



DMV did not adopt the ALJ's proposed decision in its entirety. In March 1995, the DMV Director issued his decision ordering the dealer's license revoked without the possibility of reactivation and issuance of a probationary license; DMV's decision relied upon the ALJ's finding that the advertising violations constituted moral turpitude.

World Nissan filed the instant appeal with NMVB in April 1995; after hearing all arguments and considering the evidence, NMVB held that a violation of the Automobile Franchise Act (Vehicle Code section 3000 *et seq.*) is not *per se* moral turpitude, and that if moral turpitude exists in a given case, it must be based on the particular circumstances surrounding the conviction(s) and whether the conviction(s) demonstrates unfitness to practice as a licensed new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative. Board members reasoned that state courts have been reluctant to hold that any but the most abhorrent crimes constitute moral turpitude *per se* in cases where an individual's vested right to pursue a particular profession or vocation is at stake.

Accordingly, the Board ordered that World Nissan's dealer's license be suspended for thirty days, and stayed the order until World Nissan applies for issuance of a new occupational license as a new motor vehicle dealer. In addition, NMVB ordered that any subsequent occupational license as a new motor vehicle dealer issued to World Nissan will be probationary for a period of three years from the issuance of the license, and any license issued to World Nissan during the three-year probationary period will be issued only as a probationary license.

LEGISLATION

AB 28 (Gallegos). Existing law makes it unlawful for the holder of any dealer's license to fail to disclose in writing to the buyer of a new motor vehicle that the vehicle, as equipped, may not be operated on a highway signed for the requirement of tire chains if the owner's manual or other material provided by the manufacturer states that the vehicle, as equipped, may not be operated with tire chains. As amended July 18, this bill requires vehicle manufacturers to provide franchised dealers with a list of the affected vehicles, and requires the dealer to provide a specified disclosure statement to the buyer or lessee of a new motor vehicle, in not less than fourteen-point boldface type on a single piece of paper. The bill requires the dealer to furnish the buyer or lessee with a copy of the disclosure, signed by the buyer or

lessee, prior to the sale or lease of the vehicle. This bill was signed by the Governor on September 2 (Chapter 452, Statutes of 1995).

AB 770 (Aguilar). Existing law prohibits the holder of any motor vehicle dealer's license from advertising for sale or selling any new vehicle of a line-make for which the dealer does not hold a franchise; a violation of that provision is a misdemeanor. Existing law makes several exceptions to that general prohibition, including transactions involving a commercial vehicle. As amended May 11, this bill limits the exception for transactions involving a commercial vehicle to commercial vehicles with a gross vehicle weight rating of more than 10,000 pounds. The bill adds to the list of exceptions specified above a transaction involving a manufactured home, a vehicle purchased for export and exported outside the territorial limits of the United States without being registered with DMV, or a new vehicle that will be substantially altered or modified by a converter, which the bill defines, prior to resale.

Existing law requires DMV to furnish an autobroker's registration certificate to a dealer who registers with DMV as an autobroker. This bill instead requires DMV to furnish the dealer with an autobroker's endorsement to the dealer's license. This bill was signed by the Governor on July 30 (Chapter 211, Statutes of 1995).

AB 1381 (Speier). The Automotive Consumer Notification Act requires the seller of a vehicle to include a specified "lemon law" disclosure if that vehicle has been returned, or should have been returned, to the dealer or manufacturer for failure to conform to warranties. As amended August 21, this bill revises and recast the Automotive Consumer Notification Act to, among other things, require the manufacturer to retitle specified defective vehicles in its name, request DMV to inscribe the ownership certificate with a "lemon buy-back" notation, affix a "lemon buy-back" decal to the left doorframe of the vehicle, deliver a specified notice to the transferee of the vehicle, and obtain the transferee's acknowledgment. The bill provides that it shall apply only to vehicles reacquired by a manufacturer on or after January 1, 1996. This bill was signed by the Governor on October 3 (Chapter 503, Statutes of 1995).

