



INDEPENDENTS

AUCTIONEER COMMISSION

*Executive Officer: Karen Wyant
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The Auctioneer and Auction Licensing Act, Business and Professions Code section 5700 *et seq.*, was enacted in 1982 and establishes the California Auctioneer Commission to regulate auctioneers and auction businesses in California.

The Act is 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.

Section 5715 of the Act provides for the appointment of a seven-member Board of Governors, which is authorized to adopt and enforce regulations to carry out the provisions of the Act. The Board's regulations are codified in Division 35, Title 16 of the California Code of Regulations (CCR). The Board, which is composed of four public members and 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 Releases Biennial Report. Pursuant to Business and Professions Code section 5724, the Commission recently released its biennial report covering the period from January 1989 to June 1991. (The period covered by this report changed from previous reports so that the information reported in future years will relate to full fiscal years

rather than partial years.) The report contains the Commission's activities, goals and objectives in administration, licensing, compliance and education, and enforcement. For example, the report notes that the Commission reduced the average number of pending complaints from 58 to 34; directly assisted in the return of \$249,234 to consumers through complaint mediation over the past three fiscal years; and began formal investigations of licensees for practices harmful to the buying public, such as false and misleading advertising, misrepresentation of goods, and use of false bidding practices. The Commission's goals include achieving a higher level of compliance with laws related to misrepresentation and false bidding practices; establishing a document containing a list of the laws which have the most serious impact on the public and requiring that applicants read and sign the document prior to receiving a license; and continuing to maintain administrative expenditures at existing levels so that all available monies may be directed to enforcement.

Commission Adopts Amendments to Conflict of Interest Code. On September 13, the Commission adopted its proposed amendments to the Appendix to section 3526, Division 35, Title 16 of the CCR, which sets forth the Commission's conflict of interest code. The Appendix presently lists the designated Commission employees who must file statements of economic interest with the Fair Political Practices Commission (FPPC); the proposed amendments would add Commission consultants to the list of designated employees. The proposed amendments would also require designated employees to report any business positions in specified activities. Finally, the amendments would provide that the Commission's Executive Officer may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements of section 3526. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 182 for background information.) At this writing, the Commission is awaiting approval of the proposed amendments by the FPPC.

Commission Statistics. In its July newsletter, the Commission noted that

it currently licenses 1,153 auctioneers and 232 auction companies. Between July 1, 1990 and July 1991, the Commission issued 199 licenses; received 170 complaints against its licensees, of which 38 were pending as of June 30; assessed 37 fines; filed 12 disciplinary actions; revoked 5 licenses; and suspended 1 license. The 1991-92 projected enforcement expenses of \$78,496 compared to 1990-91 expenditures of \$11,430 reflects the Commission's intensified disciplinary efforts.

Commission Moves to New Headquarters. The Commission recently relocated its headquarters to 2231 J Street, Suite 101, Sacramento, CA 95816; its telephone number remains the same.

RECENT MEETINGS:

At its September 13 special meeting in Sacramento, the Board of Governors discussed provisions in the 1991-92 state budget which require the transfer, on June 30, 1992, of certain monies in the Auctioneer Fund to the state's general fund, to be used for purposes outside the scope of the Commission; in particular, the Board discussed the Governor's authority to require such a transfer. The Commission stands to lose approximately \$355,000 to the general fund. The Board agreed to draft a letter to the Department of Finance, explaining the Commission's special circumstances due to its two-year renewal period, and requesting that the Commission's monies not be transferred to the general fund.

Also at its September 13 meeting, the Board of Governors discussed whether it should pursue an amendment to section 3525, Title 16 of the CCR, to reduce license renewal fees for the 1992-94 renewal period. Staff noted that if fees are reduced, monies in the Auctioneer Fund could be used to cover any deficit, and therefore such monies would not be available for transfer to the general fund on June 30, 1992. After discussion, the Board directed staff to commence the regulatory process necessary to reduce license renewal fees for auction company licensees from \$275 to \$200, and from \$265 to \$200 for auctioneer licensees.

Finally, the Board approved two budget change proposals (BCP) for fiscal year 1991-92 and one BCP for fiscal year 1992-93. For 1991-92, the Board approved an increase for statewide pro rata costs, which are charged to each agency, and an increase for Attorney General/Office of Administrative Hearings expenditures, more than doubling the amount allocated to that item. For 1992-93, the Board approved an in-



crease in facilities operations, due to an increase in the square footage of the Commission's new headquarters office.

FUTURE MEETINGS:

February 28 in San Francisco.

