September 26.

The following bills were made two-year bills, and may be pursued when the legislature reconvenes in January: *AB 2395 (Sher)*, which, as amended September 13, would enact the Global Warming Response Act of 1989; *SB 539 (Rosenthal)*, which, as amended July 13, would

require CEC to prepare and submit, by December 31, 1990, a report to the Governor and the legislature setting forth options and recommendations for aligning investor-owned and public utility conservation and demand side management programs with long-term utility resource plans for minimizing the cost of reliable electricity services; *AB 345 (Torres)*, which would require CEC to study the benefits of increasing the surface reflectance of buildings, streets, and highways to conserve energy and reduce global warming; *SB 538 (Rosenthal)* which would require CEC to submit to the Senate Rules Committee and the Speaker of the Assembly a compilation and summary of all rules, regulations, and hearing procedures adopted in the past twelve months and being considered for adoption in the next twelve months; *SB 1219 (Rosenthal)*, which would provide financial incentives for utilities to use cleaner-burning natural gas in place of fuel oil; and *SB 1679 (Hart)*, which would require CEC to develop and implement a statewide fuel economy incentive program in conjunction with the Department of Motor Vehicles.

## RECENT MEETINGS:

At its September 20 meeting, the Commission adopted a committee draft of its Final 1988 Biennial Report as required by Public Resources Code section 25309. The report identifies emerging trends related to energy supply, demand, conservation, and public health and safety factors. The report is designed to provide a basis for state energy policies and actions. This year's report is noteworthy for its new emphasis on the integration of social and economic values in a statewide systems approach to the air quality problems and other environmental challenges associated with energy production and consumption. Environmental concerns have always been a part of the Commission's policy mandate, but this year's Report signals a renewed commitment in that area as a significant justification for statewide energy policy planning and research.

## FUTURE MEETINGS:

General CEC meetings are held every other Wednesday in Sacramento.