AB 1383 (Speier), as amended July 28, would make existing law which authorizes the Department of Consumer Affairs (DCA) to certify third-party dispute resolution processes for "lemon law" disputes inoperative for a four-year period, during which time alternative provisions added

by the bill would be operative. Among other things, the bill would require DCA to impose an additional fee of up to \$2 on the sale of all new motor vehicles to be used solely for the purposes of the bill subject to appropriation by the legislature.

Existing law specifies the remedies for breach of a consumer warranty, including the remedies for breach of an express warranty. This bill would eliminate the above provisions which specify the damages available for breach of an express consumer warranty, and replace them with provisions applicable solely to motor vehicle manufacturers who refuse to participate in or comply with a decision rendered pursuant to state-certified new car arbitration proceedings under the bill. [*S. Jud*]

AB 1218 (Escutia), as amended July 29, is no longer applicable to NMVB.

SB 1085 (Wright), as amended April 5, is a spot bill making minor changes in the law requiring DCA to certify qualified third-party dispute resolution processes to resolve "lemon law" disputes. [*S. Rls*]

FUTURE MEETINGS

To be announced.

OSTEOPATHIC MEDICAL BOARD OF CALIFORNIA

Executive Director:
Linda Bergmann
(916) 322-4306

In 1922, California voters approved a constitutional initiative which created the Board of Osteopathic Examiners; 1991 legislation changed the Board's name to the Osteopathic Medical Board of California (OMBC). Today, pursuant to Business and Professions Code section 3600 *et seq.*, OMBC regulates entry into the osteopathic profession, examines and approves schools and colleges of osteopathic medicine, and enforces professional standards. The Board is empowered to adopt regulations to implement its enabling legislation; OMBC's regulations are codified in Division 16, Title 16 of the California Code of Regulations (CCR). The 1922 initiative, which provided for a five-member Board consisting of practicing doctors of osteopathy (DOs), was amended in 1982 to include two public members. The Board now consists of seven members, appointed by the Governor, serving staggered three-year terms.

On June 27, Governor Wilson appointed attorney Navid Sharafatian to a



public member position on the Board. On October 19, the Governor appointed Michael Liskanich, DO, to fill a professional member vacancy on OMBC; Liskanich is the husband of former OMBC member Laurie Woll, DO, who resigned from the Board effective October 19. In addition to Liskanich and Sharafatian, the members of the Board are osteopaths Richard Bond, William Evans, and Ernestina Agresti, and public member Ronald Kaldor. At this writing, OMBC is functioning with one professional member vacancy.

MAJOR PROJECTS

OMBC Budget Update. At the Board's July 22 meeting, staff reported that OMBC's 1995-96 budget includes an increase of \$150,000 which will be dedicated to enforcement activities. [15:2&3 CRLR 197] Staff also noted that other 1995-96 expenses will include upgrading the Board's computer equipment and preserving the Board's vital records on microfilm; also, additional office space is necessary in order to carry out all of the Board's functions.

OMBC Adopts Information Disclosure Policy. At its July 22 meeting, OMBC adopted its policy and procedures regarding the release of information on licensees to the public. [14:4 CRLR 196] Among other things, the policy states that OMBC will release, upon request by a member of the public, the following information, if known, regarding a licensee: license status including discipline or surrender of license; malpractice judgments of \$30,000 or more; disciplinary actions taken by another state; and felony convictions which are substantially related to practice as a physician.

OMBC Newsletter Released. In October, OMBC released its newsletter, which—among other things—explained the Board's complaint resolution process, discussed laws regarding the labeling of prescription medication, and instructed licensees on how to avoid sexual misconduct charges. The newsletter noted that in 1992-93, OMBC received 135 complaints, 21 of which required formal investigation; in 1993-94, OMBC received 134 complaints, 20 of which required formal investigation, and in 1994-95, OMBC received 153 complaints, 30 of which required formal investigation.