BOARD OF CHIROPRACTIC EXAMINERS

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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 Division 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:

BCE Scope of Practice Regulatory Amendments. Earlier this year, a settlement was approved 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 County Superior Court), a 1987 case in which the parties were litigating the validity of BCE's adoption and the Office of Administrative Law's (OAL) approval of section 302 of BCE's regulations, which defines the scope of chiropractic practice. (See CRLR Vol. 11, No. 3 (Summer 1991) pp. 182-83; Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 199; and Vol. 9, No. 1 (Winter 1989) p. 97 for background information on this case.) The terms of the settlement approved by the court required BCE to amend section 302 specifically as stipulated by the parties to the lawsuit. Accordingly, BCE adopted new section 302 on an emergency basis, containing the agreed-upon language; OAL approved the emergency section 302 on June 3.

On June 20, BCE held a public hearing on the permanent adoption of the new section 302. The Board made two minor clarifying revisions to the proposed language and adopted the modified version. The revisions provide that (1) "[a] part of a course of chiropractic treatment, a duly licensed chiropractor may use . . . physical therapy techniques in the course of chiropractic manipula-

tions and/or adjustments"; and (2) a chiropractor is prohibited from holding him/herself out as practicing physical therapy or using the term "physical therapy" in advertising unless he/she holds another such license. The Board released the revised version of section 302 for an additional 15-day comment period which expired on July 15. No further revisions were made to the stipulated language of section 302; the Board adopted the revised version of section 302 at its July 25 meeting. On September 27, BCE transmitted the rulemaking file to OAL for review and approval; at this writing, BCE is awaiting OAL's decision.

Also on June 20, the Board held a public hearing on proposed new section 317(v), Title 16 of the CCR. Also compelled by the settlement agreement in the litigation, new section 317(v) would make it unprofessional conduct for a chiropractor to fail to refer a patient to an appropriate physician, surgeon, podiatrist, or dentist if in the course of a diagnostic evaluation, a chiropractor detects an abnormality that indicates that the patient has a condition, disease, or injury that is not subject to complete treatment by chiropractic methods and techniques. In response to the public comments received, BCE is considering modifications to proposed section 317(v); at this writing, however, no revisions to the proposed language have been released by the Board.

Board Proposes New Examination Requirement. At its June 20 meeting, BCE agreed to commence a regulatory action which would repeal existing section 349(b) and add a new section 349(b), Title 16 of the CCR, to provide that, effective January 1, 1993, successful completion of all three parts of the National Board of Chiropractic Examiners (NBCE) examination, including physiotherapy, is required before a candidate may sit for BCE's practical examination; and successful completion of all parts, including physiotherapy, of the NBCE examination will serve as the written portion of the California chiropractic licensure examination.

The Board schedules over 1,400 candidates for the entire chiropractic licensure examination each year; approximately 46% of these candidates fail to pass the California examination and return for subsequent examination. According to BCE, requiring National Board status prior to being eligible to sit for the practical examination assures BCE that the "quality of the candidate's didactic knowledge has been established"; the "public is better served and protected"; the "candidate achieves a

more far reaching level of competency which is recognized nationwide, not solely in California"; and the "number of candidates eligible to sit for the California exam is reduced to those most likely to succeed." BCE was scheduled to hold a public hearing on these proposed revisions on October 17.

Board Seeks Amendments to Conflict of Interest Code. On June 20, the Board adopted proposed amendments to its conflict of interest code, which appears at section 375 and the Appendix thereto, Title 16 of the CCR. Specifically, the amendments designate BCE employees who must disclose certain investments, income, and interests in real property and business positions, and who must disqualify themselves from making or participating in the making of governmental decisions affecting those interests. BCE forwarded the rulemaking file to the Fair Political Practices Commission (FPPC) for a 45-day comment period which commenced on September 20. Following approval by the FPPC, BCE will forward the amended section to OAL for processing.

Update on Other Proposed Regulatory Changes. The following is a status update on other regulatory changes recently proposed and/or adopted by BCE, and discussed in detail in previous issues of the *Reporter*:

-At this writing, BCE still has not forwarded to OAL its proposed regulatory amendment to section 356, which would specify that four hours of each licensee's annual twelve-hour continuing education requirement must be completed in adjustive technique, and must be satisfied by lecture and demonstration. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 183 and Vol. 11, No. 2 (Spring 1991) pp. 166-67 for background information.)

-On July 3, BCE commenced a fifteen-day public comment period regarding modifications to the language of proposed new sections 306.1, which would require the Board to create Mid-Level Review panels as part of its discipline system, and 306.2, which would provide legal representation by the Attorney General's office in the event that a person hired or under contract to the Board to provide expertise to BCE, including a Mid-Level Review Panel member, is named as a defendant in a civil action. (See CRLR Vol. 11, No. 3 (Summer 1991) p. 183; Vol. 11, No. 2 (Spring 1991) p. 167; and Vol. 11, No. 1 (Winter 1991) p. 137 for background information.) Earlier this year, OAL disapproved the Board's proposed adoption of sections 306.1 and 306.2.