REGULATORY AGENCY ACTION

The California Regulatory Law Reporter Vol. 8, No. 4 (Fall 1988)
AB 4387 (Bronzan) would have increased the fine to not less than $200 nor more than $1,200 for any physician, podiatrist, dentist, surgeon, chiropractor, or optometrist who engages in excessive prescribing or administering of drugs or treatment. This bill failed passage in the Assembly Health Committee.

SB 2565 (Keene) would have clarified existing law regarding immunity of hospitals, persons, or organizations for peer review actions which are required to be reported to various state agencies. This bill was vetoed by the Governor on September 30.

SB 2751 (Rosenthal) increases the amount of fines and authorizes tougher jail sentences for violations of the Chiropractic Act by chiropractors. This bill was signed by the Governor on September 20 (Chapter 1094, Statutes of 1988), and will become effective upon the approval of the electorate.

AB 4682 (Isenberg) would have provided that holders of DC degrees shall be accorded the professional status of health practitioners. AB 4682 failed passage in the Assembly Health Committee on June 21.

LITIGATION:
Discovery is ongoing in California Chapter of the American Physical Therapy Ass'n, et al. v. California State Board of Chiropractic Examiners (consolidated case Nos. 35-44-85 and 35-24-14). Plaintiffs challenge the Board's adoption of regulatory section 302, which defines the scope of chiropractic practice to include homeo-medications. (See CIR. Vol. 8, No. 3 (Summer 1988) p. 119 and Vol. 8, No. 2 (Spring 1988) p. 30 for background information.)

RECENT MEETINGS:
At its September 15 meeting in Long Beach, the Board discussed the possibility of charging a fee for examination appeals. The Board decided to postpone the discussion until it receives a financial report from the Executive Director's office detailing the actual cost of the appeal process.

FUTURE MEETINGS:
January 5 in Sacramento.
February 16 in southern California.
March 30 in northern California.

CALIFORNIA ENERGY COMMISSION
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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 Advisor, 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:
Revision of Regulations on Plant Siting Jurisdiction. In July, the CEC published proposed amendments to its powerplant site certification regulations and to its Rules of Practice and Procedure (California Code of Regulations, Title 20, Chapter 2, Subchapters 5 and 2, respectively).

The proposed amendments would specifically interpret the terms "thermal powerplant", "generating capacity", and related terms; modify the existing Rules of Practice and Procedure to clarify that CEC's complaint and investigation procedure may also be used for obtaining Commission determinations of powerplant siting jurisdiction; and establish a new clearance process for project developers to obtain expedited determinations of CEC siting jurisdiction.

The Warren-Alquist Act of 1974, section 25500 of the Public Resources Code, grants the CEC the "exclusive power to certify all sites and related facilities" in California. The Commission's site certification jurisdiction extends over all thermal powerplants with a generating capacity of 50 megawatts (MW) or more. The Act also grants the Commission discretion to exempt projects with a generating capacity of 50 MW but less than 100 MW from the Commission's siting requirements. These small powerplant exemptions (SPPE) are granted only if the Commission finds that there will be no significant adverse environmental impact and that there is no state interest affected by the proposed project.

According to the Commission's 44-page Initial Statement of Reasons for the proposed regulation changes, the grant of exclusive siting power to the CEC was a response to the "energy crisis" of the early 1970s. Before the CEC was created, the siting process required developers to obtain a series of permits from a variety of single-purpose federal, state, and local agencies. Occasionally, over twenty agencies performed independent reviews of a single project. The energy crisis revealed California's need for independent energy planning and energy demand forecasting. The Commission was created to meet these needs, but also to meet the need for a consistent, efficient, and consolidated powerplant siting process. The legislature designed the CEC's siting process to provide certainty for applicants, open proceedings for the public, and full consideration of the efficiency, reliability, public health and safety impacts, and environmental impacts of proposed projects.

Questions concerning the CEC's siting jurisdiction did not arise during the Commission's first four years of existence. Of the first ten powerplant applications reviewed by the Commission through 1978, all were submitted by utilities, and the proposed projects averaged 977 MW of capacity. Since that time, three significant events have occurred. First, the demand for power has risen much more slowly, because of conservation efforts. Second, the utilities have added to their resource energy mix with nuclear, geysers, and imported hydroelectric energy. Finally, the Public Utilities Commission (PUC) has implemented a rule requiring the three largest