



ducted by California racing associations; accordingly, CHRB unanimously concurred in the amendment.

At its November 18 meeting, CHRB reaffirmed the California Western Appaloosa Association (CWAA) as the official organization to represent Appaloosa horsemen in California; this action followed a CHRB-conducted election to determine whether Appaloosa owners and trainers wanted the CWAA to be replaced by Cal-Western Appaloosa Racing, Inc. In the mail-in election, which ended on October 29, CWAA received 114 votes to 89 for Cal-Western.

At its December 16 meeting, the Board unanimously voted to reelect Ralph Scurfield as CHRB Chair and Donald Valpreo as Vice-Chair.

■ FUTURE MEETINGS

April 28 in Los Angeles.
May 20 in Cypress.

NEW MOTOR VEHICLE BOARD

Executive Secretary:
Sam W. Jennings
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Pursuant to Vehicle Code section 3000 *et seq.*, the New Motor Vehicle Board (NMVB) licenses new motor vehicle dealerships and regulates dealership relocations and manufacturer terminations of franchises. It reviews disciplinary action taken against dealers by the Department of Motor Vehicles (DMV). Most licensees deal in cars or motorcycles.

NMVB is authorized to adopt regulations to implement its enabling legislation; the Board's regulations are codified in Chapter 2, Division 1, Title 13 of the California Code of Regulations (CCR). The Board also handles disputes arising out of warranty reimbursement schedules. After servicing or replacing parts in a car under warranty, a dealer is reimbursed by the manufacturer. The manufacturer sets reimbursement rates which a dealer occasionally challenges as unreasonable. Infrequently, the manufacturer's failure to compensate the dealer for tests performed on vehicles is questioned.

The Board consists of four dealer members and five public members. The Board's staff consists of an executive secretary, three legal assistants and two secretaries.

■ MAJOR PROJECTS

Board Proposes Rulemaking Package. On December 31, NMVB published

notice of its intent to amend sections 585 and 598 and adopt new section 593.1, Title 13 of the CCR. According to NMVB, the amendments to sections 585 and 598 will formalize the current Board procedure by which the Executive Secretary files a protest only after it is determined the submitted protest comports with form, content, and timeliness requirements. The amendments will delegate the authority for determining the timeliness of a protest to the Executive Secretary, and further define the procedures by which the Board staff assigns filing dates in relation to the date the document was received at the Board's offices or mailed by certified or registered mail. Proposed new section 593.1 would describe the means for removing ambiguity from written notices under Vehicle Code section 3062 and thus decrease the likelihood of disputes over sufficiency of notice for actions under that section. At this writing, NMVB is scheduled to hold a public hearing on these proposed changes on February 14 in Sacramento.

■ LEGISLATION

AB 699 (Bowen), as amended June 10, would change the name of NMVB to the Franchise Dispute Resolution Board; revise references to NMVB in other provisions of existing law; and enlarge the Board's scope of authority to include regulation of all franchisee-franchisor relationships and authorize the charging of certain fees, as specified. [*A. W&M*]

AB 802 (Sher), as amended March 30, would prohibit a licensed vehicle dealer from advertising the amount or percentage of any down payment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge without making clear and conspicuous disclosure of specified information. The bill would require advertisements to be made in a prescribed manner. [*A. Trans*]

AB 1665 (Napolitano), as introduced March 4, would prohibit any manufacturer, manufacturer branch, distributor, or distributor branch licensed under the Vehicle Code from preventing a dealer from selling and servicing new motor vehicles of any line-make, or parts and products related to those vehicles, at the same established place of business approved for sale and service of new motor vehicles by any other manufacturer, manufacturer branch, distributor, or distributor branch, if the established place of business is sufficient to enable competitive selling and servicing of all new motor vehicles, parts, and other products sold and serviced at that established place of business. [*A. Trans*]

SB 1081 (Calderon). Under existing law, every conditional sales contract, defined to include certain contracts for the sale or bailment of a motor vehicle, is required to contain certain disclosures, as specified. As amended May 26, this bill would establish a seller's right of rescission based on the seller's inability to assign the contract, and would require the right of rescission to be included in conditional sales contracts. The bill would specify the conditions under which the seller may rescind a contract, including requiring the seller to send a Notice of Cancellation to the buyer, as specified; however, the bill would specify circumstances in which, after rescission, the seller may repossess the vehicle without notice. The bill would provide that a seller is liable in a civil action to a buyer for any damages caused by an unauthorized rescission. The bill would prohibit conditional sales contracts from containing a seller's right of rescission based on inability to assign the contract, except as provided by the bill.

Existing law prohibits various activities in connection with the advertising or sale of motor vehicles by, among others, vehicle dealers licensed by the Department of Motor Vehicles. This bill would prohibit a licensed dealer from rescinding a contract for the sale of a vehicle and subsequently engaging in any unlawful, unfair, or deceptive act or practice, as specified, or stating an intent to rescind a contract pursuant to the right of rescission provided by the bill without having the ability to comply with the requirements of the bill.

The bill would state that the provisions regarding conditional sales contracts only apply to contracts entered into on or after January 1, 1994. [*A. Desk*]

■ LITIGATION

In *Automotive Management Group, Inc. v. New Motor Vehicle Board*, 20 Cal. App. 4th 1002 (Dec. 2, 1993), plaintiff Automotive Management Group (AMG) challenged the finding of an administrative law judge (ALJ) and the trial court that AMG's protest regarding its termination as a franchised dealer of Mitsubishi Motor Sales of America, Inc., was untimely. Finding that NMVB did not review the finding of the ALJ and render a final agency decision, the Sixth District Court of Appeal remanded the matter to the Board for appropriate proceedings.