The newsletter also noted that patient complaints of sexual misconduct by physicians are the most sensitive and difficult cases investigated by the Board. In order to prevent misunderstandings and protect physicians and their patients from allegations of sexual misconduct, the Board suggested that licensees take the following actions:

- refrain from exploiting the physician-patient relationship for any purpose;

- be alert to suggestive behavior or flirtatious mannerisms of patients;

- maintain patient dignity at all times;

- have a third party available at all times during a physical examination, and present during any examination of the sexual and reproductive organs or rectum;

- individualize the approach to examinations so that the patient's apprehension, fear, and embarrassment are diminished as much as possible; and

- ensure that all physicians and staff exercise the same degree of professionalism and caution when performing diagnostic procedures as well as surgical procedures and post-surgical examinations when patients may be in varying stages of consciousness.

LEGISLATION

SB 779 (Lewis), as amended April 17, sponsored by the Medical Board of California (MBC), legislatively repeals judicial language in *Kees v. Board of Medical Quality Assurance*, 7 Cal. App. 4th 1801 (1992). [15:1 CRLR 63-64] The *Kees* decision states that physicians formally admitted into MBC's Diversion Program for substance-abusing licensees are immune from any MBC prosecution or investigation. This bill clarifies that immunity will be granted only for violations of the Medical Practice Act which are based primarily on the self-administration of drugs or alcohol under Business and Professions Code section 2239, or the illegal possession, prescription, or nonviolent procurement of drugs for self-administration, and which do not involve actual harm to the public or his/her patients. This bill also establishes additional procedures relating to participation in the Diversion Program and the further investigation and discipline of a physician who is in the Program. This bill was signed by the Governor on August 1 (Chapter 252, Statutes of 1995).

SB 609 (Rosenthal). Existing law authorizes licensing boards, with certain exceptions, to establish a system for the issuance of citations to licensees and for the imposition of a fine which is limited to \$2,500 for each inspection or investigation. As amended September 6, this bill authorizes the fine for violations involving fraudulent billing to be \$2,500 per violation or count.

Existing law requires every insurer who provides professional liability insurance to certain licensed healing arts persons to send a complete report to the licensing agency of that licensed person of certain settlements or arbitration awards. This bill also requires any state or local governmental agency that self-insures any of these licensed healing arts persons to so report.

Existing law also requires employers who pay judgments or settlement or arbitration awards against licensees employed by that employer to report those judgments. This bill revises the definition of "employer" for those purposes to include a public entity.

Existing law requires certain prosecuting agencies to notify the appropriate licensing board of any filings against a licensee charging a felony, and requires the clerk of the court in which a licensee is convicted of a crime to transmit a certified copy of the conviction to the applicable board. This bill requires the prosecuting agency to also notify the clerk of the court of the filing against a licensee. This bill was signed by the Governor on October 10 (Chapter 708, Statutes of 1995).

RECENT MEETINGS

At its July 22 meeting, OMBC re-elected public member Ronald Kaldor to serve as President, Richard Bond, DO, to serve as Vice-President, and Laurie Woll, DO, to serve as Secretary/Treasurer.

At OMBC's October 28 meeting, several Board members reported on their attendance at the Medical Board's telemedicine conference in September; in telemedicine or satellite conferencing, doctors and patients are linked together using modern communications technology, sometimes via satellite, so that expertise can be made instantly available, regardless of geographical distance (see agency report on MBC for related discussion). OMBC and MBC are expected to discuss the possibility of jointly sponsoring legislation regarding issues relevant to the practice of telemedicine.

FUTURE MEETINGS

March 1 in Palm Springs.

PUBLIC UTILITIES COMMISSION

Executive Director:

Wesley M. Franklin

President: Daniel Wm. Fessler
(415) 703-703-2782

The California Public Utilities Commission (PUC) was created in 1911 to regulate privately-owned utilities and ensure reasonable rates and service for the public. Today, under the Public Utilities Act of 1951, Public Utilities Code section 201 *et seq.*, the PUC regulates the service and rates of more than 43,000 privately-owned utilities and transportation companies. These include gas, electric, local and long distance telephone, radio-telephone,