Because AMG failed to maintain sufficient lines of credit (called "flooring") to buy vehicles from Mitsubishi, as required by the franchise agreement, Mitsubishi notified AMG of its intention to terminate the franchise on January 9, 1990. After



AMG obtained an improved, but still insufficient, flooring commitment, Mitsubishi rescinded the termination notice and entered into a six-month conditional interim sales and service agreement on April 16, 1990; this agreement gave AMG six months in which to comply with the flooring requirement. When the six months had passed and AMG still had not acquired a sufficient flooring commitment, Mitsubishi decided to terminate AMG's franchise agreement. Mitsubishi sent AMG a notice of termination, by registered mail, to be effective January 21, 1991; AMG received the termination notice on October 22, 1990.

Vehicle Code section 3060(a) specifies the required form and content of a termination notice and the procedure by which it must be given. Section 3060(b) authorizes the franchisee to protest a termination notice, requiring the franchisee to file a protest with the Board within 30 days after receiving a 60-day notice, or within 10 days after receiving a 15-day notice. After a protest has been filed, NMVB must advise the franchisor that a timely protest has been filed, and the franchisor may not terminate or refuse to continue until NMVB makes its findings.

On January 18, 1991, Mitsubishi notified AMG that it was granting a 10-day extension of the termination in order to see if AMG could work out a deal with a potential buyer; by letter of January 29, AMG notified Mitsubishi that the buyer had backed out of the buy/sell agreement. Mitsubishi terminated AMG's franchise on January 31, 1991.

On March 6, 1991, NMVB received a protest of the termination from AMG; the Board refused to file the protest because it was untimely. AMG admitted that the protest was not timely, but claimed that Mitsubishi's conduct caused its delay in submitting the protest; for this reason, AMG claimed that the protest filing deadline was tolled. Mitsubishi moved to dismiss the protest on the basis that NMVB had no jurisdiction to consider the untimely filing. Following a hearing, an administrative law judge (ALJ) issued an order rejecting the protest on the grounds that it was untimely and that there were insufficient grounds to establish estoppel. AMG then petitioned for a writ of administrative mandamus; the trial court denied AMG's petition and affirmed the decision of the ALJ.

On appeal, AMG first argued that the motion to dismiss procedure utilized before NMVB was improper, and that Vehicle Code section 3060(a)(3)(b) required NMVB to file the protest and conduct a hearing; further, AMG argued that there is

no provision in the Administrative Procedure Act for a motion to dismiss, and that it was improper for the ALJ to preside over the hearing. The Sixth District Court of Appeal rejected these arguments, noting that the Board's decision to permit the ALJ to hear the issue as a "motion to dismiss" was fair, a hearing on the timeliness issue was held, AMG was permitted to introduce evidence, and "AMG was afforded an opportunity to be heard consistent with the requirements of due process." Further, the court found that a motion to dismiss was employed in a previous matter before NMVB; although NMVB denied the motion, the court stated that "its propriety was never questioned by the appellate court or the parties." Also, the Sixth District found that it was permissible for the ALJ to hear the issue, since the Board's statutory scheme as a whole indicates that either an ALJ or the Board may preside over a hearing on a matter falling within NMVB's jurisdiction.

AMG also contended that even if the motion to dismiss procedure was permissible, the Board should have reviewed the ALJ's decision. The Sixth District agreed with this argument, finding that although the statutes do not delineate whether an ALJ may determine the issue alone or whether the ALJ's determination must be reviewed by the Board, "the statutory scheme does indicate that the Board should render the ultimate decision with respect to hearings under section 3066"; according to the court, "the same amount of review is warranted in determining whether a protest is timely."

In response to this argument, Mitsubishi contended that AMG never requested that the Board hear the matter, and that AMG failed to exhaust its administrative remedies. However, the Sixth District noted that there are exceptions to the exhaustion doctrine, such as where the administrative remedy is inadequate, unavailable, or where it would be futile to pursue such a remedy. Given the ALJ's statements that "the protest is not accepted for filing with the New Motor Vehicle Board" and "[t]here shall be no further proceedings in this cause before the Board," the court found that it would have been futile for AMG to have pursued the matter before the Board. Accordingly, the Sixth District remanded the matter to NMVB so that it may properly rule on the matter.

RECENT MEETINGS

At its December 7 meeting, NMVB discussed an ALJ's proposed decision in a matter between Jim Lynch Cadillac and General Motors Corporation's Cadillac

Motor Car Division. Because NMVB refuses to release the ALJ decision to the public, the facts are not clear. However, this dispute apparently arises out of a July 1992 NMVB decision in a matter between the same parties; at that time, the Board adopted an ALJ decision permitting GMC to terminate the franchise of Jim Lynch Cadillac. [12:4 CRLR 223] Jim Lynch Cadillac now wishes to litigate an issue related to the 1992 matter, but GMC contends that, under the doctrine of res judicata, the issue may not be relitigated because Lynch had the opportunity to have it heard in the original proceeding. Following discussion, the Board asked each party's attorney to file a two-page brief stating their arguments as to why the issue should or should not be excluded under the doctrine of issue preclusion.

FUTURE MEETINGS

To be announced.

OSTEOPATHIC MEDICAL BOARD OF CALIFORNIA

Executive Director:
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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.

At its October meeting, OMBC welcomed new member Laurie Woll, DO, to the Board; Woll was appointed to OMBC in June by Governor Wilson.

MAJOR PROJECTS

OMBC Budget Update. Like many other regulatory agencies, OMBC has